

# **SECTION 42A REPORT**

## **Ecosystems and Indigenous Biodiversity**

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<b>1</b>	<b>List of Abbreviations</b> .....	<b>3</b>
<b>2</b>	<b>Executive summary</b> .....	<b>4</b>
<b>3</b>	<b>Introduction</b> .....	<b>5</b>
	3.1 Author and qualifications .....	5
	3.2 Code of Conduct .....	6
<b>4</b>	<b>Scope/Purpose of Report</b> .....	<b>6</b>
<b>5</b>	<b>Statutory Requirements</b> .....	<b>6</b>
	5.1 Statutory documents .....	6
	5.2 Section 32AA evaluation .....	10
	5.3 Procedural matters.....	11
<b>6</b>	<b>Consideration of submissions received</b> .....	<b>11</b>
	6.1 Overview of submissions received.....	11
	6.2 Officer Recommendations .....	13
	6.2.1 Key Issue 1: Giving effect to the NPS-IB.....	13
	6.2.2 Key Issue 2: Identifying and mapping SNAs.....	18
	6.2.3 Key Issue 3: General submissions on IB Chapter.....	23
	6.2.4 Key Issue 4: Overview of Indigenous Biodiversity chapter.....	31
	6.2.5 Key Issue 5: Objectives .....	33
	6.2.6 Key Issue 6: General submissions on policies.....	38
	6.2.7 Key Issue 7: IB-P1 .....	42
	6.2.8 Key Issue 8: IB-P2, IB-P3 and IB-P4 .....	43
	6.2.9 Key Issue 9: IB-P5 and IB-P6 .....	48
	6.2.10 Key Issue 10: IB-P7, IB-P8 and IB-P9 .....	55
	6.2.11 Key Issue 11: IB-P10.....	61
	6.2.12 Key Issue 12: General submissions on rules and advice notes .....	64
	6.2.13 Key Issue 13: Rule IB-R1 .....	68
	6.2.14 Key Issue 14: IB-R2 .....	76
	6.2.15 Key Issue 15: IB-R3 .....	78
	6.2.16 Key Issue 16: IB-R4 .....	80
	6.2.17 Key Issue 17: Rule IB-P5 .....	88

6.2.18 Key Issue 18: Rule SUB-R17 - Subdivision of a site containing a  
 scheduled SNA.....91

6.2.19 Key Issue 19: SCHED-4 Schedule of Significant Natural Areas .....93

6.2.20 Key Issue 20: Definitions .....95

6.2.21 Key Issue 21: Miscellaneous/site specific concerns with SNA mapping  
 98

**7 Conclusion ..... 101**

**Appendix 1: Recommended amendments to Ecosystems and Indigenous Biodiversity chapter**

**Appendix 2: Recommended decisions on submissions on the Ecosystems and Indigenous Biodiversity chapter**

**Appendix 3: Summary assessment of how the Ecosystems and Indigenous Biodiversity chapter can practicably give effect to NPS-IB provisions**

**Appendix 4: Summary review of indigenous vegetation clearance rules in selected district plans**

## 1 List of Abbreviations

### List of Submitters and Abbreviations of Submitters' Names

Submitter Number	Abbreviation	Full Name of Submitter
S364	DOC	Director-General of Conservation (Department of Conservation)
S368	FNDC	Far North District Council
S421	Federated Farmers	Northland Federated Farmers of New Zealand
S512	FENZ	Fire and Emergency New Zealand
S511	Forest and Bird	Royal Forest and Bird Protection Society of New Zealand
S159	HortNZ	Horticulture New Zealand
S359	NRC	Northland Regional Council
S344	Paihia Properties	Paihia Properties Holdings Corporate Trustee Limited and UP Management Ltd
S454	Transpower	Transpower New Zealand Limited
S425	Twin Coast Cycle Trail	Pou Herenga Tai Twin Coast Cycle Trail Charitable Trust
S517	Spark & Vodafone	Spark New Zealand Trading Limited and Vodafone New Zealand Limited
S521	Vision Kerikeri	Vision Kerikeri (Vision for Kerikeri and Environs, VKK)
S356	NZTA	Waka Kotahi NZ Transport Agency

Note: This table contains a list of submitters relevant to this topic which are abbreviated and does not include all submitters relevant to this topic. For a summary of all submitters please refer to Section 5.1 of this report (overview of submitters). Appendix 2 to this Report also contains a table with all submission points relevant to this topic.

### Other abbreviations

Abbreviation	Full Term
FNDC	Far North District Council
NES-CF	National Environmental Standards for Commercial Forestry 2017
NPS	National Policy Statement
NPS-ET	National Policy Statement for Electricity Transmission 2008
NPS-HPL	National Policy Statement for Highly Productive Land 2022
NPS-IB	National Policy Statement for Indigenous Biodiversity 2023
NZCPS	New Zealand Coastal Policy Statement 2010
NZTCS	New Zealand Threat Classification System
PDP	Proposed District Plan
RMA	Resource Management Act 1991
RMA Amendment Bill	Resource Management (Freshwater and Other Matters) Amendment Bill 2024
RPS	Northland Regional Policy Statement 2016
SNA	Significant Natural Area

## 2 Executive summary

1. The Far North Proposed District Plan (PDP) was publicly notified in July 2022. The Ecosystems and Indigenous Biodiversity chapter is located in Part 2 – District-wide matters in the PDP.
2. 700 original submission points and 1,428 further submission points were received on the Ecosystems and Indigenous Biodiversity chapter (IB Chapter). 78 original submission points indicate general support for the provisions to be retained as notified, 180 submission points indicate support in part, with changes requested, four submission points are neutral while the majority of submission points (356) oppose the provisions<sup>1</sup>.
3. The submissions can largely be categorised into the following key themes:
  - a. The need to give effect to the National Policy Statement for Indigenous Biodiversity (NPS-IB) and other higher order direction.
  - b. Identifying, mapping and protecting Significant Natural Areas (SNAs).
  - c. A significant number of more specific submissions on the IB Chapter generally seeking more permissive or more restrictive provisions.
4. This report has been prepared in accordance with Section 42A of the Resource Management Act 1991 (RMA) and outlines recommendations in response to the issues raised in submissions. This report is intended to assist the Hearings Panel to make recommended decisions on the submissions and further submissions on the PDP to provide submitters with an opportunity to see how their submissions have been evaluated, and to see the recommendations made by officers prior to the hearing.
5. The key changes recommended in this report relate to:
  - a. Deletion of references to SNA throughout the IB Chapter and replacement with wording better aligned with section 6(c) of the RMA and the criteria in Appendix 5 of the Northland Regional Policy Statement (RPS).
  - b. Amendments to IB-P2, IB-P3, IB-P4, IB-P5 and IB-P6 to clarify intent and better align with the wording of the RPS.
  - c. Amendments to IB-P9 to refocus the policy on the aspects of pest control that are within scope of the PDP provisions and FNDC to control.
  - d. Introduction of a new policy to support subdivision in accordance with SUB-R6.

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<sup>1</sup> 82 submission points were recorded as not stating a position.

- e. A range of amendments to various rules to clarify intent and align with amendments to objectives and policies (e.g. remove references to SNAs).
- f. Deletion of IB-R3 and IB-R5.
- g. Deletion of the requirement for an ecological assessment and refinement of indigenous vegetation clearance thresholds under IB-R4 (and consequential renumbering to IB-R3).
- h. Deletion of SUB-R17 as a consequence of deleting SCHED-4 and all references to scheduled SNA.
- i. Deletion of SCHED-4 (Schedule of significant natural areas).
- j. Updates to key definitions to better reflect the NPS-IB and introduction of four new definitions for "*Pests*", "*At-Risk Indigenous Taxa*", "*Threatened Indigenous Taxa*" and "*Effects Management Hierarchy*".

### **3 Introduction**

#### **3.1 Author and qualifications**

- 6. My full name is Jerome Wyeth. I am a Technical Director – Planning at SLR Consulting based in Whangarei.
- 7. I hold the qualification of Bachelor of Science (Geography) and Masters of Science (Geography), with First Class Honours. I am a Full member of the New Zealand Planning Institute.
- 8. I have over 20 years of experience in resource management and planning with roles in central government, local government and the private sector. My primary area of work is policy planning for local and central government, and I am the New Zealand Policy Portfolio Lead at SLR Consulting. I have worked on a number of district and regional plans at various stages of the RMA Schedule 1 process and have prepared planning evidence for local authority and Environment Court hearings on a range of resource management issues.
- 9. I have been closely involved in the development and implementation of numerous national direction instruments under the RMA (national policy statements and national environmental standards), from the policy scoping stage through to policy decisions and drafting, the preparation of section 32 evaluation reports and implementation guidance. This includes close involvement in national direction instruments relating to highly productive land, climate change, renewable electricity generation and transmission, and plantation forestry. Of particular relevance is my involvement in the NPS-IB through initial involvement in the Biodiversity Collaborative Group as a central government official advising on policy development. I subsequently prepared both the draft and final section 32 evaluation report for the NPS-IB working closely with the Ministry for the Environment and Department of Conservation. I also have been involved in policy statement and plan reviews relating to indigenous biodiversity, including in Kaipara, Hamilton City,

Tairawhiti and Otago and, more recently in Change 1 to the Wellington RPS where the NPS-IB was a key focus.

10. I have been working with the Far North District Council (FNDC) on the PDP since 2021. My involvement in the PDP initially involved refining certain chapters in response to submissions on the draft district plan and preparing the associated section 32 evaluation reports. I was then involved in leading others PDP topics and undertaking a consistency/quality assurance review of the plan prior to notification working closely with the FNDC team. Since mid-2023, I have been working with the FNDC PDP team analysing submissions and am the reporting officer for a number of PDP topics, including the Coastal Environment topic being considered in Hearing 4.

### **3.2 Code of Conduct**

11. I confirm that I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023 and that I have complied with it when preparing this report. Other than when I state that I am relying on the advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
12. I am authorised to give this evidence on the Council's behalf to the Proposed District Plan hearings commissioners (Hearings Panel).

## **4 Scope/Purpose of Report**

13. This report has been prepared in accordance with section 42A of the RMA to:
  - a. Assist the Hearings Panel in their role as independent commissioners to recommended decisions on the submissions and further submissions on the PDP; and
  - b. Provide submitters with an opportunity to see how their submissions have been evaluated and the recommendations being made by reporting officers, prior to the hearing.
14. This report responds to submissions on the Ecosystems and Indigenous Biodiversity chapter.

## **5 Statutory Requirements**

### **5.1 Statutory documents**

15. I note that the section 32 evaluation report for the Ecosystems and Indigenous Biodiversity chapter provides a summary of the relevant statutory considerations applicable to this topic, including key provisions in the RMA, NZCPS and RPS. It is not necessary to repeat that statutory assessment here. However, it is important to highlight the higher order documents which have been gazetted or amended following notification of the PDP, with the NPS-IB being a key consideration for this topic.

#### **5.1.1 Resource Management Act**

16. The Government, elected in October 2023, repealed both the Spatial Planning Act 2023 and Natural and Built Environment Act 2023 on the 22<sup>nd</sup> of December 2023 and reinstated the RMA as Aotearoa/New Zealand's primary resource management policy and plan making legislation. The Government has indicated that the RMA will be replaced, with work on replacement legislation to begin in 2024. The government has indicated that this replacement legislation will be introduced to parliament in mid-2025. However, at the time of writing, details of the new legislation and when and if it may be enacted are unknown. The RMA continues to be in effect until new replacement legislation is passed.

## 5.1.2 National Policy Statements

### 5.1.2.1 National Policy Statements Gazetted since Notification of the PDP

17. The PDP was prepared to give effect to the National Policy Statements that were in effect at the time of notification (27 July 2022). This section provides a summary of the National Policy Statements, relevant to Ecosystems and Indigenous Biodiversity chapter (IB Chapter) that have been gazetted since notification of the PDP. As District Plans must be "*prepared in accordance with*"<sup>2</sup> and "*give effect to*"<sup>3</sup> a National Policy Statement, the implications of the relevant National Policy Statements on the PDP must be considered.
18. The National Policy Statement for Indigenous Biodiversity (NPS-IB) took effect on 4 August 2023, after the PDP was notified for public submissions (27 July 2022). The NPS-IB is a comprehensive NPS with a range of detailed implementation requirements that must be given effect to "*as soon as reasonably practicable*" or within the timeframes specified in Part 4 of the NPS-IB. The objective of the NPS-IB is to maintain indigenous biodiversity so there is at least no overall loss in indigenous biodiversity from the commencement date. The objective is supported by 17 policies and Part 3 (implementation) of the NPS-IB sets out what must be done to give effect to the objective and policies. A core focus of the NPS-IB is on providing direction to territorial authorities to undertake district-wide mapping of Significant Natural Areas (SNAs) based on nationally consistent principles and criteria<sup>4</sup>.
19. The approach to give effect to the NPS-IB is a key overarching issue for the consideration and recommendations on submissions on the IB Chapter. I consider the approach to implement the NPS-IB in more detail under Key Issue 1 below and in **Appendix 3** of this report.
20. The National Policy Statement for Highly Productive Land (NPS-HPL) came into effect on 17 October 2022. The NPS-HPL has a single objective: "*Highly productive land is protected for use in land-based primary production, both now and for future generations*". The NPS-HPL objective is supported by nine policies and a set of implementation requirements in Part 3 which set

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<sup>2</sup> Section 74(1)(a) of the RMA.

<sup>3</sup> Section 75(3)(a) of the RMA.

<sup>4</sup> As discussed under Key Issue 1, the Government is proposing to delay these requirement for three years through the [Resource Management \(Freshwater and Other Matters\) Amendment Bill 47-1 \(2024\), Government Bill Contents – New Zealand Legislation](#).

out what local authorities must do to give effect to the objective and policies of the NPS-HPL. I note that the NPS-HPL will be primarily given effect to through the suite of Rural Zones in the PDP and the Subdivision chapter, which are being considered in Hearing 9 and 17 respectively.

### **5.1.3 National Environmental Standards**

21. The National Environment Standards for Commercial Forestry 2017 (NES-CF) came into effect on 3 November 2023 and amended the National Environment Standards for Plantation Forestry 2017 (NES-PF). In addition to regulating the effects of plantation forestry, the NES-CF now regulates “*exotic continuous-cover forestry*”, which is commercial forestry not intended to be harvested (i.e. carbon forestry). As such, the NES-CF now applies to all types of forestry deliberately established for commercial purposes (although permanent indigenous forestry is not regulated under the NES-CF).
22. The NES-CF is relevant to the Ecosystems and Indigenous Biodiversity chapter as it includes controls relating to indigenous vegetation clearance and regulations relating to SNAs. The NES-CF also allows district plan rules to be more stringent to meet obligations under section 6(c) of the RMA subject to the requirements in section 32(4) of the RMA to demonstrate that more stringent rules than a NES are justified.

### **5.1.4 National Planning Standards**

23. The National Planning Standards outline standard for the format, structure and consent of district plans. In relation to the Ecosystems and Indigenous Biodiversity chapter, the National Planning Standards state that if the following matters are addressed, they must be included in the Ecosystems and Indigenous Biodiversity chapter:
  - a. *identification and management of significant natural areas, including under s6(c) of the RMA.*
  - b. *maintenance of biological diversity.*
  - c. *intrinsic values of ecosystems and indigenous biodiversity.*
24. The Ecosystems and Indigenous Biodiversity chapter has been prepared in accordance with requirements in the National Planning Standards.

### **5.1.5 Treaty Settlements**

25. There have been no further Deeds of Settlement signed to settle historic Treaty of Waitangi Claims against the Crown, in the Far North District, since the notification of the PDP.

### **5.1.6 Iwi Management Plans – Update**

26. Section 74 of the RMA requires that a local authority must take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority when preparing district plans.



27. When the PDP was notified in July 2022, Council had 14 hapū/iwi management planning documents which had been formally lodged with Council, as listed in the PDP section 32 overview report. Council took these management plans, including the broader outcomes sought, into account in developing the PDP. Of the 14 hapū/iwi management planning documents, two have been revised since notification of the PDP:
- a. Ngā Tikanga mo te Taiao o Ngāti Hine' the Ngāti Hine Environmental Management Plan
  - b. Ahipara Takiwā Environmental Management Plan

Ngā Tikanga mo te Taiao o Ngāti Hine' the Ngāti Hine Environmental Management Plan

28. Ngā Tikanga mo te Taiao o Ngāti Hine' the Ngāti Hine Environmental Management Plan was in draft form at the time of the notification of the PDP. This was updated, finalised and lodged with the Council in 2022, after notification of the PDP in July 2022.
29. The Ngāti Hine Environmental Management Plan has various provisions for indigenous biodiversity, including the following key policies:

*2.4 INDIGENOUS BIODIVERSITY – KOIORA TAKETAKE*

*Policies*

- 2. All proposed land-based activities which result in the modification of existing indigenous flora, including permitted activities for which certificates of compliance have been applied for will be preceded by a comprehensive biological audit to identify indigenous species in that area.*
- 4. All statutory agencies will adhere to and implement the New Zealand Biodiversity Strategy.*
- 5. Only after appropriate effective engagement and adequate remediation or mitigation, or for safety or security reasons, will Ngāti Hine support any negative or destructive impacts on our indigenous flora and fauna.*
- 10. Ngāti Hine does not support placing hierarchical values on indigenous flora and fauna within any agency's planning documents in terms of protection.*

Ahipara Takiwā Environmental Management Plan

30. The Ahipara Takiwā Environmental Management Plan was in draft form at the time of the notification of the PDP. This was updated, finalised and lodged with Council in 2023, after notification of the PDP in July 2022.
31. The Ahipara Takiwā Environmental Management Plan includes several indigenous biodiversity specific policies:

### 3.7.5 Policies relating to Biodiversity

*TWNATP2. To require that district and regional plans include policies and rules to protect, enhance and extend existing remnant wetlands, waipuna, riparian margins and native forest remnants in the takiwā.*

*TWNATP3. To require that landowners and commercial land users protect remnant areas of indigenous biodiversity as part of any development.*

*TWNATP4. To require that local authorities and central government actively recognise and provide for the relationship of Ngā Marae o Ahipara with indigenous biodiversity and ecosystems, and recognise their interests in biodiversity protection, management and restoration, including but not limited to:*

*(a) Importance of indigenous biodiversity to tāngata whenua, particularly with regard to mahinga kai, taonga species, customary use and valuable ecosystem services;*

*(b) Recognition that special features of indigenous biodiversity (specific areas or species) have significant cultural heritage value for Ngā Marae o Ahipara;*

*(c) Connection between the protection and restoration of indigenous biodiversity and cultural well-being;*

*(d) Role of mātauranga held collectively by Ngā Marae o Ahipara in biodiversity management; and*

*(e) Recognise and promote the role of Ngā Marae o Ahipara in projects to restoring indigenous biodiversity.*

*TWNATP8. To require that district and regional plans include specific policies and rules to protect, enhance and extend existing remnant and restored areas of indigenous biodiversity in the takiwā.*

32. These updated iwi management plans are considered through this report, to the extent relevant and within the scope of submissions on relevant provisions (which can vary depending on the provision).

## 5.2 Section 32AA evaluation

33. This report uses 'key issues' to group, consider and provide reasons for the recommended decisions on similar matters raised in submissions. Where changes to the provisions of the PDP are recommended, these have been evaluated in accordance with section 32AA of the RMA.
34. Where applicable, the further evaluation for recommended amendments to the IB chapter under section 32AA of the RMA considers:
- Whether the amended objectives are the best way to achieve the purpose of the RMA.

- b. The reasonably practicable options for achieving those objectives.
  - c. The environmental, social, economic and cultural benefits and costs of the amended provisions.
  - d. The efficiency and effectiveness of the provisions for achieving the objectives.
  - e. The risk of acting or not acting where there is uncertain or insufficient information about the provisions.
35. The section 32AA further evaluations in this report contain a level of detail that corresponds to the scale and significance of the anticipated effects of the recommended amendments made to the notified provisions in the PDP. Recommendations on editorial, minor and consequential changes that do not change the policy intent are not evaluated under section 32AA of the RMA in this report.

### **5.3 Procedural matters**

36. No correspondence or meetings with submitters were undertaken, therefore there are no procedural matters to consider for this hearing.

## **6 Consideration of submissions received**

### **6.1 Overview of submissions received**

37. 700 original submission points and 1,428 further submission points were received on the Ecosystems and Indigenous Biodiversity chapter (IB Chapter). 78 original submission points indicate general support for the provisions to be retained as notified, 180 submission points indicate support in part, with changes requested, four submission points are neutral while the majority of submission points (356) oppose the provisions<sup>5</sup>.
38. The main submissions on the IB Chapter came from:
- a. Governmental departments, namely the Department of Conservation (S364) and NZTA (S356).
  - b. Environmental and community interest groups such as Forest and Bird (S511), Carbon Neutral NZ Trust (S529), Manulife Forest Management (NZ) Ltd (S160), Kapiro Conservation Trust (S448) and the Kapiro Residents Association (S429).
  - c. The primary production sector, such as HortNZ (S159), NZ Kiwifruit Growers Inc (S518), Federated Farmers (S421) and Summit Forests New Zealand Limited (S148).
  - d. Iwi groups including Te Rūnanga o Whaingaroa (S486), Te Runanga o Ngai Takoto Trust (S390), Te Hiku Iwi Development Trust (S399), and

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<sup>5</sup> 82 submission points were recorded as not stating a position.

the collective of Te Kawariki me Te Wānanga o Te Rangi Aniwaniwa (S573).

- e. Infrastructure providers, such as Transpower (S454), NZTA (S356), the Twin Coast Cycle Trail (S425) and Top Energy (S483).
- f. A group of large landowners in the coastal environment with some common interests, being Bentzen Farm Limited (S167) P S Yates Family Trust (S333), Setar Thirty Six Ltd (S168), The Shooting Box Ltd (S187), Mataka Station Residents Association (S230), and Mautauri Trustee Limited (S243).
- g. Groups of primarily individual submitters raising common issues and concerns with the approach to SNA mapping, including Strand Homes Ltd/Okahu Developments Ltd (S77), Rua Hatu Trust (S377), Elbury Holdings (S541), Joel Vieviorka (S41), Julianne Sally Bainbridge (S163), Kerry-Anne Smith (S410) and Helmut Friedrich Paul Letz and Angelika Eveline Letz (S470)
- h. Submitters raising common concerns about restrictions on dog and cat ownership, including BOI Watchdogs (S354), Heather Golley (S254), Amber Hookway (S261), Wilson Hookway (S264), Allen Hookway (S311,) Heather Golley (S254) and Lianne Kennedy (S310).
- i. Other individual submitters, such as John Andrew Riddell (S431) and Sarah Ballentyne and Dean Agnew (S386).

39. The key issues in submissions addressed in this report are:

- a. Key Issue 1: Giving effect to the NPS-IB
- b. Key Issue 2: Identifying and mapping SNAs
- c. Key Issue 3: General submissions on the IB Chapter
- d. Key Issues 4: Overview of IB chapter
- e. Key Issue 5: Objectives (IB-O1 to IB-O5)
- f. Key Issue 6: General submissions on policies
- g. Key Issue 7: IB-P1
- h. Key Issue 8: IB-P2, IB-P3 and IB-P4
- i. Key Issue 9: IB-P5 and IB-P6
- j. Key Issue 10: IB-P7, IB-P8 and IB-P9
- k. Key Issue 11: IB-P10
- l. Key Issue 12: General comments on rules
- m. Key Issue 13: IB-R1

- n. Key Issue 14: IB-R2
  - o. Key Issue 15: IB-R3
  - p. Key Issue 16: IB-R4
  - q. Key Issue 17: IB-R5
  - r. Key Issue 18: Rule SUB-R17 – Subdivision of a site containing a scheduled SNA
  - s. Key Issue 19: SCHED-4 Schedule of Significant Natural Areas
  - t. Key Issue 20: Definitions
  - u. Key Issue 21: Miscellaneous/site specific concerns with SNA mapping.
40. Key Issues 1 and 2 above (relating to the NPS-IB and the identification and mapping SNAs) are the most significant, overarching issues to consider for the IB chapter. There is also significant overlap of submission points in relation to these two key issues and specific provisions in the IB Chapter. Therefore, my recommendations on submissions in relation to Key Issue 1 and 2 have a strong influence on the subsequent recommendations to the provisions in the other key issue sections that follow.
41. Section 6.2 constitutes the main body of the report and considers and provides recommendations on the decisions requested in submissions. Due to the large number of submissions received and the repetition of issues, it is not efficient to respond to each individual submission point raised in the submissions. Instead, this report groups similar submission points together under key issues as outlined above (in particular Key Issue 1 and 2). This thematic response assists in providing a more concise response to, and recommended decision on, submission points.

## 6.2 Officer Recommendations

42. A copy of the recommended plan provisions for the Ecosystems and Indigenous Biodiversity chapter is provided in **Appendix 1 – Recommended provisions** to this report.
43. A full list of submissions and further submissions on the Ecosystems and Indigenous Biodiversity chapter is contained in **Appendix 2 – Recommended Decisions on Submissions** to this report.

### 6.2.1 Key Issue 1: Giving effect to the NPS-IB

#### Overview

Provision(s)	Officer Recommendation(s)
Numerous	Include addition policy direction to give effect to the NPS-IB where this is practicable and appropriate through the PDP (also refer <b>Appendix 3</b> )

## Analysis of Submissions on Key Issue 1: Giving effect to the NPS-IB

### Matters raised in submissions

44. A key theme within numerous submissions on the IB Chapter relates to the extent to which the IB Chapter does, or should, give effect to the NPS-IB. The NPS-IB was still at the “*exposure draft*” stage when the PDP was notified and when submissions and further submissions closed. The NPS-IB subsequently came into force in August 2023. The IB Chapter as notified was intended to align with the anticipated direction in the NPS-IB while also giving effect to the relevant provisions in the RPS. This is reflected in the PDP definition of significant natural area (SNA)<sup>6</sup>, numerous provisions in the IB Chapter that refer to SNAs, and the introduction of SCHED-4 (Schedule of significant natural areas) which is currently empty.
45. There are a range of views in submissions on how the IB Chapter should give effect to the NPS-IB. Some submitters, including DOC and Forest and Bird, request closer alignment with the NPS-IB. Other submitters are strongly opposed to the mapping of SNAs and associated protection of these areas to give effect to the NPS-IB. The table below provides a summary of some general submission points relating to how the IB Chapter should give effect to the NPS-IB.

Submitter / point	Reasons	Decision requested
<b>PF Olsen Limited (S91.009)</b>	The NPS-IB is imminent and is to be gazetted before the end of 2022. Without this national instrument, the section of the plan is at risk of being inconsistent with the NPS-IB.	Do not progress the entire Ecosystems and Indigenous biodiversity section of the plan until the NPS-IB has been gazetted.
<b>NRC (S359.004)</b>	The NPS-IB (and NPS-HPL) is likely to, take effect prior to the end of 2022 and the proposed plan will need to be reviewed in light of these new pieces of national direction.	Amend the plan to have regard to the NPS-IB (and NPS-HPL)
<b>Far North District Council (S368.005)</b>	The PDP is required to give effect to any NPS-IB.	Amend where necessary to give effect to the NPS-IB.
<b>Director-General of Conservation (Department of Conservation) (S364.005)</b>	The s32 reports have identified that it is effective and efficient to align the PDP approach with the expected policy direction and requirements of the exposure draft of the NPS-IB. The NPS-IB is anticipated to come into effect during the PDP further submissions and hearing process. For this reason, the PDP should be	Amend the Plan to be consistent with the NPS-IB exposure draft. Specifically, but not limited to:.. <i>[taonga species, highly mobile fauna, incorporate offsetting and compensation principles etc...]</i>

<sup>6</sup> Significant natural area is defined in the PDP as “*means an area: identified in Schedule 4 of the District Plan as an area of significant indigenous vegetation or significant habitat of indigenous fauna; or assessed by a suitably qualified and experienced ecologist as meeting one of the criteria for ecological significance in Appendix 5 of the Regional Policy Statement for Northland 2016 or within any more recently gazetted National Policy Statement on indigenous biodiversity.*”

Submitter / point	Reasons	Decision requested
	reviewed and updated to be consistent with the NPS-IB exposure draft.	
<b>Forest and Bird (para 4.2 of original submission)</b>	Forest & Bird acknowledges that the NPS-IB is still in draft form. The Government states on the Ministry for the Environment's website that it is intended to gazette the exposure draft of the NPS-IB sometime in December.	If this occurs the Far North District Council will have to give effect to this policy direction. The exposure draft of the NPS-IP currently requires all councils to identify and map all SNAs...
<b>Ian Diarmid Palmer (S546.001)</b>	It is unclear if any NPS-IB will be formally adopted by Government and when that might occur. A change of Government could set the policy development on entirely different course.	Delete all references to SNAs from the PDP. If not adhered to then, include SNA maps as an overlay in the PDP, but only after completing a thorough process of validating such maps.

