

# **SECTION 42A REPORT**

Opening Statement

## **Hearing 21A: Natural Environments 1- Indigenous Vegetation and Habitats**

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Date: November 2020



1. Good morning Chair and Commissioners. My name is Susan Chibnall, and I am the s42A reporting officer for the Natural Environments 1-Indigenous Vegetation and Habitats topic. I am also the author of the rebuttal evidence in relation to the Topic.
2. I wish to introduce Mr John Turner from WSP, a technical expert on ecology and is here today to answer any questions the panel may have in his capacity as Council's ecological expert.
3. While I do not intend to cover my recommendations in detail, my opening statement will provide a broad overview of:
  - a. The legislative framework for indigenous biodiversity
  - b. The spatial data for significant natural areas
  - c. The Objectives and the associated policies and rules in relation to significant natural areas (SNAs)
  - d. Overview of the submissions and themes
  - e. Main changes recommended from the notified version
  - f. Amendments from submitter evidence
  - g. Matters still in contention

#### **Legislative framework for indigenous biodiversity**

4. As discussed in my s42A report, the legislative and planning framework for indigenous biodiversity includes the following:
  - a. The matters of national importance in section 6 (c) of the RMA that require Council to recognise and provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna;
  - b. Section 7 (d) of the RMA requires Council shall have particular regard to the intrinsic values of ecosystems;
  - c. Section 31(1)(b)(iii) of the Resource Management Act 1991 (RMA) requires Council to maintain indigenous biodiversity;
  - d. The New Zealand Coastal Policy Statement which supports the achievement of sections 6 and 7 of the RMA with respect to managing indigenous biodiversity within the coastal environment (namely Policy 11 and its management hierarchy).
  - e. The National Policy Statement for Freshwater, National Environmental Standard for Freshwater, and National Environmental Standard for Plantation Forestry
  - f. The Waikato Regional Policy Statement, namely section 11 requires Council to maintain or enhance indigenous biodiversity
5. The National Policy Statement for Indigenous Biodiversity is currently still in draft and therefore does not have any legal status.

#### **Objective, policies, rules and plan structure**

6. I will begin by outlining the purpose, structure, and content of Chapter 3: Natural Environment which contains the objectives and policies relevant to this topic. Chapter 3 also contains objectives and policies for Outstanding Landscapes, Significant Amenity Landscapes and Natural Character, however submissions in relation to these aspects have been addressed in Hearing 22.
7. As notified, Chapter 3 has one overarching objective for indigenous biodiversity and a suite of policies to support it. This objective is a general approach for all indigenous vegetation and seeks to ensure the biodiversity and ecosystems are maintained or enhanced, which aligns with the policy direction in the Regional Policy Statement. The supporting policies include considerations for indigenous biodiversity when undertaking activities. There is a second objective which is specific to significant natural areas (SNAs) and seeks to protect and enhance indigenous biodiversity within SNAs. The supporting policies set out the management approach to indigenous biodiversity.
8. The proposed district plan maps contain a spatial layer that indicates where SNAs are located in the district. The rule framework is designed to apply to the identified SNAs, with a more restrictive approach imposed within the spatial overlay and a less restrictive regime if outside the spatial layer.
9. The criteria for identifying SNAs are located in Appendix 2 Criteria for Determining Significance of Indigenous Biodiversity of the Proposed District Plan.
10. The rules for indigenous biodiversity are set out in zone chapters. The rules manage the following activities within SNAs:
  - a. Earthworks;
  - b. Vegetation clearance;
  - c. Subdivision which incentivises the protection of SNA by the allowance of additional lots; and
  - d. Subdivision that divides a SNA.
11. There are rules applying to indigenous vegetation outside a SNA to cover vegetation clearance for the Rural Zone, and Country Living Zone. The rules permit unlimited vegetation clearance for specific purposes e.g. removing vegetation that endangers human life or existing buildings or structures, or limited amounts of clearance for other reasons such as maintaining productive pasture or creating a building platform.

