

**BEFORE THE HEARING PANEL**

**IN THE MATTER OF**

**The Proposed Far North District Plan**

**Hearing 4: Natural Character, Natural Features and  
Landscapes, Coastal Environment and Ecosystems &  
Indigenous Biodiversity**

---

**LEGAL SUBMISSIONS ON BEHALF OF FOREST & BIRD**

---

**Dated: 2 August 2024**

---

**Royal Forest and Bird Protection Society of New Zealand**  
Solicitor: Tim Williams  
t.williams@forestandbird.org.nz / 027 3018975



## INTRODUCTION

1. The Royal Forest and Bird Protection Society of New Zealand Inc. (**Forest & Bird**) made submissions (submitter number S511) and further submissions (further submitter number FS346) on the Proposed District Plan (**PDP**).
2. These legal submissions focus on the Ecosystems and Indigenous Biodiversity chapter of the PDP, and address certain matters raised by the recommendations contained in Council's s42A report.

## IDENTIFYING SIGNIFICANT NATURAL AREAS

3. Forest & Bird maintains its position that the most efficient and effective way for Council to fulfil its functions relating to the protection and maintenance of indigenous biodiversity in the Far North District would be to identify and provide for Significant Natural Areas (**SNA**) in the PDP.
4. Without prejudice to this position, Forest & Bird acknowledges that there are now substantial obstacles to successfully achieving this outcome, which have arisen due to a lack of constructive engagement with tangata whenua and other landowners during the Schedule 1 process.
5. It is important to recognise that, while failure to identify SNAs will undoubtedly make it more difficult for Council to effectively manage adverse effects on indigenous biodiversity, this does not change the fact that Council has legal obligations to give effect to relevant legislation and higher order policies in the PDP.
6. The changes to the PDP recommended by Council's s42A report would replace references to SNAs with references to "areas of significant indigenous vegetation and significant habitat of indigenous fauna", consistent with the wording used in the Northland Regional Policy Statement (**RPS**). For convenience, these will be referred to in the following submissions as Significant Ecological Areas (**SEA**).

## Policy Direction for Identifying SNAs

7. The recommendation in the s42A report is that it would be preferable to give effect to the NPS-IB in full through a future plan change.<sup>1</sup> On this basis, the s42A report recommends that references to identifying SNAs in **IB-O1** and **IB-P1** should be deleted.
8. However, even if the future plan change recommendation is adopted, Forest & Bird submits that it would nonetheless be appropriate to provide policy direction in the PDP for the work that still needs to be done by Council.
9. This policy direction should include objectives and policies in the PDP to enable the assessment of areas that qualify as SNAs, using the assessment criteria in Appendix 1 of the NPS-IB, and in accordance with the principles set out in cl 3.8(2) of the NPS-IB.
10. Clause 4.1 of the NPS-IB states that every local authority must give effect to the NPS as soon as reasonably practicable. The recommendation to delete references to identifying SNAs from the PDP is not consistent with this obligation.
11. In this context, Forest & Bird observes that the Operative District Plan (in force since 14 September 2009) includes provisions for identifying and mapping SNAs, specifically:
  - (a) **Method 12.2.5.10** establishes an SNA committee;
  - (b) **Method 12.2.5.11** establishes a database on indigenous vegetation areas and habitat and requires Council to progressively develop SNA mapping; and
  - (c) **Rule 12.2.6.3.1** provides for ecological assessment of SNAs in the context of resource consent applications (for clearance of indigenous

---

<sup>1</sup> Section 42A Report: Ecosystems and Indigenous Biodiversity, at [48]

vegetation over 10 years old), with a requirement for "...a scaled map and/or aerial photography showing any areas of significant indigenous vegetation or significant habitat of indigenous fauna and the assessment of the area".

12. Together with the work carried out by Wildlands Consultants since 2018, the above provisions mean that Council will already have a substantial amount of information about SNAs in the district. Forest & Bird considers that it is now imperative for this work to be completed, and that removing all references to identifying and mapping SNAs from the PDP would represent a backwards step.

#### **POLICIES IB-P2 & IB-P3**

13. Forest & Bird supports in part the recommended changes to Policies **IB-P2** and **IB-P3**, which would give effect to the NZCPS and RPS, and submits that the following additional changes would be appropriate:
  - (a) IB-P2(a), to include the full list of adverse effects in NZCPS Policy 11(a).
  - (b) IB-P2(b), to include the full list of adverse effects in NZCPS Policy 11(b).
  - (c) IB-P3(b), to include the full list of adverse effects in RPS Policy 4.4.1(3).
  - (d) IB-P3(b), to refer to the effects management hierarchy (**EMH**), and to include an appropriate definition of the EMH in the PDP.