### Analysis

46. In my opinion, there is clear scope within submissions to recommend amendments to the IB Chapter to better give effect to the NPS-IB. However, the more important question, in my opinion, is what is the most appropriate, efficient and effective approach to give effect to the NPS-IB through the PDP process, which needs to consider the following key issues:
- a. The general obligation to give effect to the NPS-IB "*as soon as reasonably practicable*" as required under Clause 4.1(1). From my experience, it is common for national direction to be gazetted or amended while proposed plans are progressing through the Schedule 1 process. Therefore, the extent to which it is "*practicable*" (and appropriate, efficient and effective) to give effect to new national direction through the formal Schedule 1 process depends on a range of factors (including the extent of change required and potential natural justice issues).
  - b. The Government has proposed amendments to the RMA to delay the NPS-IB requirements relating to SNA mapping through the *Resource Management (Freshwater and Other Matters) Amendment Bill* (the RMA Amendment Bill). Clause 21 in this amendment bill would essentially disapply the provisions in the NPS-IB relating to SNA mapping for a three-year period<sup>7</sup>. It also proposes to disapply the requirement to give effect to the SNA provisions "*as soon as reasonably practicable*". The requirement to implement the SNA provisions within five years after 4 August 2023 is amended to require implementation by 31 December 2030. While these amendments are not yet in force, they are progressing through the Parliamentary process and the Hearing Panel must apply the law as it stands at the time of its decisions. It is therefore appropriate to

<sup>7</sup> More specifically, Policy 6, Clause 3.8(1)(6) and (8), Clause 3.9(1) and (3) of the NPS-IB.

be cognisant of the potential effect of this RMA Amendment Bill when considering the recommendations in this report.

- c. The RMA Amendment Bill provides that Clause 4.1 of the NPS-IB (which requires local authorities to give effect to the NPS-IB "*as soon as reasonably practicable*") continues to apply in relation to the other provisions of the NPS-IB. The RMA Amendment Bill also states that it does not affect any function or requirement under the RMA relating to indigenous biological diversity, including in relation to areas of significant indigenous vegetation or significant habitats of indigenous fauna.
- d. Clause 21 of the Amendment Bill proposes that an area of significant indigenous vegetation or significant habitat of indigenous fauna that, after commencement, is included in a proposed plan is not to be treated as an SNA regardless of how it is described in that document (proposed section 78(5)). This provision is proposed to apply for the 3-year period that commences on the date of commencement of the RMA Amendment Act.
- e. Under the law as it stands, prior to the passing of the RMA Amendment Bill, it is simply not practicable to give effect to the NPS-IB in full through the PDP process given the range of implementation requirements that must be met. This includes undertaking district-wide SNA mapping following a transparent, accurate and collaborative process (including physical inspection where practicable and engagement with both landowners and tangata whenua) and undertaking further technical work for a number of provisions (e.g. assessment of indigenous vegetation cover by NRC, recording information on highly mobile fauna).
- f. There is further complexity due to the interrelated nature of the NPS-IB provisions. This includes, for example, the detailed direction to map SNAs in Clause 3.8 and Appendix 1, the direction to avoid certain adverse effects on SNAs in Clause 3.10, the exemptions for specific activities in Clause 3.11, and the effects management hierarchy and principles for biodiversity offsetting and biodiversity compensation in Appendix 3 and Appendix 4. This means there are risks and likely implementation issues if the PDP gives effect to parts of the NPS-IB but not others where these provisions are interrelated.
- g. The definition of SNA in the NPS-IB<sup>8</sup> makes it clear that these areas need to be mapped in district plans for any of the SNA related provisions in the NPS-IB to apply. In my opinion, this means none of the NPS-IB provisions relating to the protection of SNAs can be given

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<sup>8</sup> SNA or Significant Natural Area is defined in the NPS-IB as: "*(a) any area that, after the commencement date, is notified or included in a district plan as an SNA following an assessment of the area in accordance with Appendix 1; and (b) any area that, on the commencement date, is already identified in a policy statement or plan as an area of significant indigenous vegetation or significant habitat of indigenous fauna (regardless of how it is described); in which case it remains as an SNA unless or until a suitably qualified ecologist engaged by the relevant local authority determines that it is not an area of significant indigenous vegetation or significant habitat of indigenous fauna*".



effect to through the PDP until these areas are mapped following the process prescribed in the NPS-IB. This is appropriate in my opinion, as I consider that it is most effective to undertake SNA mapping and the development of provisions to protect those areas together through a process that involves collaboration with tangata whenua and affected landowners.

47. The factors above, plus potential uncertainty about future changes to the NPS-IB, make it challenging and potentially problematic to give effect to the NPS-IB "*in part*" through the PDP process. Additional risks associated with giving effect to the NPS-IB in part, include:
  - a. The risk of rework as a result of future changes to the NPS-IB as signalled by the Government.
  - b. Potential natural justice issues associated with any significant changes to the IB Chapter to give effect to the NPS-IB that may not be reasonably contemplated by interested persons when considering the notified PDP and the notified summary of decisions requested in submissions.
48. For these reasons, I consider that it would be preferable to give effect to the NPS-IB in full through a future plan change. This will allow for collaboration and ongoing engagement with tangata whenua and landowners in the mapping of SNAs and development of provisions to protect those areas. A more collaborative approach to identify and protect SNAs may help to increase buy-in and reduce the risk of the significant opposition that occurred through the draft district plan process.
49. That being said, unless the RMA Amendment Bill is passed into law and until such time as this occurs, there is an obligation to give effect to the NPS-IB "*as soon as reasonably practicable*" through the PDP. In my opinion, it is "*practicable*" to give effect to some of the NPS-IB provisions through the PDP. Therefore, to meet this statutory requirement, I have carried out an assessment of whether it is practicable and appropriate for the IB Chapter to give effect to the full range of NPS-IB provisions based on some guiding principles.
50. This assessment is provided in **Appendix 3** and includes my recommendations for the PDP to:
  - a. **Not give effect to** any NPS-IB provisions relating to SNAs for the reasons outlined above. This has implications for how SNAs are referenced throughout the IB Chapter, as discussed under Key Issue 2 below.
  - b. **Not give effect to** NPS-IB provisions that:
    - i. Require further engagement (e.g. identifying taonga species in partnership with tangata whenua).
    - ii. Require further technical assessments (e.g. indigenous vegetation cover).

- iii. Are primarily directed at regional councils or are subject to pre-requisite procedural steps that must be completed by the regional council (e.g. regional biodiversity strategies, highly mobile fauna areas, or assessing the percentage of indigenous vegetation cover and setting targets for indigenous vegetation cover within urban and non-urban environments).
- c. **Give effect to** NPS-IB provisions that are more general in nature and can be given effect to through specific policies in the IB Chapter (e.g. the precautionary approach, resilience to climate change) without significant amendments or risk of natural justice issues.

**Recommendation**

51. For the reasons outlined above, I recommend that the IB Chapter gives effect to certain NPS-IB provisions, as outlined in **Appendix 3**, and that the NPS-IB is primarily given effect to in full through a future plan change process (including those provisions relating to SNAs).

**Section 32AA evaluation**

52. My analysis above and **Appendix 3** sets out the reasons why I consider that is appropriate, effective and efficient to only give effect to certain NPS-IB provisions through the PDP, with the majority of NPS-IB provisions (including those relating to SNAs) given effect to through a future plan change that implements the NPS-IB in full. In summary, I consider that my recommendations are:
- a. An effective way to achieve the objectives as this will enable the NPS-IB to be given effect to through a future plan change that will consider the issues in a more integrated and considered manner, involving partnership with tangata whenua and collaboration with landowners. This is likely to result in more buy-in and better protection of these areas over time. The IB Chapter can then focus on giving effect to the statutory requirements in section 6(c) and 31(1)(b)(iii) in the RMA and relevant higher order documents, including Policy 4.4.1 in the RPS, as discussed throughout this report.
  - b. An efficient way to achieve the objectives as this approach minimises the risk of rework, potential natural justice issues, strong opposition from tangata whenua and landowners, and inconsistent and unaligned plan provisions.

**6.2.2 Key Issue 2: Identifying and mapping SNAs**

**Overview**

<b>Provision(s)</b>	<b>Officer Recommendation(s)</b>
Numerous	Delete references to SNAs from the PDP and undertake district-wide mapping of SNAs through a future plan change that gives effect to the NPS-IB in full

**Analysis of Submissions on Key Issue 2: Identifying and mapping SNAs**

## Matters raised in submissions

53. There are a significant number of submissions that directly or indirectly relate to the approach the IB Chapter takes to SNA mapping and associated references to (unmapped) SNAs in the provisions. While submitters on this issue raise a range of issues and concerns, they can be broadly categorised into two groups that oppose the approach in the IB Chapter for different reasons:
- a. Submitters that oppose the removal of the SNA layer from the draft district plan and request that it be included in the PDP and/or that FNDC undertakes more robust SNA mapping to include in the PDP.
  - b. Submitters that oppose the notified PDP approach of relying on landowners to undertake assessments of SNAs on a case-by-case basis and then add any identified SNAs into SCHED-4 of the PDP in an ad hoc manner.
54. More specifically, a range of submissions allocated to IB-P1 raise broader concerns with the approach to SNA mapping in the PDP. These include DOC (S364.034), Forest and Bird (S511.057), Kapiro Conservation Trust (S442.076 and S442.175), Marianna Fenn (S542.005) and Manulife Forest Management (NZ) Ltd (S160.016). These submitters are generally concerned that the PDP does not include mapped SNAs and consider that this is contrary to section 6(c) of the RMA, the RPS and the NPS-IB. Relief requested by these submitters includes amending IB-P1 to remove clauses (b) and (c) of IB-P1 (allowing for voluntary SNA mapping) so that SNAs can only be identified using the significance criteria in Appendix 5 of the RPS or the criteria in the NPS-IB. Additionally, these submitters are concerned the voluntary approach to mapping SNAs will result in no SNAs being added to the PDP.
55. Another group of submitters raise a range of concerns with the general approach to SNA mapping in the PDP, including Bentzen Farm Limited (S167.014), Matauri Trustee Limited (S243.023), Setar Thirty Six Limited (S168.021), Wendover Two Limited (S222.021) P S Yates Family Trust (S333.014) and the Shooting Box Limited (S187.014). These submitters request amendments to the objectives, policies and rules in the IB Chapter to:
- "Recognise that the Council has not identified Significant Natural Areas in the Proposed Plan; and*
- Clarify that the role of identifying SNAs cannot be passed onto landowners."*
56. This group of submitters also raise concerns that the section 32 evaluation for the IB Chapter cannot conclude the policy and rules are the most appropriate, efficient, and effective means to achieve the purpose of the RMA and protect SNAs without these areas being mapped. Further, the submitters raise concerns that the rules in the IB Chapter lack precision in the absence of SNA mapping and the case-by-case assessment of SNAs by landowners is likely to be inconsistently applied. To address their concerns,

these submitters request that all references to SNAs in the IB Chapter are deleted and replaced with the wording in section 6(c) of the RMA. There are numerous submission points from these submitters requesting the same relief.

57. Another group of submissions have been allocated to IB-01, but they raise broader concerns with the general approach to SNA mapping in the PDP. This group of submitters are concerned with the approach to withdraw the SNA maps from the PDP and replace the draft SNA maps with direction for voluntary SNA mapping, "*with the added expense to landowner to have to engage an ecologist to prove that the bush on their property is NOT an SNA*"<sup>9</sup>. The submitters raising these concerns include Strand Homes Ltd/Okahu Developments Ltd (S77.002), Rua Hatu Trust (S377.003), Elbury Holdings (S541.003), Joel Vieviorka (S41.003), Julianne Sally Bainbridge (S163.006), Kerry-Anne Smith (S410.003) and Helmut Friedrich Paul Letz and Angelika Eveline Letz (S470.003). To address their concerns, this group of submitters request a range of relief, including:
  - a. Acknowledging that ratepayers have managed to enhance the SNAs in the District, instead of forcing them to do this.
  - b. Modifying the approach to identify SNAs to work in partnership with landowners.
  - c. Provide incentives (support and resources) for landowners to enhance the indigenous biodiversity on their land.
  - d. Enabling bush protection covenants to be imposed by consent notices, not just Reserves Act and QEII covenants.
  - e. Make the SNA mapping available publicly, even if it is not part of the PDP.
58. Andrea Vicki Thomas (S43.002) raises similar concerns about the approach to withdraw the SNA maps from the draft district plan and the added expense for landowners to engage an ecologist to prove that bush on their property is not an SNA. To address this concern, the submitter requests amendments to the IB chapter to include mapping and identification of SNA. Paul O'Connor (S49.002) raises similar concerns and requests amendments to assist landowners with the SNA identification process and thereby encourage them to protect SNAs. Ian Diarmid Palmer (S546.001 and S546.002) requests that all references to SNA from the PDP are deleted, or alternatively, include SNA mapping in the PDP but only after the maps have been thoroughly validated and inaccuracies removed.
59. Submissions from various iwi representatives' express opposition to the mapping of SNAs on the basis that it is a threat to Māori being kaitiaki of their own land. Broader issues and concerns raised by iwi submitters with the IB chapter are addressed under Key Issue 3.

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<sup>9</sup> For example, Leah Frieling (S358.039).

60. Several submitters request that the PDP include a new zone or overlay for SNAs. The submitters request that a SNA overlay or zone is used to protect existing areas of bush protected by other mechanisms, such as QEII covenants, conservation covenants or areas of bush that have been protected as part of previous subdivision or land use resource consents. Submitters requesting this relief include Kapiro Residents Association (S430.003), Kapiro Conservation Trust (S448.002 and S448.003), Carbon Neutral NZ Trust (S529.042) and Paul O'Connor (S49.001).
61. Thomson Survey Ltd (S192.003) suggest that the SNA maps could be a non-statutory information layer as an alternative to a zone or overlay. Leah Frieling (S358.039) requests similar relief to make the SNA mapping available as a public resource, even if it is not included in the PDP.

### **Analysis**

62. The issue of how SNAs are identified and mapped is closely related to Key Issue 1, as identification, mapping and protection of SNAs is a core requirement of the NPS-IB. It is also directly related to obligations under section 6(c) of the RMA to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna and Policy 4.4.1 in the RPS<sup>10</sup>.
63. In my opinion, the mapping of SNAs (however described) following a robust process (including technical assessments, engagement and physical inspections) is the most effective method to protect these areas. Mapping of SNAs also has the benefit of providing certainty to all parties on the location and extent of these areas and the relevant provisions that apply. Mapping SNAs also enables rules to be more targeted based on the ecological significance of the area affected rather than applying generic indigenous vegetation clearance rules throughout the District (as discussed further below in relation to the IB Chapter rules). Robust SNA mapping is also generally recognised as best practice at a national level, which is reflected in the principles, criteria and process for district-wide SNA mapping in the NPS-IB. In this respect, I note that the NPS-IB provisions relating to SNA mapping have been subject to significant stakeholder and technical input.
64. The “voluntary” approach to SNA mapping notified in the PDP was developed in response to a number of factors:
  - a. The release of a SNA layer in the draft district plan in 2021 that was based on a desk-top assessment, which covered approximately 42% of the District. This generated significant opposition from landowners and tangata whenua who were concerned that the draft SNA maps had not been subject to sufficient consultation and verification and would undermine their property rights and sovereignty. As a

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<sup>10</sup> Policy 4.4.1 sets out specific direction to protect significant ecological areas within and outside the coastal environment, including reference to ecological assessment criteria in Appendix 5 (Areas of significant indigenous vegetation and significant habitats of indigenous fauna in terrestrial, freshwater and marine environments). However, there are no specific requirements in the RPS to map these areas.

consequence, Council made a decision to pause the mapping of SNAs and remove the draft SNA maps from the PDP.

- b. An attempt to align the IB Chapter with the criteria in Appendix 5 of the RPS and the anticipated direction in the NPS-IB (informed by the NPS-IB exposure draft). The intent was to allow for a voluntary approach to map SNAs on a case-by-case basis in advance of district-wide SNA mapping.
65. While I understand the intent of the voluntary SNA mapping approach in the PDP, there are a number of issues, limitations and costs associated with this approach, as highlighted through the submissions summarised above. In my opinion, the key issues with the voluntary approach to SNA mapping notified in the PDP are that it:
  - a. Shifts the costs of SNA assessments from Council to landowners (noting that the policies anticipate that Council will provide assistance with this process).
  - b. Puts an onus on landowners to prove indigenous biodiversity on their land is not SNA through an expert ecological assessment (otherwise more stringent indigenous vegetation clearance rules apply).
  - c. Creates uncertainty in the implementation of indigenous vegetation clearance rules that relate to (unmapped) SNAs.
  - d. Provides no real incentive for landowners to schedule SNAs on their property as this means more restrictive policies and rules apply (so may perversely act as a disincentive in that respect).
66. Further, a case-by-case assessment of SNAs is inconsistent with the NPS-IB principles for mapping (partnership, transparency etc.) and does not reflect best practice in this regard. It is also likely to result in rework when the district-wide SNA mapping exercise is undertaken. There is also a risk that the SNA mapping requirements in the NPS-IB will change, resulting in potential rework and additional costs for the community.
67. For these reasons, I consider that the partial, "voluntary" approach to SNA mapping that was notified in the PDP is not the most appropriate, effective or efficient option to meet obligations in section 6(c) of the RMA and give effect to the NPS-IB or RPS. As discussed above under Key Issue 1, I consider that it is more appropriate to give effect to the NPS-IB requirements relating to SNAs (including mapping) through a future plan change process. Addressing the mapping of SNAs and associated provisions separate from this PDP process will allow for the NPS-IB requirements to be addressed in a more effective, integrated, holistic and collaborative manner. It will also be more efficient with less risk of rework, opposition and associated costs to the community due to potential future changes to the NPS-IB.

### **Recommendations**

68. For the reasons outlined above, I recommend that:

- a. The IB Chapter is amended to remove all references to SNAs, instead replacing this phrase with wording aligned with section 6(c) of the RMA.
  - b. The PDP definition of Significant Natural Areas is replaced with a definition based on section 6(c) of the RMA and the criteria in Appendix 5 in the RPS.
  - c. SCHED-4 (Schedule of significant natural areas) is deleted.
69. The Key Issue sections below also provide more specific recommendations to the IB Chapter to reflect this revised approach to SNAs.

**Section 32AA evaluation**

70. My analysis above sets out the reasons I consider that it is more appropriate, effective and efficient to remove the provisions relating to SNAs from the IB Chapter and give effect to the SNA provisions in the NPS-IB through a future plan change. In summary, I consider that my recommendations are:
- a. An effective way to achieve the objectives as the amendments will enable the IB Chapter to focus on giving effect to the statutory requirements in section 6(c) and relevant higher order documents, including Policy 4.4.1 in the RPS (which gives effect to Policy 11 in the NZCPS), as discussed throughout this report. As there are no mapped SNAs in the PDP, my recommendations are no less effective in protecting these areas compared to the notified PDP. Rather, the key change is how applications to clear areas of indigenous vegetation are assessed and how the provisions apply (including the direction to avoid certain adverse effects under IB-P2 and IB-P3).
  - b. An efficient way to achieve the objectives, as the recommended approach avoids the risks of significant costs for landowners to get an expert ecologist report to demonstrate that indigenous vegetation on their land is not a SNA. The recommendations will also avoid the risk of implementation issues and uncertainties associated with rules that apply to unmapped SNAs and will also minimise the risk of rework and associated costs given that district-wide SNA mapping would need to occur through a separate plan change process regardless.

**6.2.3 Key Issue 3: General submissions on IB Chapter**

**Overview**

<b>Provision(s)</b>	<b>Officer Recommendation(s)</b>
N/A	Recommendations are provided in relation to specific provisions in the Key Issue sections below

**Analysis of Submissions on Key Issue 1: General submissions on IB Chapter**

**Matters raised in submissions**

71. This section addresses more general submission points that relate to the overall approach to managing indigenous biodiversity in the PDP rather than specific provisions, noting that there is considerable overlap given the nature of the submissions. Some of these submissions have been identified as general or miscellaneous submissions in **Appendix 2**, while others have been identified as being relevant to specific provisions in the IB Chapter.

#### General submissions

72. There are a range of general submissions raising concerns that the IB Chapter does not go far enough to protect SNAs and maintain indigenous biodiversity. Key themes in submissions related to this issue include:
- a. **The need to give effect higher order documents:** Vision Kerikeri (S527.003 and 014), Kapiro Conservation Trust (S442.002 and 003) and Carbon Neutral NZ Trust (S529.115) request that the IB Chapter provides the same level of protection for indigenous biodiversity that is directed in higher order documents, such as the RMA and the RPS. Carbon Neutral Trust (S529.114) requests that the provisions in the IB chapter are amended to align with the overarching aim of the Te Mana o te Taiao. John Andrew Riddell (S431.168) requests amendments to all objectives and policies to refer to “intrinsic and natural values” where there is a reference to protection for future and current values as this is necessary to achieve the purpose of the RMA.
  - b. **A stronger focus on protecting indigenous species that are classed as Threatened or At-Risk:** Vision Kerikeri (S527.014), Kapiro Conservation Trust (S442.001, S442.004 and S442.009), Kapiro Residents Association (S429.001 and 002) request new provisions to protect other indigenous species that are classed as Threatened or At-Risk (under the New Zealand Threat Classification System (NZTCS)) and are vulnerable to predation. Suggestions from these submitters include more controls on banning predator pets, fencing, predator control, protection and restoration of native vegetation, weed control, restrictions on planting exotic vegetation, street lighting and signage.
  - c. **Broad support for the amendments sought by Forest and Bird and others:** Kapiro Residents Association (S429.012), Vision Kerikeri (S527.037) and Carbon Neutral Trust (S529.178) all request that the IB Chapter is amended as sought by Forest and Bird (submitter 511), Pacific Eco-Logic (submitter 451) and Marianna Fenn (submitter 542).
73. A number of other submitters consider that the IB chapter should be more focused on non-regulatory methods. For example:
- a. Pacific Eco-Logic (S451.011), Kapiro Conservation Trust (S442.155), Paul O'Connor (S48.002) and Ronald Toni Wooldridge (S440.003) all request more use of non-regulatory methods and/or incentives rather than restrictive rules, including rates relief and financial



support from Council and/or DOC for projects such as animal pest control, fencing and wetland restoration.

- b. Leah Frieling (S358.039) requests that the IB Chapter provide more incentives for protecting indigenous biodiversity rather than restrictive provisions. The submitter also requests that a simple bush protection covenant by consent notice should be an option for protecting indigenous biodiversity, not just the Reserves Act and QEII covenants.
- c. Ronald Toni Wooldridge (S440.006) considers that the IB Chapter should do more to research, initiate and fund weed control using non-regulatory methods, both in SNAs and in the wider environment.

#### Submissions relating to tangata whenua interests and values and Māori land

74. Numerous iwi submitters oppose the overall approach to managing indigenous biodiversity in the IB Chapter. Those submitters include Te Rūnanga o Ngāti Rēhia (S559.026<sup>11</sup>), Te Rūnanga o Whaingaroa (S486.007, S486.008, S486.047 and S486.050), Te Waka Pupuri Putea Trust (S477.021), Te Runanga o Ngai Takoto Trust (S390.005, S390.017 and S390.037), Te Kawariki me Te Wānanga o Te Rangī Aniwaniwa (S573.001) and Te Rūnanga Ā Iwi O Ngapuhi (S498.038). Key points made by these iwi submitters include:

- a. The provisions will limit their ability to utilise their whenua in a way that will provides for the social, cultural and economic prosperity of their people and the provisions are not consistent with section 6(e) of the RMA.
- b. The provisions may prejudice the administration of Māori land.
- c. The need to more closely involve tangata whenua in decision-making around the protection of flora and fauna and better provide for the role of tangata whenua as kaitiaki.

75. Relief sought by these iwi submitters include:

- a. More financial support for tangata whenua as kaitiaki.
- b. More involvement of tangata whenua in decision-making involving indigenous biodiversity.
- c. The use of more non-regulatory methods and incentives rather than regulation.
- d. The redrafting of provisions with tangata whenua.
- e. Deleting all SNAs provisions and restrictions that may prejudice the administration of Māori land.

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<sup>11</sup> And numerous other submission points which have been allocated to specific provisions in the IB Chapter.

## Other general issues

76. Finally, there are several other general submissions raising specific issues including:
- a. **Regionally significant infrastructure:** The Twin Coast Cycle Trail (S425.026) requests amendments to the IB Chapter to ensure that maintenance, operation and upgrade of regionally significant infrastructure is provided for. The submitter also raises concerns that the approach to SNA mapping is unclear and they request that any references to SNAs are removed. Instead, the submitter prefers to rely on the indigenous vegetation clearance rules to better enable development of the cycle trail (S425.023).
  - b. **Dog and pet ownership:** BOI Watchdogs (S354.016, S354.017, S354.019 and S354.024) and several other submitters (e.g. Heather Golley (S254.003)) oppose any provisions in the IB Chapter that may restrict or prohibit dog ownership. The submitters also request that the "Practice Note for Significant Indigenous Flora and Fauna" and the "Bay of Islands Kiwi Distribution Map" are made public so people can properly understand the impact of the PDP provisions. This group of submitters broadly request the same relief, to "*Amend the provisions of the District Plan so they do not limit dog ownership or result in the banning of dogs and cats (via resource consent conditions, covenants or consent notices)*".
  - c. **Managed Indigenous Vegetation:** Tupou Limited (S487.001) raises concerns that the IB Chapter is a strong disincentive for reforestation using native vegetation, as new planted areas of native vegetation could become SNA and then the use of the land becomes very restricted. To address this concern, Tupou Limited requests a new definition and associated rule framework for "*managed indigenous vegetation*", drawing on definitions in the NZ Emission Trading Scheme.
  - d. **The need for matters of control/discretion related to indigenous biodiversity:** DOC (S364.004) requests broad amendments to all controlled and restricted discretionary activity rules to insert matters of discretion/control for indigenous biodiversity where appropriate and not already listed as matter. This concern from DOC appears to be related to SNAs not being mapped in the PDP, which creates a risk that potential SNA sites could be subdivided with minimal ability to consider adverse effects on indigenous biodiversity.
  - e. **Kauri dieback disease and myrtle rust:** DOC (S364.082 and S364.083) requests clear guidance in the PDP for the management of Kauri Dieback disease, similar to provisions included in the Thames Coromandel District Plan. DOC (S364.008, S364.009, S364.010 and S364.099) also requests amendments to objectives, policies and rules as appropriate, as well as new policies and rules, to recognise and implement measures to address and manage the increased threat status of myrtle rust for manuka and kanuka.

## **Analysis**

77. Many of the general submissions cover broad issues, such as the balance of regulation and protection vs private property rights and the ability of tangata whenua to be kaitiaki of their land. These issues relate to the IB Chapter as a whole, rather than any single provision. I consider that my recommendations in relation to specific objectives, policies and rules below will address many of these general submissions either in part or in full as detailed below.

### Consistency with higher order documents

78. I make a number of recommendations to better align the IB Chapter with higher order documents, including:
- a. Recommendations above under Key Issue 2 to replace SNA with the wording in section 6(c) of the RMA and undertake district-wide SNA mapping through a future district plan change that gives effect to the NPS-IB in full. However, I do not consider that it is necessary to specifically reference intrinsic values and natural values in IB-O1 (the only provisions referring to current and future generations) as sought by John Andrew Riddle as this is a higher-level objective directly related to section 6(c) of the RMA.
  - b. Recommended amendments to IB-P2, IB-P3 and IB-P4 below under Key Issue 8 to better align with the NZCPS, RPS and NPS-IB.
79. I therefore recommend that the general submissions on this issue are accepted in part.

### Stronger protection for Threatened or At-Risk indigenous species

80. I recommend amendments to IB-P2 and IB-P3 below to provide strong direction to avoid adverse effects on "*Threatened or At-Risk indigenous species*" to better give effect to Policy 4.4.1 in the RPS. This also responds to the relief sought in the above submissions on this issue and I recommend that these are accepted.

### More focus on non-regulatory methods

81. The intent of the IB Chapter (and other PDP chapters) is to implement the objectives and policies through regulatory rules rather than non-regulatory methods, as requested in the submissions of Pacific Eco-Logic and Kapiro Conservation Trust. In my opinion, it is more effective and efficient for district plans to focus on regulatory methods which can better give effect to directive policies (e.g. the NZCPS "avoidance policies"<sup>12</sup>) rather than listing non-regulatory methods, which are often poorly implemented and can add unnecessary "clutter" in district plans. These also generally require dedicated funding from FNDC, which is outside the scope of this report to address.

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<sup>12</sup> Policy 11, 13 and 15 of the NZCPS.

82. In saying that, the IB Chapter does direct consideration of non-regulatory methods through IB-P6, IB-P7 and IB-P8. As discussed further below under Key Issue 9 and 10, I consider that it is appropriate to provide some flexibility in the non-regulatory methods that Council implements to give effect to the IB Chapter objectives and policies as the most appropriate non-regulatory method (funding, direct assistance to landowners waiving fees etc.) will vary based on a range of factors and over time. Accordingly, I do not recommend any amendments in response to these submissions.