### **Overview of submissions**

12. There are 623 primary submission points addressed that relate to the indigenous vegetation and habitats, and 674 further submission points. Thirty-one pieces of evidence were received (including rebuttal evidence).
13. The common themes are as follows:
  - a. The accuracy of the SNA mapping;
  - b. Objectives and policies, and the application of policies managing the hierarchy of effects, including offsetting and environmental compensation;
  - c. The management of manuka and kanuka and their recent classification of being either at risk or threatened;
  - d. Land use – Effects regarding earthwork and vegetation clearance;
  - e. The recognition of farming activities;

- f. The responsibility of kauri dieback; and
- g. The management of indigenous bats.

## **Main changes recommended from the notified version**

### Mapping of SNAs

14. There has been much discussion within the evidence on the mapping of SNAs. Through my consideration of the submissions and site visits to submitter's properties, I became aware of a high level of inaccuracy of the data informing the mapping of these sites. I have outlined some options to address the inaccuracies of the mapping in my s42A report. My recommended option is to remove the mapping of SNAs from the Proposed Planning Maps until such time as ground truthing has been undertaken, but retaining the mapping for those properties that:
- a. Have been ground-truthed; or
  - b. Have been subjected to an extensive and detailed ecological assessment as part of a statutory process e.g. the Notice of Requirement for the Huntly bypass; or
  - c. Are in the ownership of a government organisation such as Department of Conservation.
  - d. Are protected by a Queen Elizabeth Trust covenant.
15. As a result of this recommendation, it has necessitated amendments to the definition for "significant natural areas" so that the SNA provisions apply to every piece of indigenous vegetation that meets the criteria contained in Appendix 2 or those areas mapped as such on the planning maps. This is a similar approach to the Operative District Plan. It has also necessitated amendments to Policy 3.2.2 regarding identification of SNAs.
16. The upcoming National Policy Statement for Biodiversity is likely to require all territorial councils to undertake a district wide assessment to determine if an area is significant against criteria contained in the National Policy Statement, and suitably identify it. This assessment must be undertaken within five years after the commencement date. As a process subsequent to the Schedule 1 process associated with the Proposed District Plan, I recommend that Council promulgate a series of plan changes specific to each geographical area to reintroduce the full mapping concept back into the District Plan accurately, and delete the application of the general SNA criteria from each geographical area through each plan change.
17. Mr Turner and I undertook site visits to 40 properties in response to submissions and all of these resulted in recommended changes to the mapped SNAs for those properties. I have recommended three further amendments to SNA mapping as a result of the submitter's evidence.

### Non regulatory support

18. A number of landowners (particularly in the farming community) expressed concern that they are taking care of SNAs on behalf of the District with very little assistance or recognition. I have recommended including a new non-regulatory policy which will facilitate council to work with landowners to assist with the management of SNAs. This policy also offers ecological assistance to determine whether an area of vegetation qualifies as a SNA or not, and facilitate collaboration between landowners and both the District and Regional Councils.

### Management hierarchy

19. I have recommended policy amendments to make the hierarchy of management approaches clearer, and to recognise where offsetting and environmental compensation feature in that hierarchy. I have recommended additional policies regarding management hierarchy and biodiversity offsetting to apply to more general indigenous vegetation to mirror those policies applying to SNAs.
20. I have recommended amendments to Policy 3.2.3 Management Hierarchy to recognise and protect the 'values' of indigenous biodiversity and to clarify that avoiding adverse effects is preferable in the first instance.
21. I have recommended an additional clause in Policy 3.2.4 Biodiversity offsetting to avoid adverse effects to the extent practicable and a new clause to recognise there are limits to the appropriate use of biodiversity offsetting as this will better reflect the RPS.
22. I have also recommended including new definitions for "biodiversity offsetting" and "environmental compensation" to provide additional clarity.

### Existing infrastructure and functional requirement

23. I have included recognition of existing infrastructure in Policy 3.2.6 in terms of maintenance, operation and upgrading.
24. I have recommended an additional new policy to recognise that activities may have a locational or functional requirement to locate within a SNA where there is no alternative location, as there appears the Proposed Plan does not address this aspect of the RPS.