#### **POLICY IB-P4**

14. Forest & Bird's understanding is that the recommended changes to **IB-P4** are intended to give effect to cl 3.16 of the NPS-IB,<sup>2</sup> and to Council's functions under s 31(1)(b) of the Act.

---

<sup>2</sup> Section 42A Report: Ecosystems and Indigenous Biodiversity, at [160]

15. However, restricting IP-P4 to significant adverse effects means that the policy fails to achieve its objective. The recommended changes would give effect to clause 3.16(1) but not to clause 3.16(2) of the NPS-IB, which requires that:

All other adverse effects of any activities that may adversely affect indigenous biodiversity that is outside an SNA (other than indigenous biodiversity on specified Māori land (see clause 3.18)), must be managed to give effect to the objective and policies of this National Policy Statement.

The objective of the NPS-IB is “to maintain indigenous biodiversity across Aotearoa New Zealand so that there is at least no overall loss in indigenous biodiversity after the commencement date”.<sup>3</sup>

16. The PDP is currently lacking policy direction to ensure that indigenous biodiversity (outside SEA) can be maintained. This requires more than just applying the EMH to significant adverse effects. In the notified version the requisite policy direction was provided by **IB-P4**, which was tentatively supported by Forest & Bird on this basis.
17. Policy **IB-P5** refers obliquely to Council’s statutory obligation to maintain indigenous biodiversity, but only in the context of introducing provisos to this obligation. As a matter of planning logic, Forest & Bird considers that there should be a clear directive policy before any provisos are introduced.

#### **POLICY IB-P5**

18. Forest & Bird considers that the proposed wording of Policy **IB-P5** is problematic for several reasons:
- (a) IB-P5(a) creates unnecessary tension with the earlier policies concerning SEA, which do provide for reasonable restrictions on

---

<sup>3</sup> NPS-IB, cl 2.1

primary production activities. The alternative wording suggested by F&B in submissions would help to address this problem.<sup>4</sup>

- (b) IB-P5(b) would be better addressed in the INF chapter, where the relevant IB policies can be cross-referenced as appropriate.
- (c) IB-P5(c) is too enabling and would also be better addressed in the INF chapter. For example, there may be circumstances, particularly in the coastal environment, in which upgrading of infrastructure would not be appropriate having regard to the relevant avoidance policies.

#### **RULE IB-R1 – SPECIFIED PERMITTED ACTIVITIES**

- 19. Rule IB-R1 contains a list of specified permitted activities which involve pruning, trimming and clearance of indigenous vegetation, and associated land disturbance.
- 20. These will be permitted activities both inside and outside SEA, which means that they must be appropriate inside SEA. Forest & Bird therefore maintains its position as set out in its submissions.
- 21. Although the s42A report has recommended including reference to “the minimum necessary” in the chapeaux, this does not address Forest & Bird’s concerns relating to overly permissive thresholds, for example in IB-R1.6 (setbacks) and IB-R1.9 (fences).
- 22. Forest & Bird maintains that, for permitted activities, clear thresholds (i.e., numerical thresholds) are more appropriate and less likely to result in disputes between landowners and Council, and/or a lack of appropriate enforcement.
- 23. Finally, in relation to Rule **IB-R1**, Forest & Bird considers that the recommended addition of **IB-R1.13** (infrastructure upgrades) as a permitted activity, would be inconsistent with Policy **IB-P5** which envisages a balance

---

<sup>4</sup> Forest & Bird submissions (S511), at p 31

between protecting indigenous biodiversity and the needs of infrastructure. It would also be inconsistent Policies **IB-P2** and **IB-P3**, and with the NZCPS, the NPS-IB and the RPS, all of which require that significant adverse effects would need to be avoided, remedied or mitigated, and potentially offset or compensated, depending on the circumstances. It is not possible for Council to achieve these outcomes for permitted activities

#### **RULE IB-R3 – INDIGENOUS VEGETATION CLEARANCE**

24. **IB-R3** is a general indigenous vegetation clearance rule, and therefore the thresholds must be appropriate within SEAs. Forest & Bird considers that the proposed thresholds in **IB-R3** are too permissive, especially within SEAs.
25. In contrast, the Auckland Unitary Plan (**AUP**), for example, does not include indigenous vegetation clearance as a permitted activity within SEAs, other than for specified activities.<sup>5</sup> SEAs in the AUP are also described as “areas of significant indigenous vegetation or significant habitats of indigenous fauna”, and are identified using very similar criteria to those in Appendix 5 of the RPS.<sup>6</sup>
26. In the PDP, “remnant forest” is defined as meaning “... any indigenous natural area which has never been clear-felled”. It follows that areas of remnant forest are almost certainly SEAs. However, the PDP would enable clearance of these SEAs, as a generally permitted activity, at a rate of 50m<sup>2</sup> per site per calendar year.
27. Forest & Bird considers that this is not appropriate as a permitted activity. Any areas of remnant forest should be treated as SEAs, and the only permitted activities should be those specified in **IB-R1**.
28. Forest & Bird is also concerned that the definition of “remnant forest” is unclear and may not capture the significance of potential adverse effects on