#### Tangata whenua concerns

83. The submissions from iwi representatives raise a number of important issues and concerns with the IB Chapter with a particular focus on better recognising and providing for the role of kaitiaki, ensuring the IB Chapter does not result in additional restrictions on Māori land, and more financial support for tangata whenua.
84. In terms of the first issue, I note that IB-O4 already seeks to recognise and provide for the role of tangata whenua as kaitiaki in the protection, maintenance and restoration of indigenous biodiversity and I make some minor recommendations to this objective under Key Issue 5. However, as discussed in **Appendix 3**, I consider that there is a lack of direction in the policies to ensure the role of tangata whenua as kaitiaki in the protection, maintenance and restoration of indigenous biodiversity is recognised and provided for which a key focus of the NPS-IB. Therefore, I recommend a new policy to give effect to section 7(a), support IB-O4 and partly implement the NPS-IB direction (Clause 3.3(2)) as follows *"Ensure that the protection, maintenance and restoration of indigenous biodiversity is done in a way that: a) recognises and values the mana of tangata whenua as kaitiaki; and b) provides specific opportunities for tangata whenua to exercise kaitiakitanga in accordance with tikanga Māori"*.
85. In terms of the second issue, I note that IB-P5(d) already provides specific direction to ensure that the maintenance of indigenous biodiversity enables Māori land to be used and developed to support the well-being of tangata whenua. This direction is broadly aligned with the direction in Clause 3.18 in the NPS-IB (specified Māori land) which anticipates a more flexible, bespoke approach for managing indigenous biodiversity on Māori land which will be given effect to through a future plan change process in partnership with tangata whenua (discussed in **Appendix 3**). Further, as discussed above, I am recommending that the references to SNAs are deleted from the IB Chapter, including the deletion of IB-R2 which applies to the Māori Purpose Zone and Treaty Settlement Overlay as discussed further under Key Issue 14. I consider that this will address submissions from iwi on this issue at least in part.
86. In terms of requests for funding, this is a matter to be discussed between Council and its iwi partners and is not within the scope of this report to address and my understanding is that such funding is generally addressed through Long-Term Plan/Annual processes.
87. Finally, I note that with respect to engagement with tangata whenua, it is important to look at the PDP as a whole, rather than chapter by chapter.

The PDP includes a specific Tangata Whenua chapter in Part 1, which sets out a range of objectives and policies relating to tangata whenua interests and values including direction to provide tangata whenua with opportunities to participate as kaitiaki in resource management processes. Of particular relevance is TW-P6 which is referenced in the IB Chapter through IB-P10(m). TW-P6 sets out a range of matters to consider when assessing applications for land use and subdivision that may result in adverse effects on the relationship of tangata whenua with their ancestral lands, water, sites, wāhi tapu and other taonga.

88. Overall, I consider that the IB Chapter with my recommended amendments appropriately recognises that kaitiaki role of tangata whenua and the need to allow for the use and development of Māori land when maintaining indigenous biodiversity in the Far North District, noting that the NPS-IB provides more specific direction on these matters which will be give effect to through a future plan change.

#### Regionally significant infrastructure

89. In terms of the request from Twin Coastal Cycle Trail for the IB Chapter to specifically provide for the maintenance, operation and upgrade of regionally significant infrastructure, I note that the intent of the PDP (and the National Planning Standards) is that the Infrastructure chapter generally contains the specific provisions relating to infrastructure (including regionally significant infrastructure). This avoids the need to repeat infrastructure provisions across all the various District-Wide and Area-Specific chapters in the PDP. In this respect, I note that there is clear policy direction in the Infrastructure chapter relating to the development, operation, maintenance and upgrading of regionally significant infrastructure and this policy direction will be considered further in Hearing 12.
90. However, infrastructure provisions are included in other PDP chapters where this is considered necessary/appropriate for the particular topic. The IB Chapter already recognises the need to maintain, operate and upgrade infrastructure through Policy IB-P5 and through permitted activity condition PER-1(13) of Rule IB-R1, noting that (13)(ii) applies specifically to operating, repairing or maintaining lawfully established infrastructure and (vi) applies specifically to cycling tracks. I am also recommending an amendment to IB-P5 to recognise the need to allow for the upgrade of regionally significant infrastructure and to IB-R1 to allow for indigenous vegetation clearance associated with the upgrade of infrastructure. I consider this will address the relief sought by the Twin Coast Cycle Trail and recommend that this submission point is accepted.

#### Dog ownership

91. I discuss the concerns about restrictions on dog ownership in more detail in relation to IB-P7 and IB-P9 (Key Issue 10). In summary, I consider that it is appropriate for the IB Chapter to recognise that pets, including dogs and cats, can present risks to Threatened indigenous species. However, I recommend amendments to IB-P9 so that it is more focused on requirements that can be imposed through consent conditions "where necessary" to avoid risks to Threatened indigenous species. Accordingly, I

do not consider that this policy direction unduly limits dog ownership and certainly will not result in the banning of cats and dogs in the Far North District. I therefore recommend these submissions are accepted in part.

#### Tupou special purpose zone or bespoke rules

92. I do not consider that there is a need for specific provisions for "*managed indigenous vegetation*" as requested by Tupou Limited given my recommendations in relation to the identification of SNAs under Key Issue 2. I also note that clause 12) in IB-R1 allows for the harvesting of indigenous timber in accordance with the Forest Act 1949 which may address the relief of the submitter to some extent.

#### Matters of control/discretion relating to indigenous biodiversity

93. I understand that this request from DOC relates to a concern that sites could be subdivided with minimal ability to consider adverse effects on indigenous biodiversity. I discuss subdivision within SNAs in relation to SUB-R17 (Key Issue 18 below) where I note that most of the "*general*" subdivision rules in SUB-R1 to SUB-R8 include effects on indigenous biodiversity values as a matter of control. This includes SUB-R3 which provides for general subdivision of land to create a new allotment. In my view, this would also enable an ecological assessment to be undertaken/requested when the subdivision proposal may affect a potential area of significant indigenous vegetation or significant habitat of indigenous fauna. As such, I consider that this will address the relief sought by DOC at least in part.

#### Kauri dieback disease and myrtle rust

94. I appreciate that Kauri dieback is an important issue that requires active management and control to manage spread as noted by DOC. However, there is not sufficient reasoning and evidence in the DOC submission for me to recommend new provisions in the IB Chapter as the requested relief simply refers to potential provisions in the Thames Coromandel District Plan. In my opinion, DOC needs to demonstrate that this requested rule is appropriate, effective and efficient in the Far North District before I can recommend it is included in the IB Chapter. DOC may choose to do this through the lodgement of evidence prior to hearing.
95. For similar reasons, I do not recommend new objectives, policies and methods to recognise and implement measures to address and manage the increased threat status of myrtle rust for manuka and kanuka as requested by DOC. In my opinion, DOC needs to demonstrate why these requested provisions are appropriate, effective and efficient in the Far North District. DOC may choose to do this through the lodgement of evidence prior to hearing.

#### **Recommendation**

96. I recommend that general submissions on the IB Chapter are accepted, accepted in part and rejected as set out in **Appendix 2**. With the exception of a new policy relating to the role of tangata whenua as kaitiaki, I do not recommend specific amendments to the IB Chapter in response to these

general submissions but have considered these further in the analysis of specific submissions below (e.g. providing specific policy direction for the upgrading of regionally significant infrastructure in IB-P5).

### Section 32AA evaluation

97. The only specific recommendation that I am making in response to general submissions is new policy to recognise and provide for the role of tangata whenua as kaitiaki. I consider that this is appropriate, effective and efficient as it addresses a gap in the notified policies, directly implements IB-O5, and is strongly aligned with section 7(a) of the RMA and Clause 3.3(2) in the NPS-IB.

## 6.2.4 Key Issue 4: Overview of Indigenous Biodiversity chapter

### Overview

Provision(s)	Officer Recommendation(s)
Overview section	Amend to replace or remove references to SNAs and acknowledge that NPS-IB will be given effect to in full through a future plan change process

### Analysis of Submissions on Key Issue 4: Overview of Indigenous Biodiversity chapter

#### Matters raised in submissions

98. There are nine original submissions requesting amendments to the overview section for the IB Chapter. Six of the submissions are from a group of submitters seeking the same relief discussed above in Key Issue 2, including P S Yates Family Trust (S333.013), Setar Thirty Six Limited (S168.020) and the Shooting Box Limited (S187.013). Specifically, these submitters consider that it is not appropriate, efficient or effective to reference SNAs in the IB Chapter without these areas being mapped. The submitters request that all references to SNAs are replaced with "*areas of significant indigenous vegetation and significant habitats of indigenous fauna*".
99. Matauri X Incorporation (S396.021) requests that the overview section for the IB chapter is deleted. This is part of their broader submission to delete the entire IB Chapter on the basis that it does not appropriately meet obligations under section 6(e) of the RMA and does not promote kaitiakitanga. Tracy and Kenneth Dalton (S479.012) request that the overview section for the IB Chapter is amended to require that Council directly engage with tangata whenua to better understand and provide for the role of tangata whenua as kaitiaki, acknowledging that tikanga and mātauranga Māori play a central role in how tangata whenua manage indigenous biodiversity.
100. Kapiro Conservation Trust (S442.018) requests that the overview section for the IB Chapter be amended to better reflect the NPS-FM, noting that the NPS-FM also includes direction to territorial authorities.

### Analysis

101. As discussed in relation to Key Issue 2 above, I recommend references to SNAs are deleted and replaced with '*areas of significant indigenous vegetation and significant habitats of indigenous fauna*' including in the overview section. I consider that this wording is better aligned with section 6(c) of the RMA and the relevant indigenous biodiversity provisions in the RPS. Accordingly, I recommend that the submissions above requesting this relief are accepted.
102. In terms of the concerns relating to section 6(e) of the RMA and recognising the role of tangata whenua as kaitiaki, I addressed this at a general level under Key Issue 3 above and also in relation to specific provisions below (in particular IB-P5 and IB-R2). At a broad level, I agree there is a need to recognise and provide for the role of tangata whenua as kaitiaki in relation to indigenous biodiversity through the IB Chapter, but I consider it important to retain the IB Chapter to fulfil this role. On this basis I do not agree that the overview section should be deleted as requested by Matauri X Incorporation. I also considered that the relief sought by Tracy and Kenneth Dalton is more appropriately addressed through the provisions in the IB Chapter.
103. I do not consider that the overview of the IB Chapter needs to specifically reference the NPS-FM in any way as requested by Kapiro Conservation Trust. I agree that the NPS-FM is a relevant consideration for territorial authorities when preparing and changing district plans, but the IB chapter is specifically focused on the effects of land use and subdivision on indigenous biodiversity in the terrestrial environment and I consider that it is appropriate to retain that core focus. I also note that there are other provisions in the PDP that are more directly related to the NPS-FM (e.g. zone provisions relating to site coverage and controls on stormwater management).

### **Recommendation**

104. For the reasons outlined above, I recommend that the submissions above are accepted, accepted in part and rejected as set out in **Appendix 2**. I recommend that the third paragraph of the overview section of the IB chapter is amended as follows:

*"Council has responsibilities under the RMA, the NPS-IB, the NZCPS and the RPS to identify and protect areas of significant indigenous vegetation and significant habitats of indigenous fauna biodiversity (Significant Natural Areas) and maintain indigenous biodiversity. The NPS-IB will be given effect to in full through a separate plan change in the future.*

*Where Significant Natural Areas areas of significant indigenous vegetation and significant habitats of indigenous fauna are identified ~~in the District Plan~~ or through ecological assessments ~~in accordance with the significance criteria in Appendix 5 of the RPS or any more recent National Policy Statement on indigenous biodiversity~~ there will be greater control over land use and subdivision to ensure that the ecological significance of these areas are protected. There may be tension between the public and ecological benefits in protecting, maintaining or enhancing indigenous biodiversity and the associated costs or restrictions to private and public (including Māori) landowners."*



## Section 32AA evaluation

105. The recommended amendments above do not require an evaluation under section 32AA as the overview section for the IB Chapter does not include objectives or provisions.

### 6.2.5 Key Issue 5: Objectives

#### Overview

Provision(s)	Officer Recommendation(s)
IB-O1	Amend to exclude references to identifying SNAs
IB-O2	Retain as notified
IB-O3	Retain as notified
IB-O4	Retain with minor amendments to refer to maintenance and remove references to SNAs
IB-O5	Retain as notified

#### Analysis of Submissions on Key Issue 5: Objectives

##### Matters raised in submissions

##### Additional objectives

106. A number of submitters request additional objectives. For example:
- Carbon Neutral NZ Trust (S529.131) requests additional objectives to address the policy direction in section 4.4 of the RPS "*Maintaining and enhancing indigenous ecosystems and species*".
  - Top Energy (S483.145) requests additional objectives to recognise the need for new infrastructure within areas containing indigenous biodiversity where there is an operational and functional need, and any adverse effects are adequately managed. Top Energy also requests a new objective to provide for the operation, maintenance repair and upgrading of infrastructure within areas of indigenous biodiversity.
  - Marianna Fenn (S542.002, S542.003), Kapiro Conservation Trust (S442.172, S442.173, S442.174) and Forest and Bird (S511.055, S511.056) request new objectives relating to encouraging and supporting the role of landowners and kaitiaki and to recognise the benefits of ecosystem services as follows (noting there are slight differences in the wording requested between these submitters):  
  
*"Landowners, land occupiers, and kaitiaki/guardians are encouraged and supported to protect and enhance the biodiversity values of the land they have an interest in".*  
  
*"The ecosystem services provided by areas of indigenous biodiversity are recognized and enhanced. These services include increased resilience to the effects of climate change.*

## IB-O1

107. There are a large number of original submission points on IB-O1. The majority of submissions oppose IB-O1 in terms of the direction for SNAs to be identified as discussed under Key Issue 2.
108. A small number of submitters support IB-O1. This includes Manulife Forest Management (NZ) Ltd (S160.014) who requests that IB-O1 be retained as notified as it is important that SNAs are identified to provide certainty to landowners. DOC (S364.031) supports IB-O1 in part, requesting minor amendments to promote the "*enhancement*" of SNAs in addition to the "*protection*" of these areas.
109. Federated Farmers (S421.133) supports IB-O1 and requests it be retained as notified. Federated Farmers supports the Council removing the previous SNA mapping that was included in the draft district plan and the movement toward assessments being made where the permitted activity thresholds are not complied with. Federated Farmers supports the other indigenous biodiversity objectives for the same reasons (S421.134, S421.135, S421.136).

## IB-O2

110. There are approximately 10 original submission points on IB-O2. Manulife Forest Management (NZ) Ltd (S160.015) supports IB-O2 and requests that it is retained as notified as it is important that indigenous biodiversity is managed to consider the social, economic and cultural well-being of people and communities.
111. DOC (S364.032) supports objective IB-O2 in part but requests amendments to better align with the NPS-IB objective (exposure draft version) as follows:

*"Indigenous biodiversity is managed to maintain its extent and diversity protected, maintained, and restored in a way that provides for the social, economic and cultural well-being of people and communities".*
112. Forest and Bird (S511.054), Kapiro Conservation Trust (S442.171 and S442.171) and Marianna Fenn (S542.001) request that IB-O2 be amended to give effect to the "*environmental bottom lines*" in the RMA (i.e. removing reference to providing for well-being). Marianna Fenn requests that the wording of IB-O2 is replaced with the following wording to provide for this relief (similar wording is also requested by Forest and Bird, but without reference to protection and enhancement):

*"The extent and diversity of indigenous biodiversity across the district is maintained, protected, and where possible enhanced".*
113. Waiaua Bay Farm Limited (S463.027) supports the intent of IB-O2 but is concerned that the direction to maintain extent and diversity is unclear and may be interpreted as a hard "*environmental bottom line*" that could inappropriately constrain ecological restoration projects. To address this concern, Waiaua Bay Farm Limited requests that the direction to "*maintain*" indigenous biodiversity in IB-O2 is replaced with "*ensure no net loss*".

### IB-O3

114. Haititaimarangai Marae Kaitiaki Trust (S394.027) supports IB-O3 on the basis this effectively captures the relationship between sections 6(c) and 6(e) of the RMA and requests that it be retained as notified.

### IB-O4

115. Nicole Wooster (S259.003) supports IB-O4 in part, but requests amendments to recognise landowners are stewards of the land not just tangata whenua. Nicole Wooster notes that landowners take on a steward role, especially in the case of intergenerational properties and considers that the IB Chapter should recognise this.

### IB-O5

116. Waiaua Bay Farm Limited (S463.028), DOC (S364.033) and NZTA (S356.060) support IB-O5 and request it be retained as notified. There are no original submissions opposing IB-O5.

## **Analysis**

### General comments on objectives

117. The general submissions on the indigenous biodiversity objectives are primarily requests for new objectives to address perceived gaps. I do not recommend any additional objectives in response to these submissions for the following reasons:
- a. I consider that the objectives appropriately give effect to the policy direction in section 4.4 of the RPS "*Maintaining and enhancing indigenous ecosystems and species*". Policy 4.4.1 in the RPS is particularly relevant as it provides clear direction to avoid and manage adverse effects on significant ecological areas and habitats, which I consider in more detail in relation to IB-P2 and IB-P3 below (Key Issue 8). I consider that this more specific direction in the RPS is best implemented at a policy level and IB-O1 and IB-O2 are sufficiently broad to achieve the two key outcomes sought (i.e. protecting areas of significant indigenous vegetation and significant habitats of indigenous fauna and maintaining indigenous biodiversity).
  - b. I do not consider that additional objectives relating to new and existing infrastructure as requested by Top Energy are required or appropriate in the IB Chapter. As discussed under Key Issue 3, the intent of the PDP (and National Planning Standards) is that the Infrastructure Chapter generally includes all the specific provisions relating to infrastructure to avoid this being repeated throughout the various PDP chapters. However, the IB Chapter does include some specific recognition of infrastructure through the policies (IB-P5(b)) and rules (IB-R1 PER-1(13)) and I make recommendations on these provisions in Key Issue 9 and 12. In my view, a new objective relating to infrastructure is not necessary or appropriate in the IB Chapter and it is more appropriate to recognise infrastructure through these more specific provisions.

- c. I also do not consider that additional objectives are required to recognise the role of landowners as stewards and tangata whenua as kaitiaki as this is sufficiently addressed through IB-O4 in my view. I also consider that direction to encourage and support the protection and restoration of indigenous biodiversity is best addressed through policies and methods to give effect to IB-O5. However, as discussed above under Key Issue 1 and in **Appendix 3**, I do consider that there is a gap in the **policy framework** relating to providing for the role of tangata whenua as kaitiaki in relation to indigenous biodiversity given the specific direction in the NPS-IB on this matter. I recommend that that gap is addressed through a new replacement IB-P1 which gives effect to the direction in section 7(a) and the NPS-IB.
- d. While I recognise the important role of ecosystem services and the range of benefits these services provide, this does not warrant an additional objective in my opinion. Rather I consider that these benefits are more appropriately recognised through IB-P10, which sets out a range of matters that must be considered when assessing the effects on indigenous biodiversity when resource consent is required. I therefore recommend that IB-P10 is amended to include another matter specific to the benefits of the indigenous biodiversity, including ecosystem services, as follows: *"...the benefits provided by the indigenous biodiversity, including ecosystem services.* I am also recommending a new policy to promote the resilience of indigenous biodiversity to climate change and recognise the role of indigenous biodiversity in mitigating the effects of climate change to give effect to Policy 4 and Clause 3.6 of the NPS-IB as outlined in **Appendix 3**. Accordingly, I recommend that these submissions from Marianna Fenn, Kapiro Conservation Trust and Forest and Bird are accepted in part.

#### IB-O1

- 118. I have addressed a large number of submissions on IB-O1 under Key Issue 2 (Identifying and mapping SNAs) where I recommend all references to identifying and mapping SNAs are deleted throughout the IB Chapter. Accordingly, I recommend that IB-O1 is amended to delete the following words *"...(~~Significant Natural Areas~~) are identified and protected..."* and the relevant submission points are accepted in part.
- 119. I do not recommend that IB-O1 is expanded to refer to "enhance" as requested by DOC as that outcome is not supported by section 6(c) of the RMA. Further, IB-O5 provides more general direction to promote and enable the restoration and enhancement of indigenous biodiversity which is appropriate in my view

#### IB-O2

- 120. I do not recommend any amendments to IB-O2 in response to submissions for the following reasons:
  - a. The objective is focused on the "maintenance" of indigenous biodiversity in accordance with Council's functions under section 31(1)(b)(iii) of the RMA. There are other objectives relating to

protection (IB-O1) and restoration and enhancement (IB-O5) of indigenous biodiversity. As such, there is no need to repeat that direction in IB-O2 in my opinion and the objective should retain its focus on "*maintenance*" of indigenous biodiversity.

- b. I note that the NPS-IB objective now in force differs from the NPS-IB exposure draft referred to by DOC. The overarching objective of the NPS-IB now in force 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...*" and the last part of the NPS-IB objective refers to "*...while providing for the social, economic, and cultural wellbeing of people and communities now and in the future*". As such, I consider that IB-O2 is strongly aligned with the wording of NPS-IB objective, which is appropriate.
- c. It is inappropriate in my opinion to replace "*maintain*" with "*no net loss*" in IB-O2. No net loss is a well-established term used in the context of biodiversity offsetting and compensation, which are ways of addressing residual adverse effects that cannot be avoided, minimised or remedied. This is different to the "*maintenance of indigenous biodiversity*", which is a broader concept in section 30 and 31 of the RMA and applies at a regional or district level.

#### IB-O3

- 121. There are only two original submissions specifically allocated to IB-O3<sup>13</sup> and these submissions both support the objective and request that it be retained as notified. There are four further submissions opposing the Federated Farmers original submission (with the reasons generally being "*to the extent that the submission is inconsistent with our original submission*") and a large number of further submitters supporting the Haititaimarangai Marae Kaitiaki Trust original submission. I recommend that the original submissions are accepted and IB-O3 is retained as notified.

#### IB-O4

- 122. As with IB-O3, there are only two original submissions specifically allocated to IB-O4 which support the objective in full (Federated Farmers) or part (Nicole Wooster). There are four further submissions opposing the Federated Farmers original submission for the same reasons as IB-O4. In response to the submission from Nicole Wooster, I note that IB-O4 already recognises the role of both tangata whenua as kaitiaki and landowners as stewards, which is consistent with the direction in sections 7(a) and 7(aa) of the RMA and the NPS-IB. I therefore recommend that the original submissions on IB-O4 are accepted or accepted in part and IB-O4 is retained with minor amendments to also refer to "*maintenance*" of indigenous biodiversity and replace the reference to SNAs with the wording in section 6(c) of the RMA for the reasons discussed above.

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<sup>13</sup> Federated Farmers (S421.135) and Haititaimarangai Marae Kaitiaki Trust (S394.027).

## IB-O5

123. There are two original submissions specifically allocated to IB-O5<sup>14</sup> and these submissions (and associated further submissions) all support the objective and request that it be retained as notified. I recommend that these submissions are accepted and IB-O5 is retained as notified.

### **Recommendation**

124. I recommend that submissions on IB-O1 are accepted, accepted in part and rejected as set out in **Appendix 2** and that the objective is amended as follows:

*"Areas of significant indigenous vegetation and significant habitats of indigenous fauna (~~Significant Natural Areas~~) are identified and protected for current and future generations".*

125. I recommend that submissions on IB-O4 are accepted, accepted in part and rejected as set out in **Appendix 2** and that the objective is amended as follows:

*"The role of tangata whenua as kaitiaki and landowners as stewards in protecting, maintaining and restoring areas of significant indigenous vegetation and significant habitats of indigenous fauna ~~natural areas~~ and indigenous biodiversity is provided for."*

126. For the reasons above, I recommend that IB-O2, IB-O3 and IB-O5 are retained as notified and submissions on those objectives are accepted, accepted in part and rejected as set out in **Appendix 2**.

### **Section 32AA evaluation**

127. With respect to the amendments to IB-O1 and IB-O4 to remove references to SNAs, I have provided a section 32AA evaluation for this recommended change throughout the IB Chapter under Key Issue 2 above and it is not necessary to repeat this evaluation here.
128. With respect to inserting the word "*maintaining*" into IB-O4, I consider that this is a minor change to better reflect the scope of the role that tangata whenua have as kaitiaki of indigenous biodiversity and does not change the overall intent of the objective. It is also consistent with Council's functions under section 31 of the RMA and the direction in the NPS-IB to protect, maintain and restore indigenous biodiversity. As such, no further evaluation is required under section 32AA of the RMA in my opinion.

## **6.2.6 Key Issue 6: General submissions on policies**

### **Overview**

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<sup>14</sup> Waiau Bay Farm Ltd (S463.028) and DOC (S364.033).

<b>Provision(s)</b>	<b>Officer Recommendation(s)</b>
All IB policies	No changes in response to general submissions, however amendments to IB policies are recommended under Key Issues 7-11 below.

**Analysis of Submissions on Key Issue 6: General submissions on policies  
Matters raised in submissions**

129. There are numerous submissions that have been allocated to “policies – general” in the IB chapter topic that largely relate to Key Issue 1, 2 or 3 as discussed above. For example:
- a. The relief sought in submissions requesting amendments to policies to remove references to SNAs, such as from The Twin Coast Cycle Trail (S425.024), is addressed under Key Issue 2.
  - b. Submissions requesting amendments to policies in relation to SNA mapping, such as from Russell Landcare Trust (S276.005), DOC (S364.035 and S364.036), Lynley Newport (S128.003) and John Andrew Riddell (S431.093) are addressed above under Key Issue 2.
  - c. General submissions requesting that the IB Chapter policies align with other higher order documents, such as from Carbon Neutral Trust (S529.116 and S529.132) are addressed under Key Issue 1 and 3.
  - d. Submissions requesting that the policies better align with the RMA (particularly sections 5(2)(b), 6(a), 6(c), and 6(e)), such as those from Matauri X Incorporation (S396.023), Carbon Neutral Trust (S529.120) and John Andrew Riddell (S431.094, S431.095, S431.096, S431.097, S431.098, S431.099, S431.100 and S431.101) are also addressed under Key Issues 1-3 above
130. Several submitters request that the policy section of the IB Chapter be replaced with either Policy 4.4.1 of the RPS, (e.g. Russell Landcare Trust (S276.004)) or be amended to align with Section 12.2 of the ODP (e.g. Carbon Neutral Trust (S529.138)). The submission from Carbon Neutral Trust requests a new policy to protect kiwi, dotterel, brown teal and also other indigenous species that are classed as threatened or at risk (under NZTCS) and vulnerable to this type of predation.
131. Russell Landcare Trust (S276.014) considers that the policies are not clear enough on when effects need to be avoided, remedied or mitigated and requests amendments to set out when, and to what extent, avoiding is the preferred option versus remedying or mitigating.
132. Multiple submitters request new policies in the IB Chapter, including:
- a. Russell Landcare Trust (S276.016) requests specific policy direction for long-tailed bat protection when an application occurs in an area used by these bats. Russell Landcare Trust (S276.015) also requests specific policy direction to state that offsetting is not always the appropriate action.

- b. The Twin Coast Cycle Trail (S425.027) and Top Energy (S483.146) request a new policy to ensure that the that maintenance, operation and upgrade of regionally significant infrastructure is provided for in areas of significant indigenous biodiversity.
- c. Te Aupōuri Commercial Development Ltd (339.026 and 339.027) request a new policy to encourage the protection of significant indigenous biodiversity when undertaking development and a new policy to provide assistance to landowners with large areas of significant indigenous biodiversity.
- d. Federated Farmers (421.137) request a new policy that enables existing farming activities to continue.
- e. Marianna Fenn (S542.004) and Kapiro Conservation Trust (S442.174) request a new policy relating to identifying areas of significant indigenous biodiversity that are likely to be particularly vulnerable and/or change their location and extent due to the effects of climate change.

## **Analysis**

133. I have already addressed a number of the key themes in the general submissions on policies in Key Issues 1, 2 and 3 above. In terms of the other matters raised in these submissions:
- a. I discuss alignment with Policy 4.4.1 of the RPS below under Key Issue 9 and make a number of recommendations to better align IB-P2, IB-P3 and IB-P4 with this higher-level direction. In my view, it is more appropriate to align the IB Chapter with this more recent higher order direction rather than reverting to the corresponding policies in the ODP as the statutory framework for the management of indigenous biodiversity in the Far North District has changed. I therefore recommend these submissions are accepted in part to the extent that my recommended amendments to IB-P2, IB-P3 and IB-P4 satisfy the submitters concerns.
  - b. I consider that my recommendations to IB-P2, IB-P3 and IB-P4 also provide clearer direction on what adverse effects need to be avoided versus avoided, remedied or mitigated and therefore recommend that the submission from Russell Landcare Trust on this issue is accepted in part.
  - c. In terms of the request for a new policy to protect kiwi, dotterel, brown teal and other indigenous species that are classed as Threatened or At Risk and for a policy specific to long-tailed bats, I recommend amendments to IB-P2 and IB-P3 under Key Issue 9 to provide specific direction to avoid adverse effects on Threatened or At-Risk species. I consider that these amendments address the relief sought in the submissions above and recommend that these are accepted.



- d. I do not consider that a specific policy on offsetting is necessary. However, I have recommended amendments to Policy IB-P4 below (Key Issue 8) and the definition of biodiversity offsetting (Key Issue 20) that help clarify when offsetting is to be used and when it is inappropriate.
- e. I have discussed the PDP approach to infrastructure above under Key Issue 3 and the same reasoning applies here. More specifically, IB-P5 already provides for regionally significant infrastructure therefore an additional policy is not necessary as requested by Top Energy and Twin Coast Cycle Trail. However, I recommend a minor amendment to IB-P5(c) to also refer to “upgrading” existing regionally significant infrastructure, as discussed further in Key Issue 9, which is consistent with the relief sought by these submitters.
- f. For similar reasons, I do not consider that it is necessary to provide a policy specific to farming activities in the IB Chapter as requested by Federated Farmers. Clause a) in IB-P5 includes specific conditions to allow for existing primary production activities to continue without unreasonable restrictions, which I discuss further under Key Issue 9 below. This policy direction is consistent with the relief sought from Federated Farmers to allow existing farming activities to continue.
- g. In terms of the submission from Te Aupōuri Commercial Development Ltd, I note that IB-P6 seeks to encourage the protection of indigenous biodiversity which may include support to landowners, as discussed further in Key Issue 9. However, I do not consider it appropriate to specifically direct that landowners with large areas of significant indigenous biodiversity should be provided with assistance as this could have significant financial implications for Council.
- h. I do not consider that it is necessary or appropriate to include a new policy to identify areas of significant indigenous biodiversity that are particularly vulnerable to the effects of climate change. This direction is not supported by higher order documents and could have significant costs implications for Council. However, I am recommending a clause in IB-P10 focused on improving the resilience of indigenous biodiversity to climate change to give effect to Policy 4 and Clause 3.6 of the NPS-IB, which may help to address the relief sought in these submissions to some extent.