### Earthworks rules

25. I have recommended removing the limits on volume and area for earthworks when maintaining existing tracks, fences etc as this farming infrastructure already exists. I have also recommended including an advice note in response to the submission from Waikato Regional Council drawing attention to the Waikato Pest Management Plan.
26. I have recommended inclusion of conservation activities when undertaking earthworks within a SNA to recognise that earthworks may be required to facilitate conservation activities that can benefit a SNA.

### Vegetation clearance rules

27. Policy 11 of the New Zealand Coastal Policy Statement (NZCPS) sets out a management hierarchy where adverse effects of activities are avoided on particular taxa and habitats, most of which appear in the criteria for SNAs. This absolute policy direction of the NZCPS has necessitated changes to rules to separate SNAs in the coastal environment from SNAs outside the coastal environment, with more restrictive rules applying to SNAs within the coastal environment.
28. It also became apparent that the rules did not explicitly allow for simple (and logical) activities such as clearance of non-indigenous species in a SNA, and vegetation clearance outside a SNA (particularly relevant to the urban zones).
29. I have also recommended vegetation clearance associated with conservation activities (relying on the existing definition of this term) is a permitted activity within a SNA.

### Kauri dieback

30. The Environment Court decision arising from Thames Coromandel District Council's district plan held it is a function of a territorial authority to manage the control of Kauri

dieback to maintain indigenous biological diversity. I have recommended a simplistic approach to the management of kauri dieback, where I have recognised the disease via a broad approach in a policy. To support the policy, I have recommended straightforward rules where no earthworks can be within the kauri root zone and a matter of discretion if the permitted standards are exceeded. The reason for this simplistic approach is that I consider it will be more effective and efficient and practical, than the more complex approach sought by the Department of Conservation.

#### Kanuka and Manuka

31. I have recommended relocating the rules enabling the removal of kanuka and manuka for maintenance of pasture from outside an SNA to inside a SNA. This approach is in response to their recent classification as either being at risk or threatened, which has meant that this species instantly meets the criteria for being a SNA.

#### Bats

32. I am aware that my rebuttal has referred to the '*management of long tailed bats*' rather than the '*management of their habitat*'. Nevertheless, I have not recommended including provisions for the management of the habitat of bats due to insufficient data both inside and outside a SNA. In addition, I consider the lack of expertise within council, and the practicality of being able to implement the submitter's suggested approach to manage this issue means that that the framework sought by the Department of Conservation will not be effective nor efficient.

### **Main matters from submitter evidence that remain in contention**

#### Significant Natural Area Mapping

33. Waikato Regional Council have not supported the removal of the majority of the SNA mapping. I have not been persuaded by Ms Foley to change my thinking on this. Although I essentially agree that the mapping of these areas provides clarity and certainty for both landowners and the Council, I consider this needs to be absolutely accurate and informed by robust data.

#### Objectives and policies

34. Department of Conservation in their original submission supported the retention of Objective 3.1.1, however Mr Riddell sought an amendment to Objective 3.1.1 to include additional wording 'attributes' and 'functioning'. I consider the additional wording does not add any significant benefit (refer to section 6 of my rebuttal).
35. Federated Farmers NZ requested to include additional wording into Objective 3.2.1 to provide for protection and enhancement through regulatory and non-regulatory methods. I have not been persuaded by the evidence and consider that non regulatory methods are best separate to the rules as they are not conducive to a rule framework. This is discussed in my rebuttal report in section 8.
36. The retention of Policy 3.2.2 Identify and Recognise was sought by Federated Farmers, Waikato Regional Council, and Department of Conservation. Due to my recommended approach to the mapping, I am still of the opinion that deleting this policy is appropriate as the policy does not add any real value. This is discussed in section 9 of my rebuttal.
37. The Department of Conservation considers there should be no permitted activity for building development in Policy 3.2.6 Providing for vegetation clearance. I have not been persuaded by the Department's evidence and consider that the Proposed Plan needs to

provide for people to develop their land in a sustainable manner. This is discussed in section 12 of my rebuttal.