---

<sup>5</sup> See Activity table E15.4.1

<sup>6</sup> See AUP Schedule 3 – Significant Ecological Areas – Terrestrial Schedule

indigenous biodiversity. Forest & Bird expects that there is likely to be very little native forest remaining in the district that has never been logged. However, there will be areas that have been selectively logged and have subsequently regenerated.

29. A distinction based on “remnant forest” also fails to recognise that areas which have been clear-felled in the past may have been regenerating for many decades and will meet the Appendix 5 criteria for SEAs. In these areas, the PDP would permit clearance at a rate of 500m<sup>2</sup> per site per year,<sup>7</sup> as a permitted activity.
30. Again, Forest & Bird considers that enabling the clearance of SEAs in this way as a generally permitted activity would not be appropriate. Council will need to adopt a more nuanced approach than this to fulfil its statutory obligations relating to the protection of indigenous biodiversity, and to give effect to its own proposed Policies **IB-P3** and **IB-P4**.
31. In addition, any native forest remnants that include kauri have elevated significance because of the threat to standing kauri of kauri dieback disease (*Phytophthora agathidicida*). These kauri forest remnants should not be available for clearance both because of the threat of spreading the disease and also because kauri is now listed as a threatened species due to the disease risk.
32. The s42A report, Appendix 4, compares the indigenous vegetation clearance thresholds in selected district plans. This comparative analysis needs to be approached with caution but does illustrate that the thresholds in the PDP are extremely permissive when compared to other district plans throughout the country.
33. Without having yet conducted a comprehensive review of every district plan that has been referred to in the s42A report, or an assessment of their

---

<sup>7</sup> In the Rural Production zone, Horticulture zone, Māori Purpose zone, and Treaty Settlement Land Overlay.



representativeness across the entire country, Forest & Bird makes the following observations:

- (a) The Whangarei District Plan, which does not identify SNAs, does not allow indigenous vegetation clearance as a generally permitted activity within 20m of water bodies, and the 500m<sup>2</sup> threshold is for a 10-year period.
- (b) It is not correct to say that the Porirua PDP does not have any restrictions on indigenous vegetation clearance outside SNAs, these restrictions are contained in the infrastructure and earthworks chapters of the plan, rather than the eco-chapter (which only relates to SNAs).
- (c) It is not meaningful to compare **IB-R3** with the general indigenous vegetation clearance rules contained in district plans that have identified SNAs. In those plans, significant adverse effects are managed primarily by the SNA policies and rules. This will not be possible in the Far North PDP if the recommendations in the s42A report are adopted.
- (d) In the Kaipara District Plan, which does not identify SNAs, there is no generally permitted indigenous vegetation clearance in the rural zone where the criteria for continuous areas of predominantly indigenous vegetation are met.<sup>8</sup> A similar approach has been adopted in the City of Lower Hutt District Plan.<sup>9</sup>

34. Finally, in its submissions Forest & Bird has sought specific provision for the effects of kauri dieback disease in the district.<sup>10</sup> In its further submissions,

---

<sup>8</sup> Kaipara District Plan, rule 12.10.2a – Indigenous Vegetation Clearance

<sup>9</sup> City of Lower Hutt District Plan, standard 13.3.2.6 – Native Vegetation Clearance – Rural Residential and General Rural Activity Areas.

<sup>10</sup> Forest & Bird submissions (S511), at 4.19

Forest & Bird has supported the submissions of DOC, which also seek specific provisions for kauri dieback.

## **CONCLUSIONS**

35. Forest & Bird maintains its position that SNAs should be identified and provided for in the PDP.
36. In the alternative, policy direction for identifying SNAs should be included in the PDP in preparation for the proposed future plan change.
37. Policies IB-P2 and IB-P3 should include the full list of relevant adverse effects in the NZCPS and RPS.
38. The PDP should include clear policy direction for maintaining indigenous biodiversity in the district.
39. Policy IB-P5 is too enabling and creates unnecessary tension within the plan.
40. If SNAs are not to be identified within the PDP, the permitted activity rules will need to be modified to ensure that these activities are appropriate within SEAs.
41. Proposed rule IB-R1.13 is not appropriate as a permitted activity.

**2 August 2024**

**TIM WILLIAMS**