### **Recommendation**

134. I recommend that general submissions on the policies in the IB Chapter are accepted, accepted in part and rejected as set out in **Appendix 2**. I do not recommend specific amendments to the policies in response to these general submissions but have considered these further in the analysis of specific submissions below (e.g. providing for the upgrading of regionally significant infrastructure in IB-P5).

### **Section 32AA evaluation**

135. I do not recommend any specific amendments to the IB Chapter in response to the general submissions on policies therefore no further evaluation is required under section 32AA of the RMA.

### 6.2.7 Key Issue 7: IB-P1

#### Overview

Provision(s)	Officer Recommendation(s)
IB-P1	Delete

#### Analysis of Submissions on Key Issue 7: IB-P1

##### Matters raised in submissions

136. A significant number of submitters oppose IB-P1 for the same or similar reasons set out under Key Issue 2. This includes:
- a. Private landowners such as Rua Hatu Trust (S377.005), Kerry-Anne Smith (S410.005), Roger Myles Smith (S411.005), Helmut Friedrich Paul Letz and Angelika Eveline Letz (S470.005), and Elbury Holdings (S541.005).
  - b. Submitters focused on environmental outcomes, such as DOC (S364.034), Forest and Bird (S511.057), Kapiro Conservation Trust (S442.076 and S442.175) and Marianna Fenn (S542.005).
  - c. A group of landowners with common interests, including P S Yates Family Trust (S333.015) The Shooting Box Limited (S187.015), Wendover Two Limited (S222.022).
137. Several submitters request amendments to IB-P1 to provide greater recognition of te ao Māori values or mātauranga Māori when identifying SNAs and that mana whenua engagement be required when identifying SNAs. This includes Wakaiti Dalton (S355.019), Tracy and Kenneth Dalton (S479.013) and Te Aupōuri Commercial Development Ltd (S339.025).

##### Analysis

138. I have discussed the approach to SNA mapping in detail under Key Issue 2 and recommend that all references to SNAs are replaced with the phrase "*areas of significant indigenous vegetation and significant habitat of indigenous fauna*" and that SCHED-4 is deleted. For the same reasons, I recommend IB-P1 is deleted as it serves no useful purpose based on these recommendations and will only lead to implementation issues and costs with no/limited benefit in terms of identifying and protecting SNAs.
139. In relation to the requests for greater recognition of mātauranga Māori and engagement with tangata whenua when identifying SNAs, I note that the process to identify SNAs under the NPS-IB requires a partnership approach with tangata whenua (Clause 3.3 and Clause 3.8(2)(a)) along with specific direction to enable the application of mātauranga Māori in relation to indigenous biodiversity (Clause 3.3(5)). This is one of the reasons why I recommend that the SNA related provisions in the NPS-IB are given effect

to through a future plan change as this will allow a partnership approach with tangata whenua to be implemented.

### Recommendation

140. For the reasons above, I recommend that submissions on IB-P1 are accepted, accepted in part and deleted as set out in **Appendix 2** and IB-P1 is deleted.

### Section 32AA evaluation

141. The section 32AA evaluation under Key Issue 2 evaluates the appropriateness, efficiency and effectiveness of my recommendations to remove references to SNA mapping from the IB Chapter which also applies to IB-P1 so is not repeated here.

## 6.2.8 Key Issue 8: IB-P2, IB-P3 and IB-P4

### Overview

Provision(s)	Officer Recommendation(s)
IB-P2	Amend to better give effect to the RPS
IB-P3	Amend to better give effect to the RPS
IB-P4	Amend to give effect to Clause 3.16 in the NPS-IB

### Analysis of Submissions on Key Issue 8: IB-P2, IB-P3 and IB-P4

#### Matters raised in submissions

#### IB-P2 - Managing effects on indigenous biodiversity in the coastal environment

142. A key issue raised by submitters is that IB-P2 and IB-P3 do not give effect to Policy 11 of the NZCPS, and the policies should be amended to align with this clear direction. Submitters requesting this general relief include DOC (S364.037), Forest and Bird (S511.058), Te Hiku Iwi Development Trust (S399.058 and S399.059) and Kapiro Conservation Trust (S442.077).
143. Forest and Bird (S511.059), Russell Landcare Trust (S276.109), Kapiro Conservation Trust (S442.078), and John Andrew Riddell (S439.091) raise a similar concern that IB-P2 and IB-P3 do not give effect to Policy 4.4.1 of the RPS and request that the policies are aligned with this direction.
144. Waiaua Bay Farm Limited (S463.029) is concerned with the use of the phrase "*important and vulnerable*" in clause (b) of IB-P2 and requests that this clause is deleted or amended to clarify what it means. Waiaua Bay Farm Limited (S463.030) also requests the same relief in relation to the use of this phrase in IB-P3.
145. NZTA (S356.063) requests amendments to IB-P2 to ensure it is consistent with I-P2 in the Infrastructure Chapter, which is a policy that manages effects from infrastructure in the coastal environment. To address this, NZTA requests a new clause c) in IB-P2 to state "*in relation to infrastructure, Policy IP-2 applies*" and to refer to the "*characteristics and qualities*" of SNAs. NZTA (S356.064) requests the same relief in relation to IB-P3.

146. Transpower (S454.083) requests an amendment to IB-P2 so that the policy is "*subject to Policy I-PX*". This is intended to cross reference to a new policy specific to the National Grid that Transpower is requesting in the Infrastructure Chapter to give effect to the NPS-ET. Transpower (S454.084 and S454.086) requests the same relief in relation to IB-P3 and IB-P10.

#### IB-P3

147. Russell Landcare Trust (S276.109) supports IB-P3, noting that the "*no more than minor*" threshold for adverse effects on SNAs outside the coastal environment is consistent with Policy 4.4.1 of the RPS.
148. DOC (S364.038) supports the intent of IB-P3 but requests amendments to give effect to section 6(c) of the RMA and the RPS. The requested amendments to clause (a) to achieve this from DOC are:

*"avoid, ~~remedy or mitigate~~ significant adverse effects of land use and subdivision on Significant Natural Areas ~~to ensure adverse effects are no more than minor~~".*

149. John Andrew Riddell (S431.092), Forest and Bird (S511.059) and Kapiro Conservation Trust (S442.078) raise concerns that IB-P3 only partially gives effect to the RPS and request that it is amended to fully give effect to Policy 4.4.1 in the RPS, noting that Policy D.2.18 in the Northland Regional Plan has adopted this approach.
150. Te Hiku Iwi Development Trust (S399.059) is concerned that IB-P3 does not specifically provide for the Threatened and At-Risk species of flora and fauna that are at most risk from adverse effects. To address this concern, Te Hiku Iwi Development Trust requests that clause a) is amended to also refer to "*Threatened and At-Risk species*" and to remove the reference to "*vulnerable*" in clause b).

#### IB-P4

151. The majority of submitters support IB-P4 in part or in full. For example, KiwiRail (S416.031) supports IB-P4 and requests that it be retained as notified. KiwiRail supports the hierarchy of avoiding, remedying, mitigating and offsetting adverse effects in sensitive areas.
152. DOC (S364.039) supports IB-P4 in part, but requests amendments to require that any biodiversity offsetting or compensation be undertaken in accordance with the principles in Appendix 3 and 4 of the NPS-IB.
153. Lynley Newport (S129.001) supports IB-P4 but considers that offsetting should be available in the coastal environment. Lynley Newport requests an amendment to the start of the policy to also refer to IB-P2 to provide for this relief.
154. Kapiro Conservation Trust (S442.176) and Marianna Fenn (S542.006) support IB-P4 in part but consider that offsetting and compensation should only be used when it is clear there will be a net gain in indigenous biodiversity. The submitters request amendments to ensure both offsetting

and compensation achieve a net gain and consequential amendments to the definitions to provide for this relief. Forest and Bird (S511.060) "*tentatively supports this policy but wishes to see where discussions on other policies land*".

## Analysis

155. As notified, IB-P2, IB-P3 and IB-P4 are the key "*effects management*" policies in the IB Chapter and broadly provide the following direction:
- a. **IB-P2** (within the coastal environment): avoid adverse effects on SNAs; avoid significant adverse effects and avoid, remedy and mitigate other adverse effects on important and vulnerable indigenous vegetation, habitats and ecosystems.
  - b. **IB-P3** (outside the coastal environment): adverse effects on SNAs must be no more than minor; avoid, remedy and mitigate adverse effects on important and vulnerable indigenous vegetation, habitats and ecosystems to ensure there are no significant adverse effects.
  - c. **IB-P4** (outside the coastal environment): consider whether it is appropriate to apply biodiversity offsetting, then biodiversity compensation, to address residual adverse effects that cannot be avoided, remedied or mitigated as part of an effects management hierarchy.
156. In responding to submissions, the key issue to consider, in my opinion, is how to better align these policies with the higher order direction in Policy 11 of the NZCPS and Policy 4.4.1 in the RPS. In this respect, I understand the intent of IB-P2 and IB-P3 as notified was to give effect to Policy 4.4.1 while simplifying the drafting. However, this approach has resulted in these policies not fully giving effect to the RPS and I consider that drafting should be better aligned in that respect. There is now also a need to consider how these provisions should give effect to Clause 3.16 of the NPS-IB. Clause 3.16 relates to indigenous biodiversity outside of SNAs and requires that:
- a. Significant adverse effects must be managed by applying the "*effects management hierarchy*" (as defined in the NPS-IB).
  - b. Other adverse effects must be managed to give effect to the NPS-IB objective and policies.
157. Also of relevance is Clause 1.4(2) in the NPS-IB, which states that the NZCPS prevails over the NPS-IB when there is a conflict between the two documents. My understanding of the intent of this clause is that the stronger direction in Policy 11 of the NZCPS (and lower order policies that give effect to it) is to prevail where there is conflict with the NPS-IB that cannot be reconciled<sup>15</sup>.

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<sup>15</sup> For example, the direction to avoid certain adverse effects in Policy 11(a) of the NZCPS v apply an effects management hierarchy under Clause 3.11 of the NPS-IB.

158. Based on the direction in these higher order documents, I recommend that IB-P2 and P3 are amended to better align with Policy 4.4.1 in the RPS, in particular the direction in Policy 4.4.4(1) that gives effects to section 6(c) of the RMA and Policy 11(a) of the NZCPS. In the absence of SNA mapping, this will ensure that IB-P2 and IB-P3 still provide clear policy direction that adverse effects on areas of significant indigenous vegetation and significant habitats of indigenous fauna must be:
- a. Avoided in the coastal environment.
  - b. Avoided, remedied or mitigated outside the coastal environment so that these are no more than minor.
159. I also recommend that IB-P2 and IB-P3 are amended to provide direction to avoid adverse effects on Threatened and At-Risk indigenous species and areas "particularly vulnerable" to modification, consistent with the direction in Policy 11 of the NZCPS and Policy 4.4.1 of the RPS. My understanding is that the notified version of these policies was intended to (partially) give effect to Policy 4.4.1(2)(a) and (3)(a) of the RPS and Policy 11(b)(iv). However, I agree that the reference to "*important*" indigenous vegetation, habitats and ecosystems is subjective and uncertain in IB-P2 and IB-P3 and is likely to be problematic to assess through consenting processes. As such, I recommend the reference to "*important*" is removed from IB-P2 and IB-P3 so the policy direction is more focused on those ecological attributes (e.g. the threat status of indigenous species) that can be more objectively assessed through consenting processes.
160. I also recommend that IB-P4 is amended to apply to other "*significant adverse effects*" not already addressed by IB-P2 and IB-P3 and require that these effects are managed in accordance with the "*effects management hierarchy*" to give effect to Clause 3.16(1) in the NPS-IB. I also recommend that a definition of "*effects management hierarchy*" is included in the PDP based on the NPS-IB definition.<sup>16</sup>
161. My recommended amendments to these three policies are shown in the recommendations section below.
162. In terms of the other matters raised in submissions:
- a. I do not recommend amendments to IB-P2 and IB-P3 to cross-reference specific provisions in the Infrastructure Chapter as requested by NZTA. The provisions in the PDP chapters are to be read together as relevant when assessing a particular proposal and it is problematic and confusing to cross-reference certain policies in

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<sup>16</sup> The NPS-IB definition is: "***effects management hierarchy*** means an approach to managing the adverse effects of an activity on indigenous biodiversity that requires that: (a) adverse effects are avoided where practicable; then (b) where adverse effects cannot be avoided, they are minimised where practicable; then (c) where adverse effects cannot be minimised, they are remedied where practicable; then (d) where more than minor residual adverse effects cannot be avoided, minimised, or remedied, biodiversity offsetting is provided where possible; then (e) where biodiversity offsetting of more than minor residual adverse effects is not possible, biodiversity compensation is provided; then (f) if biodiversity compensation is not appropriate, the activity itself is avoided".

the PDP chapters and not others. However, I do note that there are some inconsistencies in the direction to avoid adverse effects between I-P2 and IB-P2 (also CE-P2 and NFL-P2), which will need to be reconciled by the reporting officer in Hearing 12 (Energy, Infrastructure and Transport).

- b. For similar reasons, I do not recommend that IB-P2 and IB-P3 are amended to include a qualifier "*Subject to I-PX*" as requested by Transpower. I understand that requested relief is intended to ensure the National Grid policy in the Infrastructure Chapter takes precedence over other relevant PDP provisions and acts as a "*one stop shop*". However, in my opinion, that relationship is best addressed in the Infrastructure Chapter rather than adding the words "*Subject to I-PX*" in IB-P2 and IB-P3 and numerous other district-wide provisions in the PDP. Accordingly, I do not recommend any amendments to IB-P2 and IB-P3 in response to the submissions from Transpower, noting that the more substantive relief sought will be considered in Hearing 12.
- c. I agree that clause a) in IB-P2 and IB-P3 should refer to Threatened and At-Risk species to give effect to the RPS and have included that amendment below. I also recommend new definitions of Threatened and At-Risk species to make it clear this refers to the identification of these species in the New Zealand Threat Classification System. I also note that the term "*vulnerable*" in clause b) in IB-P2 and IB-P3 is taken directly from Policy 4.4.1 of the RPS and is distinct in this context from Threatened and At-Risk species in the NZTCS. Accordingly, I recommend that the reference to "*vulnerable*" is retained with a minor amendment to refer to "*particularly vulnerable*" consistent with the RPS.
- d. I consider the definitions of biodiversity offsetting and biodiversity compensation below in Key Issue 20 (definitions). I agree with the submissions above that these terms should be aligned with the corresponding definitions in the NPS-IB and make recommendations to achieve this below.

## **Recommendation**

163. For the reasons above, I recommend that submissions on IB-P2, IB-P3 and IB-P4 are accepted, accepted in part and rejected as set out in **Appendix 2**. I recommend that the policies are amended as follows:

**"IB-P2:** *Within the coastal environment:*

- a. *avoid adverse effects of land use and subdivision on:*
  - i. *Threatened and At-Risk indigenous species;*
  - ii. *areas of significant indigenous vegetation and significant habitat of indigenous fauna Significant Natural Areas;*
  - iii. *areas of indigenous biodiversity protected under other legislation; and*
- b. *avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of land use and subdivision on:*
  - i. *areas of predominately indigenous vegetation; and*

- ii. indigenous species, habitats and ecosystems areas of that are important and particularly vulnerable to modification  
indigenous vegetation, habitats and ecosystems."

**"IB-P3:** *Outside the coastal environment:*

- a. *avoid, remedy or mitigate adverse effects of land use and subdivision on Significant Natural Areas to ensure adverse effects are no more than minor on:*
  - i. Threatened and At-Risk indigenous species;
  - ii. areas of significant indigenous vegetation and significant habitat of indigenous fauna;
  - iii. areas of indigenous biodiversity protected under other legislation; and
- b. *avoid, remedy, or mitigate, offset or compensate adverse effects of land use and subdivision on areas of important and vulnerable indigenous vegetation, habitats and ecosystems to ensure there are no significant adverse effects on:*
  - i. areas of predominately indigenous vegetation; and
  - ii. indigenous species, habitats and ecosystems that are particularly vulnerable to modification."

**"IB-P4:** *If adverse effects on indigenous species, habitats and ecosystems located outside of the coastal environment cannot be avoided, remedied or mitigated in accordance with IB-P3, consider whether it is appropriate to apply the following steps as an effects management hierarchy:*

- a. *biodiversity offsetting to address more than minor residual adverse effects to achieve a no net loss and preferably net gain in indigenous biodiversity; and*
- b. *environmental biodiversity compensation to address more than minor residual adverse effects where it is not practicable to achieve biodiversity offsetting. Where there are significant adverse effects on indigenous biodiversity that are not otherwise avoided, remedied, mitigated, offset or compensated under IB-P2 and IB-P3 as applicable, these must be managed by applying the effects management hierarchy."*

**Section 32AA evaluation**

164. I consider that my recommendations above will be more effective and efficient in achieving the relevant objectives as they better align IB-P2, IB-P3 and IB-P4 with the higher order direction in the NZCPS, NPS-IB and RPS. This will be more effective in achieving the outcomes sought (i.e. avoiding certain adverse effects, applying an effects management hierarchy to "other significant adverse effects") and will also be also more efficient by removing inconsistencies in wording, which could create some uncertainties and implementation issues.

**6.2.9 Key Issue 9: IB-P5 and IB-P6**

Provision(s)	Officer Recommendation(s)
IB-P5	Amend to be better aligned with RPS
IB-P6	Amend to delete redundant wording

**Analysis of Submissions on Key Issue 9: IB-P5 and IB-P6**



## Matters raised in submissions

### IB-P5

165. A large number of submitters, including infrastructure providers and primary sector submitters, support IB-P5 and request it is retained as notified. This includes, for example, NZ Agricultural Aviation Association (S182.014), Chorus New Zealand Limited, Spark New Zealand Trading Limited, Spark TowerCo Limited, Vodafone New Zealand Limited (S282.012), NZTA (S356.062), KiwiRail Holdings Limited (S416.032), Ministry of Education Te Tāhuhu o Te Mātauranga (S331.043), Summit Forests New Zealand Limited (S148.014) and Ballance Agri-Nutrients Limited (S143.005). Reasons these submitters support IB-P5 include:
- a. IB-P5 recognises the importance, as well as the operational need and functional need, of regionally significant infrastructure/infrastructure, which means that it may need to be located in SNAs/have adverse effects on indigenous biodiversity.
  - b. It is appropriate to provide policy direction not to impose unreasonable restrictions on existing primary production activities.
166. A key issue raised by submitters including, DOC (S364.040), Kapiro Conservation Trust (S442.080 and S442.177), Forest and Bird (S511.061) and Marianna Fenn (S542.007), is that IB-P5 will enable the listed activities to “*take priority*” over the protection of SNAs and indigenous biodiversity. For example, DOC considers that IB-P5 needs to be amended to be more balanced in favour of protecting SNAs by removing the reference to “*unreasonable restrictions*” in clause a) and to ensure that the operational and functional needs of “*some activities*” in clause b) do not have higher priority than SNAs. To address these concerns, DOC requests that IB-P5 be amended to delete clause a) and to amend clause b) so that it only applies to regionally significant infrastructure.
167. Forest and Bird and Kapiro Conservation Trust raise similar concerns with IB-P5 that:
- a. Clause a) gives primary production activities primacy over the protection and maintenance of indigenous biodiversity; and
  - b. Clause b) and clause c) are matters already addressed in the infrastructure and renewable energy chapters.
168. To address these concerns, Kapiro Conservation Trust requests that clause a) is deleted or, alternatively, amended to replace the words “*does not impose unreasonable restrictions*” with “*allow*”. Marianna Fenn (S542.007) and other submitters raise similar concerns with clause a) in IB-P5 and request that this be amended as follows “*Allows for existing primary production activities, to continue provided that Significant Natural Areas are protected and indigenous biodiversity values of the site are maintained*”.
169. John Andrew Riddell (S431.102) and Russell Landcare Trust (S279.006) consider that the protection and recognition of indigenous biodiversity in IB-

P5 is inadequate and request that clause a) is amended to set the policy test for restrictions on primary production as being whether these are necessary for protection and enhancement of indigenous biodiversity.

170. HortNZ (S159.051) supports IB-P5 in part but requests an amendment to replace "*highly versatile soils*" with "*highly productive land*".

#### IB-P6

171. A number of submitters support IB-P6 and request that it be retained as notified. These submitters include Summit Forests New Zealand Limited (S148.015), Northland Fish and Game Council (S436.033) and PF Olsen Limited (S91.006). These submitters support the encouragement of non-regulatory methods to protect, maintain and restore indigenous biodiversity and the direction to consider reducing or waiving resource consent fees.
172. Lynley Newport (S128.002) considers that IB-P6 should be the first policy as it provides positive direction rather than negative. Lynley Newport also requests that the words "*consideration of*" should be deleted from IB-P6 so the policy provides a list of non-regulatory methods to encourage protection, maintenance and restoration of indigenous biodiversity rather than just direction to consider these.
173. A group of submitters support IB-P6 in part, but request amendments to remove references to SNAs and to encourage "*both regulatory and non-regulatory methods*" to protect, maintain and restore indigenous biodiversity. These submitters include P S Yates Family Trust (S333.018), Setar Thirty Six Limited (S168.026), The Shooting Box Limited (S187.019), Wendover Two Limited (S222.026), Matauri Trustee Limited (S243.028) and Bentzen Farm Limited (S167.019). These submitters also request a new clause in IB-P6 as follows:
- "Enabling subdivision and land use where that results in the restoration or enhancement of indigenous biodiversity, including under-represented ecosystems, and where biodiversity is increased and legally protected"*.
174. The intent of this amendment from these submitters is to provide a policy basis for SUB-R6 (Environmental benefit subdivision) and SUB-R7 (Management plan subdivision).
175. Forest and Bird (S511.062), Kapiro Conservation Trust (S442.081, S442.178) and Marianna Fenn (S542.008) support IB-P6 in part, as they support non-regulatory methods, but consider that there still needs to be SNA mapping and rules. The submitters also request several amendments to IB-R6, including direction to consider:
- a. Nature-based solutions to mitigate the effects of climate change.
  - b. A reduction or waiver of rates where there is good pest and weed control in place or where maintenance/enhancement of indigenous biodiversity will provide significant ecosystem services.

176. Te Hiku Iwi Development Trust (S399.060) requests specific amendments to IB-P6 to give a greater priority to the protection, maintenance and restoration of SNAs in lowland or coastal areas. The submitter requests amendments to clause a) to require the assessment to determine if an area is a "*high priority*" SNA. Te Hiku Iwi Development Trust considers that these amendments are required to give priority to rare ecosystem/habitat types, which are generally coastal ecosystems and lowland ecosystems.

## **Analysis**

### IB-P5

177. The intent of IB-P5 is broadly supported by submissions. I consider that it provides essential direction to recognise several important activities when protecting and maintaining indigenous biodiversity, consistent with the direction in the NPS-IB and RPS. The main issues to address in submissions on IB-P5 in my view are:
- a. References to SNAs.
  - b. The direction in clause a) to "*not impose unreasonable restrictions*" on existing primary production activities.
  - c. The reference to "highly versatile soils".
  - d. The broad reference in clause b) to the operational need and functional need of "some activities".
  - e. The lack of recognition of "upgrading" infrastructure in clause c).
178. In terms of the first issue, I recommend that the references to SNAs are replaced with "*areas of significant indigenous vegetation and significant habitat of indigenous fauna*" for the reasons outlined in Key Issue 2.
179. My understanding is that clause a) in IB-P5 is intended to implement the direction in Method 4.4.3(3)(d) in the RPS. This states that, in implementing Policy 4.4.1 in the RPS, district plans shall "*Not unreasonably restrict the existing use of production land, including forestry*". On this basis, I consider that the direction is appropriate to give effect to the RPS. This approach is also broadly aligned with the NPS-IB, which provides specific direction relating to primary production activities (including mineral extraction, plantation forestry and maintenance of improved pastures). However, I do consider that the drafting of clause a) can be improved while also responding to the submission of HortNZ and the gazettal of the NPS-HPL as follows:
- "...does not ~~impose unreasonable restrictions on existing primary production activities, particularly on highly productive land~~ versatile soils.*
180. In terms of clause b) in IB-P5, I note that the RPS provides limited direction about the operational and functional need of different activities. However, the operational need and functional need of certain activities, including regionally significant infrastructure, is recognised in numerous higher order

documents. These include the National Planning Standards (which defines both functional and operational need) and Clause 3.11 (1)(b) of the NPS-IB (where the terms function as a “gateway test” for certain activities to be located in a SNA). I therefore agree with submitters that the reference to “*some activities*” in clause b) in IB-P5 is too broad and it should be limited to regionally significant infrastructure<sup>17</sup> as this is more consistent with higher order documents.

181. As discussed above under Key Issue 6, I consider that it is appropriate to recognise the need for upgrading infrastructure in clause c) of IB-P5. My understanding is that the drafting of this clause is intended to give effect to Method 4.4.3(3)(c) of the RPS, which directs district plans (when implementing Policy 4.4.1 to “*Allow the maintenance and use of existing structures including infrastructure*”. However, there is also direction in Policy 5.3.3(2) of the RPS to allow the upgrading of existing regionally significant infrastructure where there are no significant adverse effects in terms of Policy 4.4.1 in the RPS. I therefore recommend that the upgrading of existing regionally significant infrastructure is provided for through an amendment to clause c) in IB-P5, noting that the direction to avoid significant adverse effects is already provided for in IB-P2 and IB-P3.

#### IB-P6

182. There is broad support in submissions for IB-P6, with the main issues to consider being:
- a. Whether the policy should also focus on regulatory methods.
  - b. The direction to “consider” the list of non-regulatory methods.
  - c. Requests for additional direction relating to environment benefit subdivisions, nature-based solutions, and reductions in rates.
  - d. Identifying “*high-priority*” SNAs.
183. I consider that it is appropriate to retain the focus of IB-P6 on non-regulatory methods. The direction in the policy is to “encourage” rather than “require”, which is best delivered through non-regulatory methods. There are also other policies in the IB Chapter focused on the protection and maintenance of indigenous biodiversity using regulatory methods, as discussed throughout this report.
184. In my view, the direction to consider (rather than require) the list of non-regulatory methods is appropriate. The intent of IB-P6 is to provide a non-exhaustive list of non-regulatory methods that should be considered to encourage the protection, maintenance and restoration of indigenous biodiversity. The most appropriate method will vary based on a range of circumstances, so some flexibility in IB-P6 to provide for this is appropriate in my view.

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<sup>17</sup> Noting the regionally significant infrastructure is within the definition of “specified infrastructure” in the NPS-IB which has a pathway in relation to SNAs under Clause 3.11.

185. I agree with submitters that there is some benefit in providing policy direction to allow for subdivision where there is protection of significant biodiversity in accordance with SUB-R6 (Environment benefit subdivision). This rule provides a key incentive to protect significant indigenous vegetation and habitats through legal covenants in return for additional subdivision opportunities. My recommended wording for a new policy to support SUB-R6 is as follows "*Enable subdivision and associated land use where this results in the legal protection and/or restoration of areas of significant indigenous vegetation or significant habitat of indigenous fauna in accordance with SUB-R6*". I consider that this wording provides a clearer link to the relevant rule in the subdivision chapter than the amendment requested by the submitters. I note that this policy could also sit in the Subdivision Chapter which may be considered further as part of the integration hearing, scheduled as Hearing 20.
186. I do not consider that IB-P6 needs to specifically refer to:
- a. **Nature-based solutions** as this term is too broad to assist with interpreting the policy direction. There is sufficient direction and scope in the IB Chapter to allow for the ecological benefits of nature-based solutions to be considered, in my opinion.
  - b. **Reductions in rates** for good pest control and the maintenance/enhancement of indigenous biodiversity as this mechanism sits outside the PDP and is a matter for Council to consider separate to this process.
  - c. **"High-priority SNA"**, both because of my recommendation that SNA mapping occurs through a future plan change process (Key Issue 2) and because the meaning of "*high-priority*" SNA is unclear and potentially problematic in my view (noting the concept of high and medium-SNAs was dropped from the draft NPS-IB).
187. I recommend some consequential amendments to IB-P6:
- a. Deleting the reference to prioritising restoration of SNAs in the chapeau as I am recommending the addition of a new policy with priorities for restoration to give effect to Clause 3.21 in the NPS-IB (explained in **Appendix 3**).
  - b. Deleting clause a) for the reasons outlined under Key Issue 2.