38. Ms Foley on behalf of Waikato Regional Council sought to amend Policy 3.2.6 Providing for vegetation clearance to recognise that only clearance with minor effects will be enabled. I am still of the opinion that as there are other policies that establish the hierarchy of effects, this amendment is not necessary. The policy's purpose is generic and simply relate to specified activities that are considered appropriate.
39. Ms Foley requesting the relocation of Policy 3.2.6 Providing for vegetation clearance, to be located under 3.1.2 so that it clear that clearance applies to all indigenous vegetation. I have not agreed with this approach as it has unintended consequence of limiting indigenous vegetation removal outside SNAs, even for gardening.

#### Definitions

40. The recommendation to amend the definition for Significant Natural Area has caused concerns for several submitters. I have recommended to include additional wording that will mean a SNA will be an area that is either mapped or meets one or more of the criteria in Appendix 2. I have not changed my thinking on this. This approach combined with a policy that provides for the cost of an ecological assessment covered by council in my view is a reasonable solution until such time as a more accurate spatial data is created (refer to section 14 of my rebuttal).
41. Ms Wharfe on behalf of HortNZ sought to amend the definition for Indigenous vegetation to include reference to biosecurity works. I have not been persuaded by the evidence as I consider the additional clause providing for conservation activities within the earthworks rules and vegetation clearance rules alleviates their concerns (refer to section 14 of my rebuttal).
42. Mr Riddell on behalf of Department of Conservation sought additional wording to the definition Indigenous vegetation to recognise Long-tailed bats. I have rejected this on the grounds that this request is not supported by robust data and the rules sought are impractical to implement (refer to section 14 of my rebuttal).

#### Land use Activities

43. Hill Country Farmers Group considered the earthworks rule for the maintenance of existing tracks, fences, drains etc to be redundant as this is covered by a permitted activity for ancillary earthworks. As ancillary earthworks cover new tracks, I am still of the opinion that if new tracks are needed within a SNA, this needs to be considered through a consenting process (this is detailed in section 15 of the rebuttal).
44. Ms Wharfe on behalf of HortNZ sought to include biosecurity works with the earthworks rule. I have not being persuaded by the evidence to provide for this as I believe the additional clause allowing for conservation activities will provide for biosecurity works to be undertaken, although I invited Ms Wharfe to clarify her concerns with case studies at the hearing (refer to section 15 of my rebuttal).
45. Evidence from Kim Robinson on behalf of Lochiel Farms sought additional wording 'repairing or reinstating' to the vegetation clearance rule with regards to tracks. I have not agreed as I believe maintenance already covers repairing, and that reinstating may go outside the realm of "maintenance" depending on the age of the track and the period of disuse (refer to section 15 of my rebuttal).

46. Evidence from Mr Blomfield on behalf of Dilworth Trust sought amendments to the vegetation clearance rules to provide for remediation or stabilisation of the banks of a stream. I have not been persuaded by the evidence provided, and suggest the land use consent document and the conditions provided by Mr Dilworth would prevent them from undertaking vegetation removal (refer to section 15 of my rebuttal).
47. Mr Riddell and Mr Beauchamp on behalf of Department of Conservation sought to include a more comprehensive approach within the earthworks rules to manage kauri dieback. Although I acknowledge this is a serious issue, I have not agreed on their approach because I consider the implementation of such would not be an effective mechanism to manage this disease (refer to section 15 of my rebuttal).
48. Evidence provided by Ms Thurley on behalf of Department of Conservation sought to include provision for the management of Long Tailed bats. Although I agree that the loss of roost sites for this species is an issue, I have not been persuaded to change my mind for the reasons I have outlined above.

### **Summary**

49. I am mindful that my s42A report and analysis of submissions has taken a highly practical approach in terms of implementation of provisions. It can be difficult balancing legislative requirements with the eventual manifestation of a rule framework, and I have been mindful in my consideration of submissions of the question 'how will this work on the ground?'.  
I look forward to the evidence presented by submitters over the course of the hearing and welcome any questions that you may have.
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