### **Recommendation**

188. I recommend that submissions on IB-P5 and IB-P6 are accepted, accepted in part and rejected as set out in **Appendix 2**. I recommend that IB-P5 and IB-P6 are amended as follows:

**"IB-P5:** *Ensure that the management of land use and subdivision to protect Significant Natural Areas areas of significant indigenous vegetation and significant habitat of indigenous fauna and maintain indigenous biodiversity is done in a way that:*

- a. ~~does not impose unreasonable restrictions on existing primary production activities, particularly on highly productive land versatile soils;~~
- b. ~~recognises the operational need and functional need of some activities, including regionally significant infrastructure, to be located within areas of significant indigenous vegetation and significant habitat of indigenous fauna Significant Natural Areas in some circumstances;~~
- c. ~~allows for maintenance, use and operation of existing structures, including infrastructure and the upgrading of regionally significant infrastructure; and~~
- d. ~~enables Māori land to be used and developed to support the social, economic and cultural well-being of tangata whenua, including the provision of papakāinga, marae and associated residential units and infrastructure."~~

**"IB-P6:** ~~Encourage the protection, maintenance and restoration of indigenous biodiversity, with priority given to Significant Natural Areas, through non-regulatory methods including consideration of:~~

- a. ~~assisting landowners with physical assessments by suitably qualified ecologists to determine whether an area is a Significant Natural Area;~~
- b. ~~reducing or waiving resource consent application fees;~~
- c. ~~providing, or assisting in obtaining funding from other agencies and trusts;~~
- d. ~~sharing and helping to improve information on indigenous biodiversity; and~~
- e. ~~working directly with iwi and hapū, landowners and community groups on ecological protection and enhancement projects. "~~

189. I recommend a new policy as follows (noting this could equally sit in the Subdivision Chapter):

"Enable subdivision and associated land use where this results in the legal protection and/or restoration of areas of significant indigenous vegetation or significant habitat of indigenous fauna in accordance with SUB-R6."

### **Section 32AA evaluation**

190. With respect to the amendments to IB-P5 and IB-P6 to remove references to SNAs, I have provided a section 32AA evaluation for this recommended amendment under Key Issue 2 above and this further evaluation is not repeated here.
191. I consider that that my other recommended amendments to IB-P5 will be more effective and efficient in achieving the relevant objectives as they will better align the policy with higher order documents, in particular the NPS-IB and the NPS-HPL in relation to clause (a) and the National Planning Standards, the NPS-IB and the RPS in relation to clauses (b) and (c).
192. I consider that the new policy I am recommending to provide policy support for Environment Benefit subdivisions (to be inserted either into the IB chapter or the Subdivision chapter) is an effective way to provide higher

order policy support for SUB-R6, which is a key mechanism for achieving both legal protection of indigenous biodiversity in perpetuity and/or incentivising restoration work. A separate policy is more efficient from a drafting perspective than reworking an existing policy as it gives a clearer focus on how subdivision can both achieve positive indigenous biodiversity outcomes and providing landowners with additional subdivision opportunities.

## 6.2.10 Key Issue 10: IB-P7, IB-P8 and IB-P9

### Overview

Provision(s)	Officer Recommendation(s)
IB-P7	Retain with minor amendment to refer to "pests"
IB-P8	Retain with minor amendments to clarify wording
IB-P9	Amend to clarify that any requirements on pest controls are to be imposed through consent conditions

### Analysis of Submissions on Key Issue 10: IB-P7, IB-P8 and IB-P9

#### Matters raised in submissions

##### IB-P7

193. The majority of submissions on IB-P7 support the policy and request it be retained as notified, or with minor amendments, consistent with the overall intent. These submitters include, for example, Ballance Agri-Nutrients Limited (S143.006), NZ Agricultural Aviation Association (S182.015), Marianna Fenn (S542.009), Carbon Neutral NZ Trust (S529.134), Kapiro Conservation Trust (S442.179), and Vision Kerikeri (S527.010). These submitters support IB-P7 the general policy direction to encourage and support the active management of pest plants and pest animals. The amendments to IB-P7 sought by some of these submitters include greater consideration of incentives to landowners to control pests through, for example, rates relief.
194. HortNZ (S159.052) requests amendments to IB-P7 to be clear that the policy includes pests under the Regional Pest Management Plan and the Biosecurity Act 1993 and to strengthen the wording to "***provide for the active management of pest plants...***" rather than "*encourage and support*".
195. DOC (S364.042) supports IB-P7 in part but requests a minor amendment to encourage and support the active "*control*" of pests, rather than active "*management*".
196. Heather Golley (S254.004) opposes IB-P7 and requests that the provisions are amended to not limit dog ownership or result in the banning of dogs and cats. The BOI Watchdogs (S354.020) request that IB-R7 is amended to not apply to dogs on the basis that these are not pests.

##### IB-P8

197. There are six original submission points on IB-P8 which are all in support or support the policy in part. For example, Carbon Neutral NZ Trust (S529.135)

and Vision Kerikeri (Vision for Kerikeri and Environs, VKK) (S527.011) support IB-P8 and request it be retained as notified.

198. Forest and Bird (S511.063), Marianna Fenn (S542.010) and Kapiro Conservation Trust (S442.082 and S442.180) support IB-P8 in part as the submitters consider that eco-sourcing of native plants is extremely important to protect variations in species genetics. The submitters request minor amendments to IB-P8 to refer to "*assist with the protections of species...*" rather than "*promote*" and to refer to "*promoting, supporting and using eco-sourced plants*" rather than "*by eco-sourcing plants...*".

#### IB-P9

199. There are approximately 45 original submission points on IB-P9. Carbon Neutral NZ Trust (S529.136) and Vision Kerikeri (S527.012) support IB-R9 and request that it is retained as notified. Scrumptious Fruit Trust (S568.003) supports IB-P9 in part but requests an amendment to refer to endangered foreshore habitat, not just areas containing kiwi.
200. A large proportion of original submissions on IB-P9 support the policy in part, but request amendments to acknowledge that landowners are not the only party responsible for the management of pests in kiwi areas as organisations, in particular DOC, are also responsible. These submitters include LJ King Limited (S464.010 and S543.010), Rodney S Gates and Cherie R Gates (S569.010), Robyn Josephine Baker (S69.003), Sean Frieling (S357.039), Elbury Holdings (S541.010 and S519.011), John Joseph and Jacqueline Elizabeth Matthews (S439.010), and Sapphire Surveyors Limited (S348.008). Some of these submitters request an amendment to IB-R9 to replace the word "*require*" with "*assist*" to recognise that there are better ways to achieve the outcome of kiwi protection than "*making*" landowners carry out pest control. Other submitters request a similar amendment to refer to "*support landowners*" rather than "*require landowners*".
201. HortNZ (S159.053) and New Zealand Kiwifruit Growers Incorporated (S518.001) request an amendment to IB-P9 to make it clear the direction to landowners to manage pests and pest species relates to "*on their own land*".
202. Several original submitters oppose IB-P9, raising concerns that the policy will result in a banning of pets and unfairly penalise responsible dog and cat owners. They request that the policy be deleted. These submitters include Amber Hookway (S261.008), Wilson Hookway (S264.008), Allen Hookway (S311.008), Heather Golley (S254.001) and the BOI Watchdogs (S354.021). Lianne Kennedy (S310.008) raises similar concerns and requests that IB-P9 be amended so that it does not result in a blanket banning of pets in the Far North District.
203. Forest and Bird (S511.064), Kapiro Conservation Trust (S442.083 and S442.181) and Kate Burdekin (S507.001) support IB-P9 in part but question the practicality and enforceability of "*requiring*" landowners to manage pest species. The submitters note this could be overly onerous on large blocks of native forests and non-regulatory methods may be more appropriate. The submitters request amendments to IB-P9 to encourage the use of resource



consent conditions to restrict pet ownership and require pest control to protect kiwi when assessing subdivision and land use applications.

204. Marianna Fenn (S542.011) and Kapiro Conservation Trust (S442.181) support IB-P9 in part but consider that the policy should extend to livestock. The submitters request amendments to IB-P9 to require management and (where appropriate) limits on the numbers of domestic pets and livestock for landowners and land occupiers and to clarify that further limits on ownership, plus pest and weed control, will be considered where possible and appropriate.
205. DOC (S364.041) supports IB-P9 in part but requests a minor amendment to ensure 'At Risk' and 'Threatened' species are defined in accordance with the NZTCS by replacing "*threatened indigenous species*" with "*At-Risk or Threatened Indigenous Fauna*".
206. Russell Landcare Trust (S276.013) requests a new policy to ban cats and dogs from new subdivisions in high density kiwi areas (as per the Council's practice note) and from other areas with threatened species where cats and/or dogs are a significant threat. The submitter notes that Council has appeared to ban cats and dogs in some zones but not others where there is a high-density kiwi population, including Orongo Bay Special Purpose Zone.
207. Summit Forests New Zealand Limited (S148.017) opposes IB-P9 and considers that this is potentially overly onerous without significant support from Council. The submitter requests that IB-P9 is amended to focus on **supporting** landowners to manage pets and pests.

## **Analysis**

### IB-P7

208. My understanding is that IB-P7 and IB-P9 are intended to work together to effectively manage the adverse effects of pests on indigenous biodiversity as follows:
  - a. IB-P7 focuses on the more supportive things that FNDC can do to encourage active management of pests.
  - b. IB-P9 focuses on the regulatory tools that Council has available to require landowners to manage pest species to avoid risks to threatened indigenous species, with a particular focus on kiwis.
209. On this basis, I do not consider it necessary to strengthen the wording of IB-P7 as per the request of HortNZ as the stronger policy focused on regulatory options for pest control is IB-P9.
210. I agree that it would be useful to define 'pests' to align with how this is defined in the Biosecurity Act 1993<sup>18</sup> and identified in the Regional Pest Management Plan, as requested in the HortNZ submission. This would also

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<sup>18</sup> Defined in the Biosecurity Act 1993 as "**pest** means an organism specified as a pest in a pest management plan".

help respond to concerns about whether IB-P7 applies to dogs (which are not currently identified as pests in the Northland Regional Pest Management Plan<sup>19</sup>) versus other pest animals such as feral cats. On this basis, I recommend that IB-P7 is amended to simply refer to “pests” as that will cover pest animals (the focus of this policy) and pest plants and a new definition of pests is added to the PDP “*pest means an organism specified as a pest in the current Northland Pest Management Plan*”.

211. For these reasons, I do not agree with Heather Golley and BOI Watchdogs that dogs should be excluded from this policy. The reference to “pests” as identified in the Regional Pest Management Plan ensures this applies to current pests, which could potentially include feral dogs in future iterations of the Regional Pest Management Plan. I discuss the issue of controls on dogs to protect threatened indigenous species below in relation to IB-P9.
212. With respect to the submissions that request minor amendments to refer to providing incentives to landowners, I consider that the terms used in IB-P7, i.e. “*encourage*”, “*support*” and “*active management*” already anticipate incentives to be used to support landowners manage pest species on their properties. Non-regulatory support for landowners is also anticipated under IB-P6. As such, I do not recommend any amendments to IB-P7 to explicitly refer to incentives.
213. With respect to the request from DOC to replace “*active management*” with “*active control*”, I note that “*control*” is the terminology used under the Biosecurity Act 1993 and Regional Pest Management Plan and therefore I agree with this requested amendment. While the first part of IB-P7 is focused on encouragement and support, “*control*” more accurately covers the actions sought from the policy in relation to pests.

#### IB-P8

214. There are no submissions on IB-P8 that oppose in principle the concept of promoting the use of eco-sourced native plants as part of protecting the genetics of various indigenous species. I consider that the minor amendments to IB-P8 requested by Forest and Bird are helpful to clarify the intent and improve the wording of IB-P8. I therefore recommend that these submissions are accepted IB-P8 is retained with the following amendments:

*“Promote Assist with the protection of species that are endemic to Northland by promoting and supporting the use of eco-sourced plants eco-sourcing plants from within the ecological district”.*

#### IB-P9

215. In broad terms, I consider that IB-P9 is an appropriate response to give effect to Method 4.4.3(2)(b) in the RPS that requires the PDP to introduce “*Controls on the introduction or keeping of species with recognised pest potential*”. The explanation of this method is that “*Method 4.4.3(2)(b) may include pest species, including terrestrial, aquatic and marine pest plants, animals and organisms, and some domestic cats and dogs.*” In my view,

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<sup>19</sup> Refer: [Northland Regional Pest and Marine Pathway Management Plan 2017-2027 \(nrc.govt.nz\)](https://nrc.govt.nz)

this RPS direction is clear that the PDP is required to include controls on pest species (which include feral cats) and on some domestic dogs and cats in order to implement Policy 4.4.1 in the RPS. My understanding through discussions with Council is that this "control" is primarily at the time of subdivision and IB-P9 provides the policy basis to impose consent conditions when necessary to control pets and pests to protect indigenous biodiversity. On this basis, I agree with the submitters who request that IB-P9 is retained in principle.

216. I also note the concept of requiring landowners to manage pest species to avoid risks to threatened indigenous species is already in the ODP, which includes the following direction:

***Policy 12.2.4.10:*** *In order to protect areas of significant indigenous fauna:*

*(a) that dogs (excluding working dogs), cats, possums, rats, mustelids and other pest species are not introduced into areas with populations of kiwi, dotterel and brown teal;*

*(b) in areas where dogs, cats, possums, rats, mustelids and other pest species are having adverse effects on indigenous fauna their removal is promoted."*

***Policy 12.2.4.11:*** *That when considering resource consent applications in areas identified as known high density kiwi habitat, the Council may impose conditions, in order to protect kiwi and their habitat.*

217. I agree with the submitters such as LJ King Limited and Elbury Holdings that landowners are not the only ones responsible for managing pests in kiwi habitats and that other organisations such as DOC and the Council also have a role. However, one of the purposes of the IB Chapter is to provide direction to plan users (in this case, specifically landowners) of properties containing areas of significant indigenous vegetation and significant habitats of indigenous fauna. As such, I consider it appropriate that IB-P9 is focused on providing direction to landowners.
218. I also agree with Forest and Bird and other submitters that it is unclear from the drafting of IB-P9 how the PDP will **require** landowners to manage pest species to protect threatened indigenous species. In this respect, I note that the direction in ODP Policy 12.2.4.11 to impose consent conditions as the primary mechanism for **requiring** pest control from landowners has not been translated into IB-P9. In my view, this creates some uncertainty about how the policy will be implemented and the potential risk that IB-P9 is interpreted as requiring landowners to manage pets and pest species at all times over all parts of their land.
219. In this respect, I agree with the submissions of Forest and Bird and others that there are issues about practicality and enforceability with the notified drafting of IB-P9. To address these issues, I agree with the request to amend IB-P9 to focus on the use of **resource consent conditions** as the only enforceable method to **require** landowners to manage pets and pests

**within their property.** As noted above, my understanding from Council is that this typically occurs through the subdivision consent process through consent conditions and notices on the title where considered necessary/appropriate. My recommended amendments to IB-P9 also respond to the relief sought by HortNZ and New Zealand Kiwifruit Growers Incorporated for IB-P9 to only apply to pest species "*on their own land*".

220. With respect to the submissions of BOI Watchdogs and others, I do not agree that dogs should be exempt from this policy. As discussed above, the RPS provides some direction that controls on domestic dogs may be a necessary method to give effect to Policy 4.4.1 in the RPS. However, I consider that my recommendation above to refocus IB-P9 on requirements that can be imposed via consent conditions will help address the concerns of these submitters to some degree as it more targeted and is not a "*blanket banning of pets*"<sup>20</sup> in the Far North District in my opinion. For the same reason, I do not consider that IB-P9 should impose a requirement to ban cats and dogs for all new subdivisions in high density kiwi areas as requested by Russell Landcare Trust as this may not be appropriate/necessary in all circumstances and some discretion is desirable (e.g. the same outcome may be achieved through dog restrictions).
221. I agree with DOC that IB-P9 should be amended to refer to "*Threatened and At-Risk Indigenous Fauna*" as this better reflects the intent of the policy (i.e. focusing on fauna such kiwi) and is better aligned with the NZTCS.
222. I do not consider that IB-P9 should be expanded to cover livestock as requested by some submitters. This is not supported by higher order direction and the submitter has not provided evidence to demonstrate the risks livestock poses to Threatened and At-Risk indigenous fauna (although I acknowledge livestock can present risks to indigenous vegetation).

### **Recommendation**

223. For the reasons above, I recommend that submissions on IB-P7 and IB-P8 are accepted, accepted or rejected as set out in **Appendix 2**. I recommend that the policies are amended as follows:
- "IB-P7: Encourage and support active management of pests plants and pest animals.*
- IB-P8: ~~Promote~~ Assist with the protection of species that are endemic to Northland by promoting, supporting and using eco-sourced eco-sourcing plants from within the ecological district."*
224. I also recommend a new definition of "pests" in the PDP as follows "*pest means an organism specified as a pest in the current Northland Pest Management Plan*".
225. For the reasons above, I recommend that submissions on IB-P9 are accepted, accepted or rejected as set out in **Appendix 2**. I recommend IB-

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<sup>20</sup> Lianne Kennedy (S310.008)

P9 is amended as follows to refocus the policy on the aspects of pest control that are within scope of the PDP provisions and FNDC to control (i.e. imposition of consent conditions) as follows:

***"IB-P9: Require landowners to manage pets and pests species within their property through consent conditions, including ~~dogs, cats, possums, rats and mustelids~~, where necessary to avoid risks to Threatened and At-Risk indigenous fauna ~~threatened indigenous species~~, including avoiding the introduction of pets and pest species into kiwi present or high-density kiwi areas."***

### Section 32AA evaluation

226. I consider that my recommended amendments to IB-P7, P8 and P9 will be more effective and efficient in achieving the relevant PDP objectives as:

- a. The recommended amendments are better aligned with the Biosecurity Act 1993 and the Regional Pest Management Plan with respect to IB-P7 and the RPS with respect to IB-P9.
- b. The wording changes to IB-P9 appropriately focus the policy on the use of resource consent conditions to impose requirements on landowners to manage pests when necessary to avoid risks to Threatened indigenous biodiversity. This will make the policy direction more targeted and effective as consent conditions are a mechanism able to be used and enforced by Council when assessing land use and subdivision applications and will also make the policy more efficient by removing interpretation issues and constraining the scope of the policy and associated requirements on landowners.

227. The wording changes to IB-P8 are to clarify the intent of the policy and improve interpretation without changing the policy direction in a material way. Accordingly, no further evaluation of this minor amendments is required under section 32AA of the RMAA in my opinion.

### 6.2.11 Key Issue 11: IB-P10

#### Overview

Provision(s)	Officer Recommendation(s)
IB-P10	Amend to simplify the direction in the policy and add additional considerations

#### Analysis of Submissions on Key Issue 11: IB-P10

#### Matters raised in submissions

228. There are 15 original submission points on IB-P10. The majority of submitters support IB-P10 in part and request various amendments to the policy. Forest and Bird (S511.065) and Kapiro Conservation Trust (S442.084) support IB-P10 in part but request minor amendments to also refer to "development" alongside land use and subdivision. Carbon Neutral NZ Trust (S529.137) supports IB-P10 in part but requests that it is amended to refer to "protect" rather than "manage". The submitter considers that this

wording is more consistent with the corresponding policy in the draft district plan.

229. Russell Landcare Trust (S276.017) is opposed to IB-P10 on the basis that it simply provides a list of matters to be considered but does not provide real guidance to decision-makers on the "bottom lines" for each of those matters. To address this concern, Russell Landcare Trust requests that IB-P10 is redrafted to provide more guidance to decision-makers on the "bottom lines" for each of the matters listed in the policy.
230. A large group of submitters support IB-P10 in part, but request that clause h) is deleted as this relates to areas mapped or assessed as SNAs. The submitters requesting this relief include Bentzen Farm Limited (S167.020), Matauri Trustee Limited (S243.029), Setar Thirty Six Limited (S168.027), Wendover Two Limited (S222.027) P S Yates Family Trust (S333.019) and the Shooting Box Limited (S187.020). The reasons that these submitters request clause h) in IB-P10 is deleted are the same as outlined under Key Issue 2.
231. Heather Golley (S254.005) opposes IB-P10 and requests that the PDP provisions are amended to not limit dog ownership or result in the banning of dogs and cats. BOI Watchdogs (S354.022) raise similar concerns and request that IB-P10 is deleted.

## **Analysis**

232. Submitters broadly support IB-P10, which sets out a range of matters to be considered as relevant when assessing resource consent applications. I note that IB-P10 functions as a "consideration" policy, which is an approach that has been adopted consistently at the end of the policies across the PDP chapters to provide a consistent way of ensuring all relevant matters are assessed when resource consent is required under the relevant chapter. I consider that this is an appropriate drafting approach to achieve consistency across the PDP and recommend that IB-P10 is retained on that basis.
233. However, as also discussed in the Coastal Environment section 42A report, I consider that the chapeau to IB-P10 is unnecessarily lengthy (i.e. "*manage land use and subdivision...to address effects of the activity...including consideration of the following matters...*") which makes the intended application of the policy somewhat confusing in my opinion. I therefore recommend that the chapeau of IB-P10 is simplified as follows, consistent with my recommendation on CE-P10 (with appropriate modifications):

*Consider the following matters where relevant when assessing and managing the effects of indigenous vegetation clearance and associated land disturbance....*

234. This amendment also responds to the request to refer to "development" alongside land use and subdivision in the chapeau of IB-P10. I consider that it is clearer and more effective for the policy to focus of the activity requiring consent under the rules (i.e. indigenous vegetation clearance) rather than a generic reference to subdivision, land use and development.

235. My recommended wording also removes the word “*manage*” to focus more on the purpose of the policy (i.e. to set out matters to consider), which may address the Carbon Neutral NZ Trust submission to some extent. For similar reasons, I do not consider it appropriate for IB-P10 to be redrafted to set out “*bottom lines*” for each of the matters, as requested by Russell Landcare Trust, as that is not the purpose of the policy. IB-P2 and IB-P3 discussed above under Key Issue 8 are the more directive “*avoid*” policies in the IB Chapter whereas IB-P10 functions as a consideration policy as discussed above.
236. I agree in part with the concerns raised with the references to SNAs in clause h) of IB-P10. However, rather than delete the clause entirely, I consider that it still serves an important purpose when resource consent is required for indigenous vegetation clearance. This clause allows for an ecological assessment to confirm whether the vegetation to be cleared meets the criteria in Appendix 5 of the RPS as an area of significant indigenous vegetation and significant habitat of indigenous fauna. I therefore recommend clause h) is amended to allow for this assessment but remove the reference to mapped SNAs.
237. I have discussed concerns about restrictions on dog ownership above under Key Issue 10. I am also of the view that IB-P10 as a consideration policy will not result in undue restriction or banning of dogs and cats. However, I do recommend a consequential amendment to clause f) to simply refer to “pests” based on my recommended amendments to IB-P7.
238. Additionally, I recommend several additions and amendments to IB-P10 as a result of my assessment of the NPS-IB in **Appendix 3** and in response to submissions in other parts of this report. These additional clauses relate to whether the activity will provide for wellbeing of people and communities, taking a precautionary approach and climate change resilience and mitigation (see recommendation section below for proposed wording).

### **Recommendation**

239. I recommend submissions on IB-P10 are accepted, accepted in part and rejected as set out in **Appendix 2**. I recommend that the chapeau of IB-P10 is amended as follows:

*Consider the following matters where relevant when assessing and managing the effects of indigenous vegetation clearance and associated land disturbance:...*

240. I recommend the following amendments to existing clauses in IB-P10:

*f. the potential for increased threats from ~~pests plants and animals~~;*

*h. where the area has been ~~mapped or assessed as a Significant Natural Area~~ area of significant indigenous vegetation and significant habitats of indigenous fauna:...*

241. I recommend the following clauses are added to IB-P10:

- n. the extent to which the proposed activity provides for the social, economic and cultural wellbeing of people and communities;
- o. adopting a precautionary approach where the effects on indigenous biodiversity are uncertain, unknown, or little understood and those effects could cause significant or irreversible damage to indigenous biodiversity;
- p. promoting the resilience of indigenous biodiversity to climate change and recognising the role of indigenous biodiversity in mitigating the effects of climate change; and
- q. the benefits provided by the indigenous biodiversity, including ecosystem services.

**Section 32AA evaluation**

242. I consider that my recommended amendments to CE-P10 are an appropriate, effective and efficient way to achieve the relevant objectives as these retain the intent of the policy direction while clarifying how the matters are to be assessed. The amendments also refine and expand on the matters to be considered where relevant where resource consent is required for indigenous vegetation clearance to better align with higher order direction.

**6.2.12 Key Issue 12: General submissions on rules and advice notes**

**Overview**

Provision(s)	Officer Recommendation(s)
Numerous	Specific recommendations are provided in relation to IB-R1 to IB-R5 below

**Analysis of Submissions on Key Issue 12: General submissions on rules and advice notes**

**Matters raised in submissions**

243. As with submissions allocated to the “General – Policies” topic, there are numerous submissions that have been allocated to the “General – Rules” topic that relate to Key Issues 1, 2 or 3 discussed above. For example:
- a. The relief sought in submissions requesting amendments to rules and advice notes related to removing references to SNAs, such as The Twin Coast Cycle Trail (S425.025) and Amber Hookway (S261.007), is addressed under Key Issue 2.
  - b. Submissions requesting amendments to rules relating to SNA mapping and associated requirements for an ecologist report to determine SNA status, such as Tristan Simpkin (S287.008), are addressed under Key Issue 2.
  - c. General submissions seeking that the IB Chapter rules align with other higher order documents, such as Carbon Neutral Trust (S529.117, S529.121, S529.133 and S529.234) are addressed under Key Issues 1 and 3.
244. A group of submitters raise common issues and seek common relief for all the rules in the IB Chapter. Specially, these submitters request that IB-R1 is



amended to increase the maximum vegetation clearance thresholds and to apply to indigenous vegetation more generally. These submitters include Willowridge Developments Limited (S250.006), Te Aupōuri Commercial Development Ltd (S339.029), Wakaiti Dalton (S355.021 and S355.022), and Tracy and Kenneth Dalton (479.016).

245. These submitters support the removal of the draft SNA layer from the PDP but are concerned that it is now unclear how the rules relating to SNAs will be applied, assessed and monitored in practice. The submitters also raise concerns that the rules are overly onerous as they require an ecological assessment of all areas of indigenous vegetation to be undertaken to assess compliance with the permitted activity thresholds due to the lack of SNA mapping in the PDP. The submitters consider that this is inappropriate and onerous as a permitted activity status. Accordingly, these submitters request that the rules are amended to apply to indigenous vegetation more generally (not SNAs) and to increase the clearance thresholds. These submissions have been allocated to each of the rules in the IB Chapter but are addressed here for consistency.
246. Forest and Bird (S511.066) and Kapiro Conservation Trust (S442.085) identify in their submission a potential misalignment between the IB Chapter rules relating to vegetation clearance and Regulation 54 of the NES-F where vegetation clearance is a non-complying activity. The submitters note that the IB Chapter rules are not allowed to be more lenient than the NES-F and request amendments to ensure there is no conflict with the NES-F.
247. Kapiro Conservation Trust (S442.001) considers that policies and rules relating to indigenous vegetation clearance are too permissive and provide insufficient protection for indigenous biodiversity.
248. Multiple submitters request new rules in the IB Chapter, including:
  - a. The Twin Coast Cycle Trail (S425.028) and Top Energy (S483.147) request new rules to ensure that the maintenance, operation and upgrade of regionally significant infrastructure is provided for in areas of significant indigenous biodiversity.
  - b. Vision Kerikeri (S527.013 and S527.019) request more stringent rules to properly give effect to the policies in the IB Chapter, including clear direction about the environmental values to be protected during subdivision.
  - c. Kapiro Conservation Trust (S442.005, S442.006 and S442.008) and Carbon Neutral NZ Trust (S529.129) request a range of new rules that would allow Council to control on subdivision, land use or development in, or adjacent to, locations where Threatened or At-Risk species (under the NZTCS) are present, including rules that ban potential predator pets and require fencing.
  - d. Summit Forests New Zealand Ltd (S148.019) requests new rules to provide for provide for the clearance and incidental damage of indigenous vegetation in accordance with Regulations 93 and 94 of the NES-CF.

249. There are also requests for the addition of new methods and/or further information on various matters relating to indigenous biodiversity, including:
- a. Julianne Sally Bainbridge (S163.014) requests new methods relating to better pet management and desexing of animals to reduce instances of irresponsible pet owners dumping pets.
  - b. Ronald Toni Wooldridge (S440.004 and S440.005) requests that the provisions of the IB chapter impose no costs on property owners and that new provisions are inserted explaining the potential consequences of a SNA designation being put on a property.
  - c. Pacific Eco-Logic (S451.010) and Kapiro Conservation Trust (S442.154) request the addition of new rules and/or clarification as to what Northland Regional Council consents are/will be required for wetland drainage under the new Northland Regional Plan.
  - d. Carbon Neutral Trust (S529.130) request the insertion of an appendix to include, or refer to, a protocol that sets out guiding principles and procedures for protection of kiwi or indigenous species.
250. Nicole Wooster (S259.008) raises a number of concerns about the identification of SNAs applying to large areas of regeneration manuka and kanuka in her property and the application of the rules that apply to these areas. To address this concern, Nicole Wooster requests that the SNA classification do not apply to manuka or kanuaka and for different rules to apply to this type of vegetation.
251. The only submission received directly on the IB Chapter advice notes is from Top Energy (S483.148), who supports the clear direction on how the chapter interacts with other PDP chapters.

### **Analysis**

252. I agree with the concerns raised by submitters about the rules in the IB Chapter that apply within SNAs that have not been mapped in the PDP. This creates uncertainty about when the rule applies and how it can be practically assessed, monitored and complied with. As discussed in detail under Key Issue 2, I recommend that the references to SNAs is removed from the PDP and that the mapping of these areas occurs through a future plan change that gives effect to the NPS-IB in full. For these reasons, I also recommend that the rules applying within SNAs in the IB Chapter are deleted and the rules are amended to focus on appropriate indigenous vegetation clearance thresholds to require resource consent. These more specific recommendations are outlined below in relation to IB-R2, IB-R3, IB-R4 and IB-R5 below.
253. In terms of the alignment between the IB Chapter rules and Regulation 54 in the NES-F, I note that section 44A of the RMA requires amendment of proposed rules to remove *duplication or conflict* with a provision in a NES. A rule conflicts with the NES-F if it is more lenient, i.e. it permits or authorises an activity that the NES prohibits or restricts. However, because

the NES-F deals only with the functions of regional councils under section 30 (see Regulation 5), it seems difficult to interpret section 44A as requiring amendments to district rules which are made for a different purpose (i.e. to protect terrestrial indigenous biodiversity).

254. The Natural Character Chapter in the PDP includes specific rules relating to indigenous vegetation clearance within "*wetland, lake and river margins*" which apply within 20-30m of a wetland. I also understand the reporting officer for the Natural Character chapter is making recommendations to address the interaction of that chapter with the NES-F in relation to indigenous vegetation clearance within the margins of natural inland wetlands. The Natural Character Chapter rules will be more stringent than the IB Chapter Rules in circumstances that overlap with Regulation 54 of the NES-F (i.e. within 10m of a natural inland wetland). Advice note 2 in the IB Chapter also makes it clear that the more stringent indigenous vegetation clearance rules in the Natural Character chapter apply where relevant. For the reasons above, I do not consider that the IB Chapter rules need to be amended to align with the NES-F.
255. I address general submissions relating to the IB Chapter rules being too permissive or restrictive in relation to each of the rules below.
256. In terms of the request for new rules:
  - a. I note that clause 13(ii) in IB-R1 allows for indigenous vegetation clearance associated with the operation, repair and maintenance or existing infrastructure. However, I agree that there should be some allowance for indigenous vegetation clearance associated with the upgrading of existing infrastructure which is consistent with my recommendations on the Coastal Environment topic. I therefore recommend that IB-R1 is amended to allow for (the minimum necessary) indigenous vegetation clearance associated with the upgrading of existing infrastructure.
  - b. In my view, the IB Chapter rules (and supporting policies) already adequately allow for a range of conditions to be imposed when resource consent is required, including conditions to protect Threatened and At-Risk indigenous species. This is because the rules require a discretionary activity consent when compliance is not achieved and the policies in the IB Chapter provide specific direction on a range of matters, including direction to avoid adverse effects on Threatened and At-Risk species and the control of pests through consent conditions.
  - c. I address the interaction between the IB Chapter rules and Regulation 93 and 94 in the NES-CF below in relation to IB-R5 (Key Issue 17) where I broadly accept the relief sought from Summit Forests New Zealand Ltd outlined above.
257. In response to the submission from Nicole Wooster, I consider that my recommendation to remove references to SNAs throughout the IB Chapter will address the concerns raised to some extent. I also note that IB-R1 enables clearance of regenerating indigenous vegetation less than 10 years

to be undertaken as a permitted activity without any limitations and I would expect that this will enable the type of indigenous vegetation clearance generally sought by the submitter.

258. I consider that the other rules and information sought in the above submissions (i.e. desexing of animals, information to explain costs on property owners from SNA mapping, NRC’s responsibilities) are not within the scope of the PDP to address and/or best addressed by other methods. For example, I consider that protocols for kiwi protection (including maps of high-density kiwi areas) better sit outside the PDP to enable these to be more readily updated. Accordingly, I do not recommend any amendments to the IB Chapter rules in response to these submissions.

**Recommendation**

259. I recommend that general submissions on the IB Chapter rules are accepted, accepted in part and rejected as set out in **Appendix 2**. I do not recommend specific amendments to the rules in response to these general submissions but have considered these further in the analysis of IB-R1, IB-R2, IB-R3, IB-R4 and IB-R5 below (e.g. rules applying within SNAs).

**Section 32AA evaluation**

260. The specific amendments I recommend to IB-R1, IB-R2, IB-R3, IB-R4 and IB-R5 in response to these general submissions are evaluated below in accordance with section 32AA of the RMA. As such, there is no need to repeat that further evaluation here.

**6.2.13 Key Issue 13: Rule IB-R1**

**Overview**

Provision(s)	Officer Recommendation(s)
IB-R1	Amend to clarify and refine the list of permitted activities

**Analysis of Submissions on Key Issue 13: IB-R1**

**Matters raised in submissions**

- 261. There are a large number of submissions on IB-R1 which is a rule that enables indigenous vegetation clearance to be undertaken as a permitted activity where this is associated with a range of activities listed under PER-1. Several submissions support IB-R1 and request that it be retained as notified. These include KiwiRail (S416.033), Ministry of Education (S331,044), New Zealand Kiwifruit Growers Incorporated (S518.002), FENZ (S512.026), HortNZ (S159.054), Transpower (S454.087) and Federated Farmers (S421.138).
- 262. Tane's Tree Trust – Northland Totara Working Group (S157.001) supports IB-R1 and considers that it is critical to retain clause 12) in the rule to ensure that sustainable indigenous forestry activities are not subject to unnecessary, costly and uncertain consenting processes.
- 263. Russell Landcare Trust (S276.007) and John Andrew Riddell (S431.104) request an amendment to the start of IB-R1 to state the clearance "is the

*minimum necessary and is for any one of the following...*". John Andrew Riddell (S431.167) also requests that all indigenous vegetation clearance rules that do not specify a clearance limit are amended by adding a condition that vegetation clearance is to be the minimum necessary (this only applies to IB-R1 as the other rules already have a clearance limit).

264. Carbon Neutral NZ Trust (S529.125) raise concerns that clearance of exotic vegetation is often mixed with indigenous vegetation without any precautions or considerations for vulnerable types of indigenous species that are present (e.g. nesting kiwis, rare native lizards). Carbon Neutral NZ Trust requests that IB-R1 is amended to apply to vegetation clearance that "*includes indigenous vegetation*" to capture situations where clearance involves both indigenous and exotic vegetation. Carbon Neutral NZ Trust requests the same relief for IB-R2 (S529.126), IB-R3 (S529.127) and IB-R4 (S529.128).
265. Forest and Bird (S511.067) and Kapiro Conservation Trust (S442.086) request amendments to IB-R1 to ensure clearance or trimming of indigenous vegetation in an SNA is undertaken in accordance with advice from a suitably qualified arborist.
266. Manu Burkhardt Macrae (S279.004) requests an increase in the amount of permitted activity clearance and land disturbance for sites where there is a protection mechanism in place, such as provided for in the SUB-R6 – Environmental benefit subdivision rule. The submitter considers that this would reward landowners who already have protected indigenous biodiversity and incentivise landowners to protect indigenous biodiversity.

#### IB-R1 - PER-1(7) – Residential units

267. There are a range of submissions on clause 7) in IB-R1 which enables indigenous vegetation clearance for a single residential unit and associated infrastructure and access. Several submitters raise concerns that clause 7) in IB-R1 is too enabling and request that this be a controlled activity rule as this will be more effective to ensure any adverse effects are avoided, remedied, or mitigated. These submitters include John Andrew Riddell (S431.104 and S431.106), Marianna Fenn (S542.012), Michael John Winch (S67.004), Forest and Bird (S511.067) and Kapiro Conservation Trust (S442.086). Russell Landcare Trust (S276.007) and John Andrew Riddell (S431.106) request that clause 7) in IB-R1 does not apply in any SNA as a permitted activity pathway.
268. Thomson Survey Ltd (S195.001) and Lynley Newport (S130.001) support IB-R1 in part, but request that clause 7) is amended to allow 2,000m<sup>2</sup> of clearance as a permitted activity as the submitters consider that 1,000m<sup>2</sup> is too restrictive to accommodate a residential unit, onsite services and access.
269. A group of submitters support IB-R1 in part but are concerned with the reference in clause 7) to "*a single residential unit*" on the basis that this is not relevant to effects on indigenous biodiversity and could create issues with other PDP rules relating to residential density. These submitters include Setar Thirty Six Limited (S168.028), The Shooting Box Limited (S187.021), Wendover Two Limited (S222.028), P S Yates Family Trust (S333.020),

Bentzen Farm Limited (S167.021) and Matauri Trustee Limited (S243.030). To address this concern, the submitters request that the reference to “*single residential unit on a title*” be replaced with “*approved building platform*”. These submitters also request that reference to SNAs is deleted from the title of IB-R1 consistent with their general relief sought for the IB Chapter.

Requests for additional permitted activities

270. Several submitters request that PER-1 in IB-R1 be amended to include additional activities where indigenous vegetation clearance to be undertaken as a permitted activity. These submissions include:

- a. Summit Forests New Zealand Limited (S148.020) and Manulife Forest Management (NZ) Ltd (S160.017) request that indigenous vegetation clearance associated with plantation forestry activities be provided for as a permitted activity. More specifically, Summit Forests New Zealand Limited requests that IB-R1 is amended to provide for plantation forestry activities and rotation lengths of 28 to 35 years. Manulife Forest Management (NZ) Ltd requests that clause (10) is amended to allow for forest rotations of 28 years.
- b. Northland Fish and Game Council (S436.034) requests indigenous vegetation clearance associated with wetland maintenance and restoration be a permitted activity. Northland Fish and Game Council (S436.002) also request that clearance associated with the operation, repair and maintenance of “maimai” to be added to clause 13) in IB-R1.
- c. NZ Agricultural Aviation Association (S182.016) requests that indigenous vegetation clearance is permitted for “*the clearance of regenerating indigenous vegetation for the maintenance of improved pasture*” and also request that a definition of “*improved pasture*” be added to the PDP.
- d. A group of submitters, including Setar Thirty Six Limited (S168.028), The Shooting Box Limited (S187.021), Wendover Two Limited (S222.028), P S Yates Family Trust (S333.020), Bentzen Farm Limited (S167.021) and Matauri Trustee Limited (S243.030) request that that indigenous vegetation clearance associated with the following activities is included in IB-R1:
  - i. Existing domestic gardens.
  - ii. Ecosystem protection, rehabilitation or restoration works.

IB-R1 – delete or amend the permitted activities and uses

271. There are a range of requests in submissions to amend or delete the notified list of activities in PER-1. These requests are summarised in the table below.

Clause	Request in submissions
1	<ul style="list-style-type: none"> <li>• Amend to apply where there is “<i>probable, imminent or actual damage to property</i>” – Adams -Te Whata Whanau Trust (S473.001)</li> </ul>

Clause	Request in submissions
2	<ul style="list-style-type: none"> <li>Delete or be more specific/restrictive on when a dead tree can be felled in a SNA - Forest and Bird (S511.067), Marianna Fenn (S542.012), John Andrew Riddell (S431.103)</li> </ul>
3	<ul style="list-style-type: none"> <li>Amend to refer to walking and cycling tracks no greater than 1.8m wide and remove the requirement to use manual methods - Waiaua Bay Farm Limited (S463.031)</li> <li>Delete - Forest and Bird (S511.067)</li> </ul>
4	<ul style="list-style-type: none"> <li>Provide more specificity on when it would apply, including potential definition - DOC (S364.044), Forest and Bird (S511.067)</li> </ul>
5	N/A
6	<ul style="list-style-type: none"> <li>Reduce the setback to 10m - Forest and Bird (S511.067)</li> <li>Amend to only apply to lawfully established buildings - Russell Landcare Trust (S276.007), John Andrew Riddell (S431.1035)</li> </ul>
7	Discussed above.
8	<ul style="list-style-type: none"> <li>Amend to be a controlled activity - Forest and Bird (S511.067)</li> </ul>
9	<ul style="list-style-type: none"> <li>Amend to only allow clearance 1m each side of fence line - Forest and Bird (S511.067)</li> <li>Amend to allow clearance of 4m width in total - Marianna Fenn (S542.012), DOC (S364.045)</li> </ul>
10	<ul style="list-style-type: none"> <li>Remove reference to vegetation being less than 10 years old - NZ Agricultural Aviation Association (S182.016)</li> <li>Delete or amend to be more restrictive, either by limiting it to kanuka and manuka or vegetation less than 5 years old - Forest and Bird (S511.067)</li> <li>Amend to be less than 5 years old - Marianna Fenn (S542.012)</li> </ul>
11	N/A
12	<ul style="list-style-type: none"> <li>Delete - Forest and Bird (S511.067), Marianna Fenn (S542.012), Russell Landcare Trust (276.007), John Andrew Riddell (S431.103)</li> </ul>
13	<ul style="list-style-type: none"> <li>Amend to limit clearance to 1m from the listed activities - Forest and Bird (S511.067)</li> <li>Amend to also apply when clearance is necessary for the "protection" of the listed activities – Adams -Te Whata Whanau Trust (S473.001)</li> </ul>

## Analysis

272. IB-R1 is an "*enabling*" rule which allows indigenous vegetation clearance to be undertaken as a permitted activity when it is associated with a range of activities. IB-R1 works in tandem with the other rules in the IB Chapter so that the thresholds in those rules only apply to activities not permitted under IB-R1. I discuss this important relationship further below in relation to the thresholds in IB-R2 and IB-R4 below.
273. In broad terms, I consider that the intent of IB-R1 is generally sound. Its purpose is to avoid unnecessary consent requirements and costs for indigenous vegetation clearance associated with routine, essential, or important activities that is generally low risk if implemented as intended. In this respect, I note that many of the activities listed in IB-R1 are based on Rule 12.2.6.1.1 in the ODP which provides a list of activities where "*indigenous vegetation clearance permitted throughout the district*".
274. However, there is a need to assess the appropriateness of the list of activities in the notified IB-R1 and the requests by submitters, to ensure the:

- a. Clearance permitted under IB-R1 is consistent with the outcomes sought in the IB Chapter objectives and policies.
  - b. IB-R1 does permit indigenous vegetation clearance with potentially significant adverse effects.
275. In this respect, I agree with the relief sought by Russell Landcare Trust and John Andrew Riddell for IB-R1 to be amended to refer indigenous vegetation clearance being "*the minimum necessary*" for the listed activities. While this is somewhat subjective and will need to be determined on case-by-case basis, it will help to reduce the risk of IB-R1 being used to undertake excessive indigenous vegetation clearance and also sends a clear message to landowners on the intent of the rule to minimise the amount of clearance undertaken. This may help minimise the loss of indigenous vegetation clearance and assist with compliance when the rule is clearly being breached (although I acknowledge that it will be difficult to enforce for minor breaches above "*the minimum necessary*").
276. In terms of the other general submissions on IB-R1:
- a. I agree that references to "*within and outside SNAs*" should be removed from the title of IB-R1 for the reasons outlined under Key Issue 2 above.
  - b. It is not appropriate in my view to expand IB-R1 to include both indigenous vegetation and exotic vegetation as requested by Carbon Neutral NZ Trust. While I accept that exotic vegetation can be mixed with indigenous vegetation, the focus of the IB Chapter is on indigenous biodiversity in accordance the relevant provisions in the RMA and higher order documents. Extending IB-R1 to cover exotic vegetation would also have significant implications for commercial forestry and directly conflict with the NES-CF. I also note that there are existing provisions in the NES-CF which recognise that commercial forests can provide a habitat for indigenous bird species and put procedures in place to manage potential adverse effects on these species<sup>21</sup>.
  - c. It is not appropriate in my view to require all clearance permitted under IB-R1 to be undertaken in accordance with advice from a suitably qualified arborist as requested by Forest and Bird and Kapiro Conservation Trust. This could collectively impose significant costs on landowners across the Far North District for clearance associated with common, low-risk activities. It is also not feasible to limit this requirement to SNAs until such time as these areas have been mapped (as discussed under Key Issue 2).
  - d. I do not consider that there should be an increase in the amount of indigenous vegetation clearance permitted where there is a protection mechanism in place such as SUB-R6 (Environment benefit subdivision). The "*benefit*" that landowners receive under SUB-R6 for protecting significant indigenous vegetation is an entitlement to

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<sup>21</sup> Regulation 102 in the NES-CF which relates to indigenous bird nesting.



create additional allotments when subdividing a Record of Title. It is inappropriate and unnecessary in my view to allow for an additional benefit in terms of indigenous vegetation clearance. I therefore recommend that this submission point from Manu Burkhardt Macrae, and other submissions requesting similar relief, are rejected.

Requests for new and amended activities

277. My assessment of requested amendments to the existing clauses in IB-R1 and requests for additional activities to be added to PER-R1 by submitters is provided in the table below.

Clause/ request	Assessment
1	<p><b>Clearance for health and safety and damage to property</b> – I note that this clause appears to be based on the ODP (Rule 12.2.6.1.1(c)) which permits clearance where there is a risk to the safety of people or property. It is also consistent, but slightly different, to corresponding indigenous vegetation rules in other chapters (e.g. CE-R3 PER-1 permits indigenous vegetation clearance where this is “<i>necessary to ensure the health and safety of the public</i>”). The only specific submission on this clause requests that this is broadened out to where there is “<i>probable, imminent or actual damage to property</i>”. I do not agree with this suggested wording as “<i>probable</i>” damage to property is likely to provide a very low bar to justify clearance of vegetation. In my opinion, the focus on addressing “<i>an immediate risk</i>” is appropriate as it implies there may be an obvious and urgent risk to public health and safety and property before clearance can be undertaken/justified. It is also broadly aligned with the corresponding clause in the NPS-IB which refers to adverse effects on SNAs to “<i>address a high risk to public health and safety</i>”<sup>22</sup>. I therefore recommend that the notified wording of clause 1) in IB-R1 is retained.</p>
2	<p><b>Removing dead trees</b> – some submitters consider that dead trees should be retained in situ for nutrient cycling and to provide habitat and only removed where necessary for safety reasons. I note that clause 2) is based on the ODP (Rule 12.2.6.1.1(c)) and importantly has the condition that “<i>no more indigenous vegetation is cleared or trimmed than is necessary for safe felling</i>”. In my opinion, it is appropriate to allow the removal of dead trees when deemed appropriate/necessary by the landowner as this still allows for dead trees to be retained in situ when there is no reason to remove them. I therefore recommend that clause 2) is retained with an amendment to remove the words referred to above which have been superseded by the reference to “the minimum necessary” as the start of PER-1.</p>
3	<p><b>Walking tracks</b> – again this clause is based on the ODP (Rule 12.2.6.1.1(e)) and I recommend it is retained. It is appropriate in my view to allow for clearance for walking cycling tracks and the submitters on this clause have not sufficiently demonstrated why this should be more enabling or, conversely, deleted.</p>
4	<p><b>Biosecurity reasons</b> – this is broadly supported, but submitters have sought more specificity on when it applies. I note that indigenous vegetation clearance “<i>for biosecurity reasons</i>” is permitted in a number of rules in the PDP (e.g. CE-R3 PER-1) and it would be beneficial to adopt consistent wording in the relevant rules. In my view, it would be</p>

<sup>22</sup> Clause 3.10(6)(a) of the NPS-IB.

Clause/ request	Assessment
	clearer and more specific to refer to " <i>for the control of pests for biosecurity reasons</i> ", noting that I am recommending a new definition for " <i>pests</i> " that is aligned with the Biosecurity Act 1993 and Northland Pest Management Plan (refer Key Issue 10).
<b>5</b>	N/A – no specific submissions on this clause.
<b>6</b>	<b>Setback for buildings vulnerable activities</b> <sup>23</sup> - I do not consider that this clause should be limited to existing buildings as vegetation may encroach around new buildings and it is appropriate to allow for clearance within the setback to manage wildfire risk in my opinion. I also consider that 20m is a reasonable setback that is consistent with Rule 12.2.6.1.1(f) in the ODP but more targeted to vulnerable activities. Further, the submitter has not sufficiently demonstrated why a 10m setback is more appropriate to both protect indigenous vegetation clearance and manage wildfire risk. I therefore recommend that the clause is retained as notified.
<b>7</b>	<b>Clearance for residential unit</b> – I consider that it is appropriate to allow for vegetation clearance for a residential unit on an <b>existing</b> title as permitted activity rather than controlled activity as requested by some submitters. I note that this intent is broadly aligned with the NPS-IB exemption relating to single residential dwellings on existing lots <sup>24</sup> . In this respect, I consider that it is appropriate to retain the focus on a " <i>single residential unit and essential on-site infrastructure and access</i> " rather than an " <i>approved building platform</i> " as requested by some submitters. I also consider that a limit of 1,000m <sup>2</sup> is appropriate as a permitted activity standard (rather than 2,000m <sup>2</sup> as requested by some submitters) as this would accommodate a large house, garage and access. Where more than 1,000m <sup>2</sup> of clearance is required (for example for a long accessway), then indigenous vegetation clearance thresholds in the other rules will apply which is appropriate in my view.
<b>8</b>	<b>Clearance associated with covenant</b> - I consider that it is appropriate to allow for vegetation clearance provided for in covenant (e.g., QEII, Reserves Act etc.) as permitted activity rather than controlled activity as requested a submitter. Accordingly, I recommend that clause 8) is retained. However, I recommend some minor amendments to the wording of clause 8) so that it is more aligned with the wording in the clauses in IB-R1. I consider that there is scope to make this amendment as a minor alteration under Clause 16, Schedule 1 of the RMA.
<b>9</b>	<b>Clearance for new fence for stock exclusion or pests</b> – this clause is based on Rule 12.2.6.1.1(f) in the ODP and I consider that it is appropriate to retain for a range of reasons, including to comply with other national and regional regulations relating to stock exclusion and ensure there are no barriers to fencing for pest control. The main issue to consider is whether the 3.5m width either side of the fence line should be reduced as requested by submitters. In my view, there is not sufficient reasoning in submissions to support this request and demonstrate that the existing ODP standard is resulting in poor

<sup>23</sup> Vulnerable activities are defined in the PDP as "*means residential activities, care facilities (including day care centres), retirement villages, visitor accommodation, marae and medical facilities with overnight stay facilities*".

<sup>24</sup> Specifically, Clause 3.11(2) which enables adverse effects on SNAs for single residential dwelling on an existing allotment subject to certain tests.

Clause/ request	Assessment
	outcomes. I therefore recommend that the clause 9) is retained as notified.
<b>10</b>	<b>Clearance of vegetation less than 10 years old</b> - this clause is based on Rule 12.2.6.1.1(n) in the ODP and submitters have both sought to make it more enabling (e.g. remove limitation of vegetation being less than 10 years old), more restrictive (e.g. limiting it to kanuka and manuka) and for it to be deleted. While I expect that this clause will primarily be used to clear regenerating kanuka and manuka on previously cleared land, limiting the clause to these two species could create issues when other indigenous plant species are also present. I therefore recommend that clause 9) is retained as notified.
<b>11</b>	N/A – no specific submissions on this clause.
<b>12</b>	<b>Harvesting under Forest Act</b> – some submitters have requested that this clause be deleted with limited supporting rationale (e.g. it “ <i>does not protect or maintain indigenous biodiversity</i> ” <sup>25</sup> ). I note that the intent of this clause is consistent with the NPS-IB (Clause 3.11(5)) and it is appropriate in my view to allow for harvesting of indigenous timber where this is under an approved plan or permit under the Forest Act 1949. I therefore recommend that clause 12) is retained as notified.
<b>13</b>	<b>Operation, repair and maintenance of existing activities</b> – this clause enables clearance associated with a list of seven existing activities which is consistent with a number of other rules in the PDP (e.g. CE-R3 -PER-1(1)). I do not consider that it is appropriate to limit clearance to 1m either side of these activities as requested by Forest and Bird as the actual required clearance may be more than this in some circumstances. As outlined above, I also recommend that the start of PER-1 in IB-R3 be amended to limit all vegetation clearance to the “ <i>minimum necessary</i> ” which will help to reduce the risk of excessive clearance under clause 13. I do not consider that a reference to “ <i>protection</i> ” is required in clause 13) as I consider that this is adequately captured in the notified wording (e.g. clearance to provide for the safe <u>operation</u> of network utilities would also provide for their <u>protection</u> from encroaching vegetation). I therefore recommend that clause 13) is retained as notified with minor amendments to refine the wording of the list to be consistent with recommendations in other PDP Chapters being considered in Hearing 4 (Coastal Environment, Natural Features and Landscapes, Natural Character).
<b>Plantation forestry activities</b>	I discuss indigenous vegetation clearance associated with commercial forestry below in relation to IB-R5, where I recommend that the NES-CF be relied on to manage this activity. On this basis, I do not consider that it is necessary to add plantation forestry to IB-R1.
<b>Wetland maintenance</b>	I do not consider that it is necessary to add clearance associated with wetland maintenance to IB-R5 as requested by Fish and Game as I expect that this clearance will be well below the general thresholds that apply under IB-R4. Further, I note that Regulation 38 in the NES-F enables vegetation clearance associated with wetland maintenance so there appears to be no barrier to this activity.
<b>Maimai</b>	I do not consider that it is necessary to add clearance associated with maimai to IB-R5 as requested by Fish and Game as I expect that this clearance will be well below the general thresholds that apply under IB-R4. I therefore do not support the addition of this activity to the list of clearance permitted under IB-R1.

<sup>25</sup> For example, Forest and Bird (S511.067).

Clause/request	Assessment
<b>Clearance for improved pasture</b>	I consider that the request from NZ Agricultural Aviation Association to permit clearance for maintenance of improved pasture is too broad. In this respect, I note that the NPS-IB (Clause 3.17) provides specific direction relating to the maintenance of improved pasture for farming <b>where this may affect a SNA</b> which I recommend is given effect to through a future plan change. I would also expect that clause 10) would generally allow for clearance of vegetation for the maintenance of improved pasture as this allows for clearance of vegetation which is less than 10 years old.
<b>Existing domestic gardens</b>	My expectation is that any indigenous vegetation clearance for domestic gardens would be well below the thresholds in IB-R4, particularly as IB-R1 already enables clearance around residential buildings, for maintenance of existing driveways etc. I therefore do not support the addition of this activity to the list of activities where indigenous vegetation clearance is permitted under IB-R1.
<b>Ecosystem protection, rehabilitation works</b>	While I support the activities in principle, I consider that the broad nature of the request creates a risk of the rule being applied in unintended ways. It is also unclear to me when you would need to exceed the indigenous vegetation clearance thresholds in IB-R4 in order to protect ecosystems etc. I therefore do not support the addition of this activity to the list of activities where indigenous vegetation clearance is permitted under IB-R1.

### Recommendation

278. For the reasons above, I recommend that submissions on IB-R1 are accepted, accepted in part and rejected as set out in **Appendix 2**. I recommend that the IB-R1 is amended as set out in **Appendix 1**.

### Section 32AA evaluation

279. I consider that my recommended amendments to IB-R1 are an appropriate, efficient and effective way to achieve the relevant objectives. The amendments are consistent with the notified intent of the rule to enable indigenous vegetation clearance associated with common, essential and/or low-risk activities while clarifying that all clearance should be limited to the minimum necessary to provide for the activity. The amendments also clarify and refine some clauses and include clearance associated with the upgrade of regionally significant infrastructure which is expected to have efficiency benefits.

#### 6.2.14 Key Issue 14: IB-R2

##### Overview

Provision(s)	Officer Recommendation(s)
IB-R2	Amend to remove references to SNAs

##### Analysis of Submissions on Key Issue 14: IB-R2

##### Matters raised in submissions

280. There are approximately 16 original submission points on IB-R2. Several submitters support IB-R2 in part, but request amendments to make the rule more enabling. These include Adams-Te Whata Whanau Trust (S473.004)

who supports IB-R2 in part but requests that the rule is amended to enable clearance of 1,000m<sup>2</sup> for the first residential unit and 500m<sup>2</sup> for subsequent units. The submitter requests this relief on the basis that Māori tend to have bigger families and require bigger houses and therefore the thresholds in notified IB-R2 are overly restrictive.

281. Tracy and Kenneth Dalton (S479.015), Wakaiti Dalton (S355.020) and Te Aupōuri Commercial Development Ltd (S339.028) request that the thresholds in IB-R2 are amended to recognise the role of tangata whenua as kaitiaki and provide for tangata whenua to use and occupy their land. The submitters consider that the notified thresholds do not:
- a. Sufficiently enable the development of land for papakāinga, particularly where there is more than one residential unit being constructed.
  - b. Recognise the complex nature of multiple ownership of whenua Māori land.
282. The submitters also raise concerns that the section 32 evaluation report for the IB Chapter does not sufficiently justify the thresholds in IB-R2 and, in the absence of this, there should be more flexibility in the thresholds to provide for the wellbeing of whanau.
283. A group of submitters oppose IB-R2 and request it is deleted. This includes P S Yates Family Trust (S333.021), the Shooting Box Limited (S187.022) and Wendover Two Limited (S222.029). The reasons these submitters oppose IB-R2 are the same as those outlined above, i.e. that the IB Chapter should not be referencing SNAs in the absence of these areas being mapped. The submitters request the same relief for other rules in the IB Chapter that reference SNAs (i.e. delete IB-R3, IB-R4, IB-R5).

## **Analysis**

284. IB-R2 as notified sets out indigenous vegetation clearance limits within a SNA for the purposes of papakāinga, which is broadly defined in the PDP<sup>26</sup>. The rule enables indigenous vegetation clearance of up to 1,500m<sup>2</sup> for a marae complex and 500m<sup>2</sup> per residential unit, which is more enabling than the 100m<sup>2</sup> threshold in IB-R3 that applies to other activities within a SNA (where IB-R1 does not apply). IB-R2 applies in the Māori Purpose Zone, Treaty Settlement Overlay, and Rural Production Zone, which I understand would cover all (or the vast majority of) Māori land in the Far North District.
285. I support the general intent of IB-R2 to provide more flexibility for indigenous vegetation clearance on Māori land, which will enable use and development of land for papakāinga to provide for social, economic and

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<sup>26</sup> Defined in the PDP as "means an activity undertaken to support traditional Māori cultural living for tangata whenua residing in the Far North District on: Māori land; Treaty Settlement Land; Land which is the subject of proceedings before the Māori land court to convert the land to Māori land; or General land owned by Māori where it can be demonstrated that there is an ancestral link identified. Papakāinga may include (but is not limited to) residential, social, cultural, economic, conservation and recreation activities, marae, wāhi tapu and urupā."

cultural well-being. This is aligned with the direction in IB-P5(d) to ensure that the maintenance of indigenous biodiversity still enables Māori land to be used and developed to support the well-being of tangata whenua. It is also aligned with the direction in Clause 3.18 in the NPS-IB (specified Māori land), discussed in **Appendix 3**, which enables a more flexible approach for the management of indigenous biodiversity on "*specified Māori land*" (as defined in the NPS-IB) to be developed in partnership with tangata whenua that also enables use and development to provide for the social, economic and cultural well-being of tangata whenua.

286. However, as discussed under Key Issues 2 and 12, IB-R2 as notified has a number of implementation issues as it applies within SNAs that have not been mapped in the PDP. This creates uncertainty about when the rule applies and how it can be practically assessed, monitored and complied with. I therefore agree with requests in submissions for the IB Chapter rules to not apply within SNAs and instead the rules are amended to focus on the indigenous vegetation clearance thresholds that require resource consent (discussed in more detail below in relation to IB-R4).
287. In the context of IB-R2, I consider that there is value in retaining the rule to provide more flexibility for indigenous vegetation clearance on Māori land consistent with the general direction in the NPS-IB and IB-P5(b) with the following amendments:
- a. Removing the reference to "*within a Significant Natural Area*" from within the rule title.
  - b. Amending PER-1(1) to allow for 1,000m<sup>2</sup> for the first residential unit and 500m<sup>2</sup> for each additional unit as sought Adams-Te Whata Whanau Trust.

### **Recommendation**

288. For the reasons above, I recommend that IB-R2 is amended to remove references to SNAs and be more enabling for the first residential unit and that submissions on the rule are accepted, accepted in part and rejected as set out in **Appendix 2**.

### **Section 32AA evaluation**

289. I have provided a section 32AA evaluation of my recommended amendments to remove references to SNAs from the IB Chapter under Key Issue 2 and this evaluation also applies to my recommendation to delete the references to SNAs from IB-R2. I consider that my recommended amendment to PER-1(1) is consistent with the notified policy intent with slightly more flexibility to enable indigenous vegetation clearance for residential housing for Māori communities and is therefore appropriate, effective and efficient to achieve the relevant PDP objectives.

## **6.2.15 Key Issue 15: IB-R3**

### **Overview**

Provision(s)	Officer Recommendation(s)
IB-R3	Delete

### **Analysis of Submissions on Key Issue 15: Rule IB-R3**

#### **Matters raised in submissions**

290. There are approximately 25 original submissions on IB-R3. The majority of these submissions oppose IB-R3 both in terms of it being too enabling or, conversely, too restrictive and costly for landowners.
291. DOC (S364.046) opposes IB-R3 on the basis that allowing 100m<sup>2</sup> of indigenous vegetation clearance per site in any calendar year will enable the incremental loss of SNAs. To address this concern, DOC requests that IB-R3 is amended to only allow the clearance of indigenous vegetation as a permitted activity in specific circumstances where there is a clear identified need for clearance, or otherwise require resource consent as a non-complying activity.
292. Several submitters support IB-R3 in part but raise similar concerns that the rule is inadequate and will result in incremental loss of SNAs. These submitters include Carbon Neutral NZ Trust (S529.123), Marianna Fenn (S542.013), John Andrew Riddell (S431.107 and S431.108), Russell Landcare Trust (S276.008), and Kapiro Conservation Trust (S442.183). To address their concerns, the submitters request a range of relief to make IB-R3 more restrictive, including applying the 100m<sup>2</sup> threshold over a 10-year period rather than a calendar year, or applying a 50m<sup>2</sup> threshold over a 5-year period. The relief sought also includes a request to identify SNAs that include particularly rare or vulnerable indigenous biodiversity and require resource consent for any clearance or disturbance of these areas.
293. Forest and Bird (S511.068) raise similar concerns in that the 100m<sup>2</sup> threshold is likely to result in the incremental degradation and loss of SNAs. To address these concerns, Forest and Bird requests similar relief to amend IB-R3 to list the most sensitive types of areas of indigenous biodiversity in the Far North District. Forest and Bird also request a reduction in the threshold for clearance to 50m<sup>2</sup> every five years in these areas and apply a 100m<sup>2</sup> threshold every five years elsewhere.

#### **Analysis**

294. As notified, IB-R3 applies within a SNA and would enable up to 100m<sup>2</sup> of indigenous vegetation clearance, per calendar year, per site, to be undertaken as a permitted activity. Submitters are generally opposed to the rule on the basis it is both too permissive and too restrictive.
295. My understanding is that the threshold of 100m<sup>2</sup> in IB-R3 was adapted from the 200m<sup>2</sup> threshold in the draft district plan but amended to apply per calendar year rather than over a 10-year period.
296. Regardless of the views of submitters about the appropriateness of a 100m<sup>2</sup> threshold in a SNA, IB-R3 has no useful purpose in my view given it applies to unmapped SNAs and my recommendation under Key Issue 2 that the district-wide mapping of SNAs occurs through a future plan change process. I therefore recommend that IB-R3 is deleted and the rule framework for the

IB Chapter is focused on indigenous vegetation clearance thresholds that determine when a resource consent is required.

297. That is not to say that targeted rules to protect SNAs are not important – rather I consider that these are necessary to effectively meet obligations to protect these significant in section 6(c) and higher order documents. However, I consider that it is inefficient and unclear to all parties to include SNA rules in the PDP in advance of these areas being mapped in the PDP. For these reasons, I consider that it is most effective and efficient to develop these SNAs rules alongside the mapping of these areas to ensure these are fit-for-purpose and to provide certainty to all parties on where the rules apply.

### **Recommendations**

298. For the reasons above, I recommend that IB-R3 is deleted and submissions on this rule are accepted, accepted in part and rejected as set out in **Appendix 2**.

### **Section 32AA evaluation**

299. I have provided a section 32AA evaluation of my recommended amendments to remove references to SNAs from the IB Chapter under Key Issue 2 and this also applies to my recommendation to delete IB-R3.

## **6.2.16 Key Issue 16: IB-R4**

### **Overview**

<b>Provision(s)</b>	<b>Officer Recommendation(s)</b>
IB-R4	Amend to delete requirements for ecological assessment and refine the thresholds

### **Analysis of Submissions on Key Issue 16: Rule IB-R4**

#### **Matters raised in submissions**

300. There are approximately 60 original submission points on IB-R4, with the majority of these opposing the rule for a range of reasons.
301. Forest and Bird (S511.069) and Kapiro Conservation Trust (S442.185) support IB-R4 in part but raise concerns the extent of clearance allowed as a permitted activity is excessive, particularly given the climate and indigenous biodiversity crises. The submitters are concerned that the thresholds in IB-R4 will lead to the cumulative loss of indigenous vegetation and the incremental loss and degradation of SNAs. To address these concerns, the submitters request that:
- a. PER-1(2)(i) is amended to limit permitted clearance to 500m<sup>2</sup> every five years or restrict it to clearly defined purposes (e.g. maintaining cleared pasture and fence lines).
  - b. The reference to remnant forests in PER-1(2)(i) is deleted as remnant forests should qualify as SNA.



- c. PER(2) is amended to limit clearance to 50m<sup>2</sup> every five years.
302. DOC (S364.047) supports IB-R4 in part but is concerned that the rule does not allow Council discretion to review the ecologist report and request further information. To address this concern, DOC requests that IB-R4 is amended to require resource consent as a controlled activity to enable greater Council oversight of the ecologist's report and that PER-2 is deleted.
303. Marianna Fenn (S542.014 and S542.015) and Kapiro Conservation Trust (S442.184 and S442.185) oppose IB-R4 on the basis that the permitted thresholds are excessive and request a number of amendments, including for remnant forests to qualify as SNAs and to limit clearance to 50m<sup>2</sup> every 5 years. The submitters also request clarification as to whether IB-R4 applies in addition to the indigenous vegetation clearance thresholds permitted under IB-R1.
304. Pacific Eco-Logic (S451.009) and Kapiro Conservation Trust (S442.153) support IB-R4 in part but consider that the rule is confusing and will provide little practical protection for SNAs. The submitters request amendments to clarify that resource consent is required for the clearance of indigenous vegetation covering more than 100m<sup>2</sup> per site per calendar year for areas outside the coastal environment (as per PER-2 in IB-R4). The submitters also note that remnant forests will generally qualify as a SNA and should therefore be subject to the clearance rules for SNAs.
305. Several submitters request IB-R4 be amended to increase the vegetation clearance thresholds. These include:
- a. NZ Agricultural Aviation Association (S182.017) requesting that the 20,000m<sup>2</sup> (2ha) threshold from the ODP is retained.
  - b. Robyn Josephine Baker (S69.001) raises concerns that it is totally inappropriate to take land without market compensation and require landowners to pay an ecologist to prove that bush on their property is not a SNA. To address these concerns, the submitter requests that IB-R4 PER-2 be amended to allow an unlimited area to be cleared per calendar year in Rural Production Zone or, as a minimum, apply the ODP thresholds.
  - c. Thomson Survey Ltd (S196.001) and Lynley Newport (S131.001) are concerned that IB-R4 is overly restrictive and consider that it is not appropriate to group the Rural Lifestyle Zone together with "*all other zones*". To address this concern, Thomson Survey Ltd requests that the threshold is increased to 10,000m<sup>2</sup> in the Rural Production Zone and a new threshold of 1,000m<sup>2</sup> is introduced for the Rural Lifestyle Zone.
306. A group of submitters oppose IB-R4 and request that it is deleted. These submitters include P S Yates Family Trust (S333.023), The Shooting Box Limited (S187.024) and Wendover Two Limited (S222.031). In addition to the general concerns raised by these submitters outlined above, these submitters raise specific concerns with IB-R4 as follows:

- a. The requirement to obtain an ecologist report to confirm an area is not a SNA lacks the precision necessary for a permitted activity condition.
  - b. It imposes an unfair cost and burden on landowners by assuming an area is a SNA unless proved otherwise by landowners.
  - c. The rule does not satisfy the requirements of section 32 of the RMA.
307. Another large group of submitters oppose IB-R4 and raise similar concerns as those noted above under Key Issue 2. This includes Strand Homes Ltd/Okahu Developments Ltd (S77.006), Martin John Yuretich (S40.007), and Joel Vieviorka (S41.007). These submitters request the same relief as outlined above under Key Issue 2, which includes working in partnership with landowners to identify SNA and making the draft SNA mapping publicly available.
308. Summit Forests New Zealand Limited (S148.022) opposes the requirement in PER-1(1) to obtain a report from an ecologist to confirm an area is not a SNA. Summit Forests New Zealand Limited is concerned that these costs are potentially onerous, and the rule pushes the costs of a public good onto private landowners, noting that the costs of this approach are acknowledged in the section 32 evaluation report. To address this concern, Summit Forests New Zealand Limited requests that the requirement to get an ecologist report to prove an area is not a SNA is deleted, or alternatively a process is established where FNDC fully funds such reports when associated with primary production activities.
309. PF Olsen Limited (S91.008) raises similar concerns that the requirement for individuals to obtain an ecologist report for SNAs places a costly burden on resource consent applicants (essentially requiring private individuals to fund public good). To address concern, PF Olsen Limited requests that:
- a. IB-R4 is deleted or amended to not require an ecologist's report to prove that the indigenous vegetation is not a SNA.
  - b. Council undertakes ground truthing of SNAs after appropriate consultation with affected landowners and land managers, which should be introduced through a future plan change.
310. Tristan Simpkin (S287.004) also raises concerns with the requirement to obtain an ecologist report under IB-R4, noting this will add several thousand dollars to many home builds across the district and make housing less affordable. Accordingly, Tristan Simpkin requests that IB-R4 is deleted.
311. Waiaua Bay Farm Limited (S463.033) opposes IB-R4 and is concerned that the 500m<sup>2</sup> limit would be overly restrictive in the Kauri Cliffs SPZ, which anticipates a larger scale of development. To address this concern, Waiaua Bay Farm Limited requests that the Kauri Cliffs SPZ is added to PER-1(2)(i) to have a permitted threshold of 5,000m<sup>2</sup> over a five-year period.
312. Nicole Wooster (S259.024) requests further consideration of the indigenous vegetation clearance rules in terms of the thresholds that apply and trigger

the need for resource consent. In particular, the submitter considers that there should be further consideration given to providing more flexibility for clearance on non-Māori land where there is a high degree of indigenous vegetation coverage to provide for the economic and social wellbeing of those landowners. The submitter considers that this is important to ensure that people have reasonable use of their property and are not penalised for retaining large areas of indigenous vegetation.

313. Adams-Te Whata Whanau Trust (S473.002) requests that IB-R4, PER-2 be amended to include an advice note that says "*This rule shall not apply to fire-breaks urgently to prevent the spread of fire to indigenous and other bush/ forest areas*".

### **Analysis**

314. Given my recommendations above to delete references to SNAs throughout the IB Chapter, IB-R4 is a key rule to enable adverse effects on indigenous biodiversity to be considered and managed through a resource consent process in accordance with the relevant policies (including the direction to avoid certain adverse effects in IB-P2 and IB-P3). In my opinion, there are two key issues to consider in relation to IB-R4:
- a. The requirement for landowners to obtain an expert ecological assessment to determine that indigenous vegetation on their land does not meet the criteria to be a SNA, which will in turn determine the thresholds that apply.
  - b. The appropriateness of the indigenous vegetation clearance thresholds, which need to consider a range of factors, including the effectiveness and efficiency of the provisions in accordance with section 32AA, as detailed further below.

#### Requirement for ecological assessment

315. The requirement in IB-R4 – PER-1(1) for landowners to obtain an expert ecological assessment to determine that indigenous vegetation clearance does not meet the criteria to be a SNA is a result of the Council decision to withdraw the draft SNA maps/pause SNA mapping. The inevitable consequence of not mapping SNAs is that there is no certainty on what indigenous vegetation in the Far North District has significant ecological values until such time as an ecological assessment is undertaken.
316. That is the policy rationale for IB-R4 – PER-1(1) as notified, i.e. to recognise this uncertainty by requiring an ecological assessment when indigenous vegetation clearance is proposed, which will determine the thresholds that apply. This has the potential benefit of not unnecessarily requiring resource consent for clearance of "non-significant" indigenous vegetation while also helping to avoid the risk of permitting clearance of indigenous vegetation with significant ecological values.
317. While I understand the intent of this approach, I agree with submitters that is not appropriate, effective or efficient for the rule framework to effectively assume all indigenous vegetation has significant ecological values unless

proved otherwise by landowners through an expert ecological assessment. I understand that a basic expert ecological assessment may be in the range of \$3,000 to \$5,000 where there is information available and the assessment is relatively straightforward, but these costs are likely to be higher where the assessment is more complicated, e.g. more 'marginal' areas or where fauna surveys may be required. Collectively, these costs could potentially be significant across the Far North District over the life of the PDP depending on how the rule is implemented.

318. My understanding through high-level discussions with Council consent staff is that the ecological assessment requirements in IB-R4 – PER-1(1), which had immediate effect when the PDP was notified, are having limited effectiveness/uptake in practice. Rather, it is more common for ecological assessments to be provided as part of a subdivision application when indigenous vegetation clearance is proposed as part of that development. This then enables Council to impose conditions to ensure effects on any significant ecological values are appropriately avoided/managed.
319. The limited uptake/compliance with IB-R4 – PER-1(1) is not unexpected in my opinion. The notified rule imposes a cost on landowners and the results of the ecological assessment may result in more stringent indigenous vegetation clearance requirements applying to their land, so there is a disincentive to comply.
320. For these reasons, I consider that the requirement for an ecological assessment under IB-R4 has limited useful purpose, and its costs and limitations outweigh its potential benefits. I therefore recommend that it is deleted and IB-R4 more usefully focuses on applying a suitable indigenous vegetation clearance threshold to serve as a trigger for requiring resource consent. If the threshold is exceeded, my expectation (informed by Council consent staff feedback) is that an ecological assessment will generally be required through the consent process to determine how the proposal is consistent with the IB Chapter objectives and policies.

#### Indigenous vegetation clearance thresholds

321. As notified, IB-R4 requires a resource consent where indigenous vegetation clearance exceeds the following thresholds per site over a five-year period:
- a. 500m<sup>2</sup> if a remnant forest;<sup>27</sup>
  - b. Rural Production Zone, Horticulture Zone, Māori Purpose Zone, Treaty Settlement Overlay – 5,000m<sup>2</sup>; or
  - c. All other zones – 500m<sup>2</sup>.
322. From my experience, it is very difficult to develop robust, fit-for-purpose indigenous vegetation clearance thresholds, particularly where there has been no mapping of areas of significant indigenous vegetation in the District. This is because the most appropriate threshold from an ecological perspective varies based on a range of factors (e.g. the type of vegetation

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<sup>27</sup> Defined in the PDP as "*means any indigenous natural area which has never been clear-felled*".

present, and whether the vegetation provides known habitat for Threatened fauna).

323. In my view, the indigenous vegetation clearance thresholds in IB-R4 need to be set at a level that is consistent with the policy direction in the IB Chapter and gives effect to the higher order planning instruments. These thresholds also need to be pragmatic from a landowner perspective to ensure the threshold does not impose significant compliance costs. With this in mind, and in accordance with section 32AA evaluation requirements relating to appropriateness, efficiency and effectiveness, I consider that the main issues to consider are:
- a. The extent of indigenous vegetation cover in the Far North District and the likelihood that this would meet the ecological significance criteria in Appendix 5 of the RPS.
  - b. The relationship between IB-R1, which provides a permitted activity pathway for indigenous vegetation clearance associated with a range of activities, and IB-R4.
  - c. The clear higher order direction to protect areas of significant indigenous vegetation.
324. In responding to these issues, I have also undertaken a review of indigenous vegetation clearance thresholds in other district plans for comparison. This is provided in **Appendix 4**.
325. In terms of the first consideration, a preliminary assessment of SNAs in the Far North District was undertaken by Wildlands Consultants in 2019<sup>28</sup>. This assessment was based on the criteria in Appendix 5 of the RPS and a review of readily available literature on the indigenous biodiversity of the Far North District. While the process undertaken by Wildlands Consultants differs from that required under the NPS-IB, it provides some useful contextual information on indigenous biodiversity in the Far North District. In particular:
- a. The assessment identified a total of 685 SNAs covering 282,696ha or approximately 42% of the Far North District. Analysis undertaken by Council of this potential SNA coverage indicates that 58% is in private ownership and that this could potentially affect approximately 10,000 properties, with Māori freehold Land disproportionately affected<sup>29</sup>.
  - b. The Landcover Database (V4.1) indicates that predominant landcover within the Far North District is "*High Producing Exotic Grassland*" (251,285ha or 34% of District) followed by "*Indigenous*

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<sup>28</sup> Refer: [4899d Significant Natural Areas of Far North District Volume 1 6 11 19.pdf \(fyi.org.nz\)](#)

<sup>29</sup> As noted in Council's submission on the NPS-IB exposure draft: [Strategy and Policy Committee meeting held on 6/09/2022 - Item 6.1 Feedback on the Ministry for the Environment National Policy Statement for Indigenous Biodiversity, Exposure Draft - Attachment FNDC feedback on the National Policy Statement for Indigenous Biodiversity exposure draft \(21 July 2022\)](#). This analysis indicates that the 58% of the potential SNA coverage (20.8% of the Far North District) is in private ownership and that this covers 52% of Māori Freehold Land.

*Forest'* (151,921ha or 21% of District) and "*Mānuka and/or Kānuka'* (98,649ha or 14% of District).

- c. Approximately 15.6 percent of Far North District in on "*Acutely Threatened'* (less than 10% indigenous cover left) and "*Chronically Threatened'* (10% to 20% indigenous cover left) land environments in the Threatened Land Environment Classification. These areas would qualify as a SNA under both the RPS and NPS-IB.
  - d. Far North District is the best protected district in the Northland region with approximately 18.5% of the District (879 sites covering 124,350ha) protected as DOC Estate, QEII covenants or Ngā Whenua Rāhui Kawenata.
326. It not possible to accurately understand the extent of the Far North District that will qualify as a SNA without following the processes, principles and criteria in the NPS-IB. These principles require physical inspection of areas of indigenous vegetation where practicable, which may reduce the actual spatial extent of indigenous biodiversity identified as SNAs. Nonetheless, in my view, the information set out above indicates that there is a reasonable likelihood that large areas of indigenous vegetation managed under IB-R4 may be ecologically significant in terms of the criteria in Appendix 5 of the RPS.
327. In terms of the second consideration, it is important to emphasise that indigenous vegetation clearance thresholds in IB-R4 apply to clearance **that is not otherwise permitted under IB-R1**. IB-R1 provides a permitted pathway for indigenous vegetation clearance associated with wide range of essential and common activities. My expectation is that IB-R1 will generally provide for the common types of indigenous vegetation clearance required in the District, such as clearing scrub and constructing fences within a productive rural environment and to provide for the operation, maintenance and upgrading of infrastructure. I therefore also expect that (informed by high-level discussions with Council consent staff) the thresholds in IB-R4 will generally apply when new, larger development is proposed (typically through a subdivision consent process) that involves indigenous vegetation clearance. In my view, the requirement to obtain a resource consent for the indigenous vegetation clearance component of the development in the circumstances is not overly onerous or inappropriate.
328. If more permissive thresholds are sought by submitters for other purposes, I would need to fully understand what those purposes are in order to consider whether it is appropriate to amend the thresholds in IB-R4 or alternatively the permitted activities in IB-R1. There is of course the opportunity to do this through evidence from submitters and presentations at the hearing, which will be considered in my right of reply evidence.
329. Lastly, as discussed throughout this report, there is clear direction in the RMA and higher order documents to protect areas of significant indigenous vegetation and maintain indigenous biodiversity more generally. This warrants a more conservative approach to the notified thresholds in IB-R4 in my opinion, particularly given my recommendations to remove the ecological assessment requirement outlined above.

330. On this basis and taking into account the range of factors above, I recommend that IB-R4 is amended to apply the indigenous vegetation clearance rules over a calendar year (for certainty and enforceability reasons) and to reduce the permitted activity thresholds as follows:
- a. 50m<sup>2</sup> in any remnant forest;
  - b. 500m<sup>2</sup> in the Rural Production Zone, Horticulture Zone, Māori Purpose Zone and Treaty Settlement Land Overlay, if not in a remnant forest; and
  - c. 100m<sup>2</sup> in all other zones, if not in a remnant forest.
331. While these thresholds are inevitably somewhat arbitrary, these are more consistent with comparable thresholds in other district plans (as outlined in **Appendix 4**). It should be noted that indigenous vegetation clearance thresholds are the most commonly used tool to manage effects outside of areas identified as SNA in other district plans, or in district like Far North where SNAs are not mapped (or are only partially mapped). The only district plans reviewed that did not use indigenous vegetation clearance thresholds were those plans where SNAs had been fully mapped in the district so there is confidence that all significant areas of indigenous vegetation had been identified and more permissive controls are therefore appropriate outside these areas. For these reasons, I also consider that these revised thresholds are more appropriate and effective to give effect the higher order documents based on the range of considerations outlined above.

### **Recommendation**

332. For the reasons above, I recommend that submissions on IB-R4 (now IB-R3 in **Appendix 1**) are accepted, accepted in part and rejected, as set out in **Appendix 2**. I recommend that PER-1(1) and PER-2 are deleted from IB-R4 and that PER-1(2) is amended to apply the following thresholds per calendar year:
- a. 50m<sup>2</sup> in any remnant forest;
  - b. 500m<sup>2</sup> in the Rural Production Zone, Horticulture Zone, Māori Purpose Zone and Treaty Settlement Land Overlay; and
  - c. 100m<sup>2</sup> in all other zones.

### **Section 32AA evaluation**

333. I consider that my recommended amendments to IB-R4 (now IB-R3) are an appropriate, efficient and effective way to achieve the relevant PDP objectives. My reasons are set out in the analysis above and also my section 32AA evaluation under Key Issue 2 (Identifying and mapping SNAs). In summary, I consider that my recommended amendments will be more effective to protect indigenous vegetation by applying the thresholds per calendar year (rather than five years), which will make the rule more enforceable. I also consider that lowering the clearance threshold at which resource consent is required will be more effective in achieving retention of significant indigenous vegetation than the notified combination of higher

thresholds but the requirement to obtain an ecological assessment, which I understand currently has a low rate of compliance. The amendments will also be more efficient by removing referencing to unmapped SNAs and the requirement for landowners to get an ecological assessment to determine that indigenous vegetation on their land is not a SNA.

## 6.2.17 Key Issue 17: Rule IB-P5

### Overview

Provision(s)	Officer Recommendation(s)
IB-P5	Delete

### Analysis of Submissions on Key Issue 17: Rule IB-15

#### Matters raised in submissions

334. There are approximately 15 original submission points on IB-P5, the majority of which oppose the rule and request that it is amended or deleted.
335. Several submitters request that IB-P5 be a non-complying activity. This includes Marianna Fenn (S542.016), DOC (S364.048), Forest and Bird (S511.070) and Kapiro Conservation Trust (S442.089 and S442.186). No reasons are provided by these submitters for this more stringent activity status.
336. Summit Forests New Zealand Limited (S148.021) opposes IB-R5 making plantation forestry activities within an SNA a discretionary activity as the submitter considers that this activity status is potentially onerous given plantation forests could be captured within the definition of an SNA and this rule is inconsistent with the direction in IB-P5. Summit Forests New Zealand Limited also notes that the NES-PF (now the NES-CF) provides a permitted activity regime for indigenous vegetation clearance associated with plantation forestry and FNDC has not provided any justification for more stringent rules under section 32(4) of the RMA. To address this concern, Summit Forests New Zealand Limited requests that IB-R5 is amended to only apply to the clearance of indigenous vegetation within a scheduled SNA where this clearance does not meet the requirements of Regulation 93 of the NES-CF.
337. PF Olsen Limited (S91.007) raises a similar concern that IB-R5 is too wide, given how plantation forestry activities are defined and the broad SNA criteria in the NPS-IB, therefore a discretionary activity consent is overly restrictive. PF Olsen Limited is also concerned that IB-R5 fails to recognise the provisions in the NES-PF (now NES-CF) relating to SNAs and indigenous vegetation clearance and no justification has been provided to demonstrate a more stringent approach than the NES-CF is required under section 32(4) of the RMA. PF Olsen Limited therefore requests that IB-R5 is deleted and/or that the need for the rule is reconsidered given NES-PF requirements.
338. Manulife Forest Management (NZ) Ltd (S160.018) also opposes IB-P5 on the basis that the discretionary activity status is onerous and unnecessary and the lack of mapping of SNAs provides no certainty to the landowner. To



address these concerns, Manulife Forest Management (NZ) Ltd request that IB-P5 be deleted and FNDC work with industry to establish SNA boundaries.

339. Tane's Tree Trust - Northland Totara Working Group (S157.002) considers that it is critical that sustainable indigenous forestry activities are not subject to unnecessary additional, costly and uncertain resource management consenting processes under the PDP. Rather, the submitter considers that sustainable forest management activities under the Ministry of Primary Industries approved *'Sustainable Forest Management Plans'* need to be encouraged, supported, and explicitly provided for. To provide for this relief, the submitter requests that harvesting under approved Sustainable Forest Management Plans are permitted activities in SNAs (and rural zones and ONLs).

### **Analysis**

340. My understanding is that the intent of IB-P5 is to require a discretionary activity resource consent for any "*plantation forestry activity*"<sup>30</sup> within a SNA, whereas Regulation 93 and 94 in the NES-CF<sup>31</sup> would apply to indigenous vegetation clearance from forestry activities outside SNAs (as stated in advice note 5). While I agree with the general intent of this rule, there are some key issues and risks with the rule as notified:
- a. The fact that SNAs have not been mapped in the PDP, as discussed throughout this report. This means the rule lacks certainty and will be difficult to comply with and enforce, particularly given the uncertainty as to how existing commercial forests may potentially be identified as SNAs/ecologically significant (as habitat for Threatened and At-Risk species).
  - b. It is unclear how the rule is intended to interact with and override existing regulations in the NES-CF relating to SNAs and indigenous vegetation clearance.
  - c. Whether a more stringent rule than the NES-CF has been justified under section 32(4) of the RMA.
341. Firstly, I agree with forestry submitters that it is important to recognise that the NES-CF already includes controls on plantation forestry (commercial) activities in relation to SNAs. This includes, for example, a requirement for a restricted discretionary activity consent when afforestation is proposed in a SNA (Regulations 12 and 16) and requirements for earthworks and harvest management plans to outline how SNAs will be avoided when undertaking the commercial forestry activity (Schedule 4 and 5). Regulation 93(5)(c) in the NES-CF also restricts indigenous vegetation clearance to "*incidental damage*" in a SNA that does not significantly affect the values of that area. Further, I note that the NES-CF does not apply to vegetation clearance that

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<sup>30</sup> Defined in the PDP as "*means the same as the definition of plantation forestry activity in section 3 of the National Environmental Standard for Plantation Forestry: means any activity regulated under subparts 1 to 9 of Part 2 of these regulations that is conducted in plantation forestry.*"

<sup>31</sup> Which was the relevant NES that applied to forestry activities at the time the PDP was notified and is now the NES-CF (Regulation 93 and 94 have not changed in the amended NES).

is carried out before afforestation (Regulation 5(3)). The vegetation clearance rules in the PDP would therefore apply to indigenous vegetation clearance carried out before afforestation.

342. As noted in advice note 5, Regulation 6(2)(b) of the NES-CF allows plan rules to be more stringent than the NES-CF to protect SNAs. However, Regulation 6 of the NES-CF must be read together with section 32(4) of the RMA which sets out an additional test where proposed rules are more stringent than the NES-CF<sup>32</sup>. I am familiar with this requirement though my close involvement in the NES-PF (and NES-CF amendments) including preparing the guidance on when plan rules may be more stringent<sup>33</sup>. I have reviewed the section 32 report for the Ecosystems and Indigenous Biodiversity, and I cannot find any analysis to demonstrate that the more stringent rule IB-R5 is justified in the context of the Far North District in accordance with section 32(4) of the RMA.
343. Given the issues above and the fact that SNAs have not been mapped in the PDP, I consider that IB-R5 will lead to uncertainty and potential compliance costs and does not meet the requirements in section 32(4) of the RMA to be more stringent than the NES-CF. I therefore recommend that the rule is deleted, and advice note 5 is amended accordingly to cross-reference the NES-CF more generally.
344. I also note that Clause 3.14 in the NPS-IB provides more specific direction on how to maintain indigenous biodiversity in a SNA while providing for plantation forestry activities to continue. As outlined under Key Issue 3 and in **Appendix 3**, I recommend that this direction is given effect to through the future plan change that implements the NPS-IB in full.

### Recommendation

345. For the reasons above, I recommend that IB-R5 is deleted and submissions on this rule are accepted, accepted in part and rejected as set out in **Appendix 2**. I recommend advice note 5 is consequentially amended as follows:

*"Plantation Commercial forestry is regulated under the National Environmental Standards for Plantation Commercial Forestry 2017 (NES-PCF). The NES-PF allows district plan rules to be more stringent than the NES-PF when the rule relates to the protection of Significant Natural Areas and IB-R5 in this chapter is a more stringent rule for plantation forestry activities in Significant Natural Areas. This chapter applies to vegetation clearance that is carried out before afforestation but does not otherwise apply to indigenous vegetation clearance associated with plantation commercial forestry activities outside Significant Natural Areas which is regulated under Regulations 93 and 94 of the NES-PCF."*

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<sup>32</sup> Specifically, section 32(4) of the RMA states "If the proposal will impose a greater or lesser prohibition or restriction on an activity to which a national environmental standard applies than the existing prohibitions or restrictions in that standard, the evaluation report must examine whether the prohibition or restriction is justified in the circumstances of each region or district in which the prohibition or restriction would have effect."

<sup>33</sup> Refer: [NESPF Guidance – Where plan rules may be more stringent than the NESPF \(mpi.govt.nz\)](https://www.mpi.govt.nz/nzesp/guidance-where-plan-rules-may-be-more-stringent-than-the-nespf/)

## Section 32AA evaluation

346. I have provided a section 32AA evaluation of my recommended amendments to remove references to SNAs from the IB Chapter under Key Issue 2 and this also applies to my recommendation to delete IB-R5. In addition, the analysis above outlines a number of other effectiveness and efficiency benefits above from deleting IB-P5, including avoiding unnecessary consenting requirements on commercial forestry and reducing uncertainty in implementation.

### 6.2.18 Key Issue 18: Rule SUB-R17 - Subdivision of a site containing a scheduled SNA

#### Overview

Provision(s)	Officer Recommendation(s)
SUB-R17	Amend to clarify where the rule applies

#### Analysis of Submissions on Key Issue 18: Rule SUB-R17 – Subdivision of a site containing a scheduled SNA

##### Matters raised in submissions

347. There are approximately 44 original submissions on SUB-R17. Several submitters support SUB-R17 in part but have concerns regarding the non-complying activity status for subdivisions in the coastal environment or when the subdivision “*divides*” a SNA. Reasons for this position include:
- A discretionary activity status for the subdivision of sites containing SNA in the coastal environment where division of a SNA is not proposed is more appropriate, particularly as some subdivisions might have benefits for the SNA (Waiaua Bay Farm Limited (S463.049)).
  - DIS-2 should be deleted as there is no issue with dividing a SNA if the appropriate legal protection can be maintained over more than one allotment (Thomson Survey Ltd (S206.001), Lynley Newport (S114.001)).
348. DOC (S364.056, S364.057 and S364.058), Forest and Bird (S511.086 and S511.087) and Kapiro Conservation Trust (S442.105 and S442.106) support SUB-R17 in part but are concerned that the reference to “*scheduled SNA*” in the rule title means the rule is ineffective as there are no scheduled SNAs in the PDP. The submitters are concerned that this creates the risk that SNAs throughout the district can be subdivided, which does not meet obligations under section 6(c) of the RMA. DOC requests more stringent requirements to identify and schedule SNAs so that SUB-R17 will be more effective, or alternatively expanding the rule to apply to all “*scheduled and qualifying*” SNAs. Forest and Bird and Kapiro Conservation Trust suggest that SUB-R17 should include a requirement for all subdivisions to have a SNA assessment to determine activity status prior to applying for subdivision and also request that the word “*scheduled*” be deleted from the rule.
349. Northland Planning and Development 2020 Limited (S502.086) requests clarification as to the activity status of a subdivision if either DIS-1 or DIS-2

is met, but not both. The submitter considers that a subdivision could still be considered discretionary if it meets either DIS-1 or DIS-2 because the rule reads "*Activity status where compliance not achieved with DIS-1 **and** DIS-2: Non-complying*".

350. A large group of submitters oppose SUB-17 and request it is deleted for the same or similar reasons, including Rua Hatu Trust (S377.008) and Elbury Holdings (S519.006). The submitters request that SUB-R17 is deleted on the basis that preventing subdivision of a SNA does not result in better protection of that SNA, rather it makes things easier for Council in that they only have to deal with a single landowner.
351. Another group of submitters, including PS Yates Family Trust (S333.052) and Setar Thirty Six Limited (S168.060), also oppose SUB-R17 and request that it be deleted. The submitters request this relief as there are no scheduled SNAs in the PDP and, if a SNA is identified through a subdivision process, the presence of a SNA should not make the activity status for the subdivision discretionary or non-complying.
352. Other reasons submitters oppose SUB-R17 and request it be deleted include:
  - a. The rule does not incentivise people to plant trees and create wetlands, as they will lose property rights once the planting has matured (Trent Simpkin (S283.009 and S283.010)).
  - b. The rule amounts to an unacceptable land 'take' without market rate compensation (Robin Josephine Baker (S69.006)).
  - c. The rule does not have any actual value in terms of protecting SNAs (Leah Frieling (S358.040)).

## **Analysis**

353. As discussed throughout this report, I consider that the reference to SNAs in the IB Chapter is problematic, particularly in the rules, and this also applies to SUB-R17. In terms of responding to submissions on SUB-R17, I consider that there are two main options:
  - a. Retain the rule and amend it to delete reference to "*scheduled SNA*" and instead refer to an "*area of significant indigenous vegetation or significant habitat of indigenous fauna*" consistent with other recommendations in this report.
  - b. Delete the rule.
354. Arguably, the first option above will be more effective to protect areas of significant indigenous vegetation or significant habitat of indigenous fauna. However, there would be uncertainty for landowners and applicants as when the rule applies and therefore what the activity status of the subdivision proposal. In my view, this is not good practice and lacks sufficient certainty as a plan rule.

355. The alternative option to delete SUB-R17 would rely on the general subdivision rules and indigenous vegetation clearance rules to ensure any effects on indigenous biodiversity from subdivision proposals are appropriately assessed and managed.
356. In this respect, I note that most of the “*general*” subdivision rules in SUB-R1 to SUB-R8 include effects on indigenous biodiversity values as a matter of control<sup>34</sup>, including SUB-R3 is the general subdivision rule to create a new allotment. This would also enable an ecological assessment to be undertaken/requested when the subdivision proposal may affect a potential area of significant indigenous vegetation or significant habitat of indigenous fauna and conditions to be imposed to manage those effects in accordance with the relevant policies. Further, as discussed above, my understanding from high-level discussions with Council consent staff is that where a subdivision proposal includes indigenous vegetation clearance above the permitted thresholds, this is often accompanied by ecological assessment (or otherwise they have scope to request this) which helps to ensure effects on indigenous biodiversity are appropriately assessed and managed.
357. For these reasons, I recommend that SUB-R17 is delete as this is likely to achieve the same outcome without the uncertainties and inefficiencies associated with a subdivision rule that applies to potentially significant ecological values that have yet to be assessed. My recommendation to delete SUB-R17 means there is no need to address submissions relating to the drafting and activity status of rule outlined above.

### **Recommendation**

358. For the reasons above, I recommend that SUB-R17 is deleted and submissions on the rule are accepted, accepted in part or rejected as set out in **Appendix 2**.

### **Section 32AA evaluation**

359. I have provided a section 32AA evaluation of my recommended amendments to remove references to SNAs from the IB Chapter under Key Issue 2 and this evaluation is also relevant to my recommendation to delete SUB-R17. My analysis above also outlines why I consider that the recommendation to delete SUB-R17 is an appropriate, efficient and effective way to achieve the relevant PDP objectives as it will likely achieve the same outcome in a more efficient and certain manner.

## **6.2.19 Key Issue 19: SCHED-4 Schedule of Significant Natural Areas**

### **Overview**

<b>Provision(s)</b>	<b>Officer Recommendation(s)</b>
SCHED-4	Delete

<sup>34</sup> More specifically, SUB-R3 matters of control refer to “*adverse effects on areas with historic heritage and cultural values, natural features and landscapes, wetland, lake and river margins, natural character or indigenous biodiversity values including indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification system lists.*”

## **Analysis of Submissions on Key Issue 19: SCHED-4 Schedule of Significant Natural Areas**

### **Matters raised in submissions**

360. There are 25 submission points on SCHED-4 of the PDP, containing a broad spectrum of views on whether it should be deleted, retained or strengthened by adding in scheduled SNAs.
361. Submitters who support SCHED-4 as notified include Federated Farmers (S421.139), who consider the schedule is an appropriate way to recognise the relationship between private landowners and Council and the need to work in partnership to manage SNAs. HortNZ (S159.050) supports SCHED-4, provided it aligns with the NPS-IB once gazetted.
362. Submitters who support SCHED-4 in part but request amendments to include actual SNAs within the schedule include Kapiro Conservation Trust (S449.044, S442.144, S448.001), Kerikeri Peninsula Conservation Charitable Trust (S180.001), Carbon Neutral NZ Trust (S529.043), Kapiro Residents Association (S430.001), Forest and Bird (S511.125) and Pacific Eco-Logic (S451.023). Suggestions for creating schedule content include:
- a. The inclusion of areas of indigenous biodiversity already protected by resource consent conditions, consent notices, covenants and similar.
  - b. The automatic inclusion of all future SNAs identified through the resource consent process into SCHED-4.
  - c. Including incentives for landowners to add SNAs to SCHED-4.
363. DOC (S364.002) requests that SCHED-4 is populated using the report prepared for Council titled "*Significant Indigenous Vegetation and Habitats of the Far North District - Volume 1*<sup>35</sup>".
364. Other submissions on SCHED-4 include:
- a. Ian Diarmid Palmer (S546.003 and S546.004), who requests that the ODP approach to managing SNAs is retained, by applying the same provisions that are currently included in the ODP for Protected Natural Areas.
  - b. Nicole Wooster (S259.005) and Kellie Edwards (S63.001) request that any amendments to SCHED-4 do not impose a SNA overlay on their properties.
365. It should be noted that no original submissions request deletion of SCHED-4. However, deletion of SCHED-4 is consequential on other submissions requesting all references to SNAs be removed from the PDP (refer Key Issue 2 above). A large number of further submissions oppose original submissions requesting that SCHED-4 is populated with actual SNAs, such as the Shooting Box Ltd (FS67.92) and Setar Thirty Six Ltd (FS69.93). The

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<sup>35</sup> Prepared by Wildlands Consultants (Contract Report No. 4899d, December 2019).

key theme of such further submissions is that if any amendments are to be made to SCHED-4 to include mapped SNAs in the PDP, this needs to be done through a plan change process to allow all landowners to consider any SNAs identified on their property and associated restrictions.

### Analysis

366. For the reasons outlined under Key Issue 2, I recommend that all references to SNAs in the IB Chapter are deleted and that SCHED-4 is deleted for the same reasons as it serves no purpose at this point of time. I recommend that a schedule of SNAs is added to the PDP through a future plan change following a robust mapping approach that involves collaboration with tangata whenua and landowners in accordance with the NPS-IB.

### Recommendation

367. I recommend that SCHED-4 is deleted and submissions on SCHED-4 are accepted, accepted in part and deleted as set out in **Appendix 2**.

### Section 32AA evaluation

368. The section 32AA evaluation under Key Issue 2 provides an evaluation of the appropriateness, efficiency and effectiveness of my recommended amendments to remove references to SNA mapping throughout the IB Chapter. The same conclusion applies here, i.e. the deletion of SCHED-4 is more appropriate, efficient and effective to achieve the relevant PDP objectives.

## 6.2.20 Key Issue 20: Definitions

### Overview

Definition	Officer Recommendation(s)
Biodiversity offsetting	Amend to align with NPS-IB
Biodiversity compensation	Amend to align with NPS-IB
Net gain	Retain as notified
No net loss	Retain as notified
Remnant forest	Retain as notified
Significant natural areas	Amend to align with section 6(c) and only refer to the ecological significance criteria in Appendix 5 of the RPS
New definitions	"Pests", "At-Risk Indigenous Taxa", "Threatened Indigenous Taxa" and "Effects Management Hierarchy".

### Analysis of Submissions on Key Issue 20: Definitions

#### Matters raised in submissions

##### Biodiversity Offsets

369. There are four submissions on the definition of "*biodiversity offsets*". Kapiro Conservation Trust (S442.021) and Forest and Bird (S511.001) support the definition and request that it be retained as notified. DOC (S364.011)

requests that the definition of biodiversity offset be deleted and replaced with the equivalent NPS-IB definition. Transpower (S454.015) requests the definition of biodiversity offsets is retained but requests the offsetting principles are deleted and relocated to an appendix or schedule of the PDP. DOC (S364.012, S364.015) requests that the NPS-IB exposure draft biodiversity offsetting and compensation principles be incorporated into the PDP, ideally within an appendix that can be referenced in relevant provisions.

#### Environmental biodiversity compensation

370. There are four submissions on the definition of "*environmental biodiversity compensation*". Kapiro Conservation Trust (S442.025) and Forest and Bird (S511.005) request that the definition is retained but with potential amendments to make it clear that compensation occurs offsite. DOC (S364.014) requests that the definition of environmental biodiversity compensation is deleted and replaced with the equivalent NPS-IB definition. Transpower (S454.018) requests the definition of biodiversity compensation is retained but requests the compensation principles are deleted and relocated to an appendix or schedule of the PDP.

#### Net gain

371. There are three submissions on the definition of "*net gain*". All three submitters support the definition and request that it is retained as notified, being Kapiro Conservation Trust (S442.028), Forest and Bird (S511.008) and DOC (S364.016).

#### No net loss

372. There are three submissions on the definition of "*no net loss*". Kapiro Conservation Trust (S442.029) and Forest and Bird (S511.009) both request that the definition be retained but request an amendment to better align it with the NPS-FM. Lynley Newport (S121.003) requests that the definition of "*no net loss*" be treated in the same manner as "*net gain*" in that both must be measurable in order to either approve or decline a proposal.

#### Remnant forest

373. There are two submissions on the definition of "*remnant forest*". Kapiro Conservation Trust (S442.147) and Pacific Eco-Logic (S451.003) request an amendment to include a broader range of natural areas, including dunelands and coastal cliff vegetation, as well as inclusion of indigenous forests that have been in place for a minimum number of years.

#### Significant Natural Area

374. There are four submissions on the definition of "*significant natural area*". Three submissions request the definition is retained, being Kapiro Conservation Trust (S442.036), Forest and Bird (S511.016) and DOC (S364.018). Nicole Wooster (S259.007) requests that the definition of significant natural area does not capture areas of manuka and kanuka that



do not contain any significant fauna (this concern is specific to manuka and kanuka on the submitters property).

### New definitions

375. There are also three requests in submissions for new definitions related to the IB chapter provisions. These are:
- a. Pacific Eco-Logic (S451.001) and Kapiro Conservation Trust (S442.145) request a new definition of "*indigenous vegetation*" without any suggested wording.
  - b. Pacific Eco-Logic (S451.002) and Kapiro Conservation Trust (S442.146) request a new definition of "*suitably qualified and experienced ecologist*" without any suggested wording.
  - c. DOC (S364.043) request a new definition for "*ecological district*", as used in IB-P8 without any suggested wording.

### **Analysis**

376. The table below sets out the relevant definitions in the PDP that have been allocated to the IB topic with my recommended amendments and reasons.

<b>Definition</b>	<b>Recommendation and reasons</b>
<b>Biodiversity offset</b>	The definition of biodiversity offset is taken from the RPS and includes the detailed principles that are largely aligned with the NPS-IB. I consider that the definition of biodiversity offsetting should be better aligned with the NPS-IB and incorporate the principles in Appendix 3 of the NPS-IB. An alternative option is to include the principles in Appendix 3 of the NPS-IB as an appendix rather than as part of the definition. However, I have shown the recommended amendments within the definition to illustrate the change from the notified definition.
<b>Environmental biodiversity compensation</b>	The definition of Environmental biodiversity compensation is taken from the RPS and includes the detailed principles that are largely aligned with those for biodiversity compensation NPS-IB. I consider that the definition of biodiversity compensation should be better aligned with the NPS-IB and incorporate the principles in Appendix 4 of the NPS-IB. An alternative option is to include the principles in Appendix 4 of the NPS-IB as an appendix rather than as part of the definition. However, I have shown the recommended amendments within the definition to illustrate the change from the notified definition.
<b>Net gain</b>	Retain as the definition supported by submissions.
<b>No-net loss</b>	Retain as the definition supported by submissions.
<b>Remnant forest</b>	The definition of remnant forest has been taken from the ODP as follows " <i>means any indigenous natural area which has never been clear-felled</i> ". As discussed in relation to IB-R4 under Key Issue 14, the rules apply a more stringent threshold for remnant forests compared to other indigenous

Definition	Recommendation and reasons
	vegetation so broadening the definition to include other natural areas, such as dunelands and coastal cliff vegetation, could have significant implications across the District, which have not been sufficiently considered in submissions in my opinion (e.g. the geographical extent of these areas). I therefore recommend that the definition of remnant forests be retained as notified.
<b>Significant natural area</b>	As noted above under Key Issue 2, a consequential amendment is required to replace the definition of "significant natural area" with " <i>significant indigenous vegetation or significant habitat of indigenous fauna</i> " and refer to this being an area identified in accordance with Appendix 5 in the RPS (i.e. removing the reference to identification of SNAs under the NPS-IB).

377. I do not consider that any additional definitions for "*indigenous vegetation*", "*suitably qualified and experienced ecologist*", or "*ecological district*" are required for the PDP as requested by submitters. The submitters have not provided wording for these terms or rationale to explain why these terms need to be defined. I also consider that the ordinary meaning of these terms is relatively clear/unambiguous.

### Recommendation

378. I recommend that submissions on the definitions allocated to the IB Chapter are accepted, accepted in part or deleted as set out in **Appendix 2**. I recommend that these definitions are amended and retained as set out in Appendix 1.2 (Interpretation). I also recommend new definitions for "*pests*", "*At-Risk Indigenous Taxa*", "*Threatened Indigenous Taxa*" and "*effects management hierarchy*" for the reasons set out under Key Issues 8 and 10.

### Section 32AA evaluation

379. My recommendations above relate to definitions in the PDP therefore no further evaluation is required under section 32AA of the RMA as this only applies to amended objectives and policies.

## 6.2.21 Key Issue 21: Miscellaneous/site specific concerns with SNAs

### Overview

Provision(s)	Officer Recommendation(s)
Various	No recommended amendments in addition to those outlined above

### Analysis of Submissions on Key Issue 21: Miscellaneous/mapping/site specific concerns with SNAs

#### Matters raised in submissions

380. Some submitters have raised site-specific concerns about the underlying zoning of specific sites that had ecological values, particularly when the PDP zoning was for rural lifestyle or residential development, given the absence

of SNA maps. These submitters included, for example, Kerikeri Peninsula Conservation Charitable Trust (S180.004), Kapiro Residents Association (S430.004) and André Galvin (S567.003). Ronald Toni Wooldridge (S440.001 and SS440.002) has concerns relating to potential SNA identification on the property at 6987 State Highway 1 (which is opposed) and the lack of SNA identification on a property at 6969 State Highway 1, which he considers worthy of being identified as SNA.

381. Several submitters have raised general concerns related to SNA mapping (or the lack of mapping). Two submissions from J L Hayes and Sons Ltd (S441.001 and S18.001) consider that SNA mapping and associated provisions affecting general title are not required in the case of their property (particular issue with Volume 1, Map 27) and that the IB Chapter provisions should take into account the range of land tenure in the district (purported by the submitter to be 1/3rd DOC land, 1/3rd Māori land and 1/3rd general title land).
382. Two specific requests for additional mapping work include:
- a. DOC (S364.006) requests the inclusion of overlays that identify locations of "*kiwi present*" or "*high-density kiwi areas*", with a mechanism for updating these maps. DOC notes that the North Island Brown Kiwi no longer has a conservation status of "*Threatened*" under the NZTCS, but considers that it is important that these conservation efforts do not go to waste. Therefore, DOC considers that the PDP should include "*specific kiwi conservation objectives, policies, and rules*".
  - b. Summit Forests New Zealand Ltd (S148.057) requests that the Council work with the Forest Industry to map and schedule all SNA within the boundaries of plantation forests as part of a process fully funded by Council when associated with primary production activity and the voluntary scheduling of SNA areas.
383. Green Inc Ltd (S164.001) raises a range of concerns that the IB chapter provisions provide a disincentive for restoration of indigenous biodiversity as this could result in these areas becoming a SNA with more restrictive controls applying. To address these concerns, Green Inc Ltd requests that the zoning of Tupou be changed from Rural Production Zone to a new managed ecological zone or a special purpose zone for Tupou. The submitter relates this back to the vision for Tupou which is "*to retain pasture and food and wool production on the flatter better quality soils and return the steep erodible hill country to native ecosystems. These will then be managed as functioning native ecosystems that can generate carbon and biodiversity credits*".
384. J L Hayes and Sons Ltd (S147.001) considers that the planning maps need to be accurate in terms of the presence of SNAs and other vegetation, noting that there are large amounts of native vegetation within the Māori Purpose Zone and Rural Production Zones.

## **Analysis**

385. For the reasons set out in detail under Key Issue 2 and throughout this report, I recommend that all references to SNAs are removed from the PDP and district-wide mapping of SNAs occurs through a future plan change to implement the NPS-IB in full. I therefore do not recommend any amendments to the above submissions raising issues about how SNA mapping may apply to individual properties or land tenure in the Far North District as that will be considered through this future plan process. I expect that this future district-wide SNA mapping and associated plan change will also consider how to best work with landowners to assess and verify the extent of SNAs within the Far North District. I also expect that it will involve engagement with the forestry industry to identify SNAs within the boundary of commercial forests.
386. In terms of the concerns about upzoning rural and residential sites with ecological values, it is not appropriate to "zone" these as SNAs through the PDP for the reasons outlined. My expectation is that these sites will be considered for inclusion in the PDP as an SNA layer as part of this future plan change if the area meets the relevant criteria. The provisions in the IB Chapter apply to these sites regardless of the underlying zoning.
387. In terms of the request from DOC to include overlays of "*kiwi present*" or "*high-density kiwi areas*" in the PDP, I agree that it is important that the PDP recognises the importance of protecting kiwi. This is discussed in relation to IB-P9 which provides direction to avoid pets and pests near "*kiwi present*" or "*high-density kiwi areas*" through consent conditions where appropriate. My understanding is that DOC has produced a map of these areas "*to assist Far North District Council policy and planning staff to identify when kiwi protection needs to be considered when processing resource consents*"<sup>36</sup>. However, it is unclear to me what process has been followed to produce these maps, how often DOC intends to update these maps across the Far North District, and how accurate and certain the maps are in order to provide sufficient confidence that these should function as a statutory layer in the PDP. I therefore recommend that these maps continue to sit outside the PDP where they can be used as a guide for Council staff to understand where greater controls may be needed to protect kiwi, and this will also allow these maps to be more readily and efficiently updated.
388. I acknowledge the relief sought from Green Inc Ltd to ensure the IB Chapter does not act as a disincentive for indigenous restoration and the planting of indigenous vegetation. However, in my view, the relief sought by the submitter does not warrant a new special purpose zone in the PDP. Firstly, I do not consider that this requested special purpose zone for "*managed ecological zone*" or "*Tupou*" meets the three criteria for including an additional special purpose zone in a district plan under the National Planning Standards<sup>37</sup>. Secondly, I consider that my recommendations above relating to SNA mapping above under Key Issue 2 are likely to help address the

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<sup>36</sup> Refer: [Regulatory Compliance Committee meeting held on 20/07/2021 - Item 5.2 Significant Flora and Fauna Assessment - Attachment Attachment A 12-natural-and-physical-resources-full-chapter-for-oc \(fndc.govt.nz\)](https://www.fndc.govt.nz/regulatory-compliance-committee-meeting-held-on-20/07/2021-item-5.2-significant-flora-and-fauna-assessment-attachment-attachment-a-12-natural-and-physical-resources-full-chapter-for-oc)

<sup>37</sup> Those criteria are that the land use activities or outcomes anticipated from the special purpose zone are: "*a. are significant to the district, region or country b. are impractical to be managed through another zone c. are impractical to be managed through a combination of spatial layers*".

submitters concerns that their land will be subject to additional protections to some extent. Further, I consider that the IB Chapter clearly promotes, rather than restricts, the restoration of indigenous biodiversity which appears to be the key outcome sought by the submitter.

389. I acknowledge that the Rural Production Zone and Māori Purpose Zone submission have high coverage of indigenous vegetation in some areas as stated in the submission from J L Hayes and Sons Ltd. However, for the reasons outlined under Key Issue 2, I recommend that the PDP does not include any mapping of SNAs at this point of time and that the ecological significance of indigenous vegetation is assessed as part of a future plan change process to give effect to the NPS-IB in full.

### **Recommendation**

390. I recommend that the above submissions raising miscellaneous or site-specific concerns with SNA mapping are accepted, accepted in part or rejected as set out in **Appendix 2**.

### **Section 32AA evaluation**

391. I am not recommending any amendments to the PDP as a result of the above submissions. Therefore, no further evaluation is required under section 32AA of the RMA.

## **7 Conclusion**

392. This report has provided an assessment of submissions received in relation to Ecosystems and Indigenous Biodiversity Chapter. The primary amendments that I have recommended relate to:
- a. Deletion of references to SNA throughout the IB Chapter and replacement with wording better aligned with section 6(c) of the RMA and the criteria in Appendix 5 of the Northland Regional Policy Statement (RPS).
  - b. Amendments to IB-P2, IB-P3, IB-P4, IB-P5 and IB-P6 to clarify intent and better align with the wording of the RPS.
  - c. Amendments to IB-P9 to refocus the policy on the aspects of pest control that are within scope of the PDP provisions and FNDC to control.
  - d. Introduction of a new policy to support subdivision in accordance with SUB-R6.
  - e. A range of amendments to various rules to clarify intent and align with amendments to objectives and policies (e.g. remove references to SNAs).
  - f. Deletion of IB-R3 and IB-R5.

- g. Deletion of the requirement for an ecological assessment and refinement of indigenous vegetation clearance thresholds under IB-R4 (and consequential renumbering to IB-R3).
  - h. Deletion of SUB-R17 as a consequence of deleting SCHED-4 and all references to scheduled SNA.
  - i. Deletion of SCHED-4 (Schedule of significant natural areas).
  - j. Updates to key definitions to better reflect the NPS-IB and introduction of four new definitions for "Pests", "At-Risk Indigenous Taxa", "Threatened Indigenous Taxa" and "Effects Management Hierarchy".
393. Section 6.2 considers and provides recommendations on the decisions requested in submissions. I consider that the submissions on the Ecosystems and Indigenous Biodiversity Chapter should be accepted, accepted in part, rejected or rejected in part, as set out in my recommendations within the main body of this report and in Appendix 2.
394. I recommend that provisions for the Ecosystems and Indigenous Biodiversity Chapter matters be amended as set out in Appendix 1 for the reasons set out in this report.
395. I consider that the amended provisions will be efficient and effective in achieving the purpose of the RMA, the relevant objectives of this plan and other relevant statutory documents, for the reasons set out in this report and the section 32AA evaluations undertaken.

**Recommendation by:** Jerome Wyeth – Technical Director, SLR Consulting.



**Approved by:** James R Witham – Team Leader District Plan, Far North District Council.

**Date:** 8 July 2024