



Proposed District Plan submission form

Clause 6 of Schedule 1, Resource Management Act 1991

Feel free to add more pages to your submission to provide a fuller response.

Form 5: Submission on Proposed Far North District Plan

TO: Far North District Council

This is a submission on the Proposed District Plan for the Far North District.

1. Submitter details:

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2. (Please select one of the two options below)

- I **could not** gain an advantage in trade competition through this submission
 I **could** gain an advantage in trade competition through this submission

If you could gain an advantage in trade competition through this submission, please complete point 3 below

3. I **am** directly affected by an effect of the subject matter of the submission that:
 (A) Adversely affects the environment; and
 (B) Does not relate to trade competition or the effect of trade competition
- I **am not** directly affected by an effect of the subject matter of the submission that:
 (A) Adversely affects the environment; and
 (B) Does not relate to trade competition or the effect of trade competition

Note: if you are a person who could gain advantage in trade competition through the submission, your right to make a submission may be limited by clause 6(4) of Part 1 of Schedule 1 of the Resource Management Act 1991

The specific provisions of the Plan that my submission relates to are:

(please provide details including the reference number of the specific provision you are submitting on)

All sections of the PDP, particularly the following -

Definitions

National direction – NPS for freshwater management

Strategic direction

Infrastructure

Transport

Ecosystems and indigenous biodiversity



Freshwater
Natural character
Natural features and landscapes
Subdivision
Coastal environment
Earthworks
Light
Zones
Appendix 3
Maps

Confirm your position: Support Support In-part Oppose
(please tick relevant box)

My submission is:

(Include details and reasons for your position)

GENERAL COMMENTS

Core principles / obligations for environmental protection

s74(1) of the RMA states that district plans must be prepared in accordance with the provisions of Part 2 of the RMA.

The purpose of the RMA (s5) includes:

'managing the ... protection of natural and physical resources ...

(a) Sustaining the potential of natural and physical resources ... to meet the reasonably foreseeable needs of future generations; and

(b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment."

RMA matters of national importance (s6) include -

(a) the preservation of the natural character of the coastal environment ..., wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:

(b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:

(c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna;

(e) The relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga'

RMA s7 matters include:

(a) Kaitiakitanga:

(aa) The ethic of stewardship:

(c) The maintenance and enhancement of amenity values:

(d) Intrinsic values of ecosystems:

(e) Maintenance and enhancement of the quality of the environment:

(f) Any finite characteristics of natural and physical resources:

(g) The effects of climate change.

RMA s31 specifies that councils shall have the following functions for the purpose of giving effect to the RMA in their district:

(b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of ...

(iii) the maintenance of indigenous biological diversity. ..



The methods used to carry out [the functions above] may include the control of subdivision.

The Council's strategy for the district set out in *Far North 2100* includes 'the protection of the natural environment for future generations'.

Cumulative/combination effects and potential long-term effects on the environment

When considering the effects of a proposed activity, s3 of the RMA states that the term *effect* 'includes ... any cumulative effect which arises over time or in combination with other effects ...'

The Regional Policy Statement for Northland, Policy 5.1.1 states that

*'Subdivision, use and development should be located, designed and built in a planned and co-ordinated manner which... Recognises and addresses potential cumulative effects of subdivision, use, and development, and is based on sufficient information to allow assessment of the potential long-term effects.'*¹

When considering proposed subdivision, land use and development, the DP needs to address *potential cumulative effects* and *potential long-term effects* on the environment.

This has implications for many topics covered by the DP, including Ecosystems and indigenous biodiversity, Natural character, Natural features and landscapes, Zones, etc. VKK recommends that all relevant parts of the DP should specifically recognise the need to identify and address *any cumulative effect* and *potential cumulative effects*, and require sufficient information to assess *potential long-term effects* of the proposed activity on the environment.

PDP proposals in the light of RMA provisions

We consider that the proposed DP does not give full and proper effect to the RMA provisions noted above. PDP policies and rules need to be strengthened to implement key principles and obligations.

The Environmental Defence Society (EDS), in the context of RMA reforms, has highlighted the concern that positive environmental objectives should not be balanced against economic development. This has fostered a trade-off approach, where the environment always loses out. Ideally, a DP should pursue synergies rather than balancing trade-offs, i.e. good outcomes should be pursued in ways that also achieve other good outcomes, as recommended by EDS.²

ECOSYSTEMS AND INDIGENOUS BIODIVERSITY

The PDP Overview on Ecosystems and Indigenous Biodiversity notes that:

'The District is home to a wide range of indigenous species, habitats and ecosystems and a high number of regionally endemic species, including a number that are of cultural significance to tangata whenua. The protection, maintenance and enhancement of indigenous biodiversity contributes to the District's unique scenery, its natural character, its amenity values, and its economic opportunities, such as tourism and recreation.'

Principles and obligations relating to indigenous biodiversity

RMA: The PDP s32 report on this topic (p.3) recognises that the 'Council has obligations under section 6(c) of the RMA to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna'.

The s32 report (p.16) also recognises that *'the maintenance of indigenous biodiversity'* is a core function of territorial authorities under section 31(1)(b)(iii) of the RMA'.

Te Mana o te Taiao – Aotearoa New Zealand National Biodiversity Strategy 2020: Te Mana o te Taiao sets out a strategic direction for the maintenance, protection and restoration of indigenous biodiversity in New Zealand for the next 30 years (2020-2050). Te Mana o te Taiao aims to stop the degradation of New Zealand's biodiversity and is coupled with an implementation plan which is still being developed.

¹ NRC (2016) *Regional Policy Statement for Northland*, updated May 2018, <https://www.nrc.govt.nz/resource-library-summary/plans-and-policies/regional-policy-statement/>

² Environmental Defence Society, media release June 2021, *EDS welcomes exposure draft of [Natural and Built Environments] bill but says more work needed to protect environment*, www.eds.org.nz



The Strategy includes an overall vision: “The mauri of nature is vibrant and vigorous” with five key outcomes to achieve by 2050:

- Ecosystems, from mountain tops to ocean depths, are thriving.
- Indigenous species and their habitats across Aotearoa New Zealand and beyond are thriving. People’s lives are enriched through their connection with nature.
- Treaty partners, whānau, hapū and iwi are exercising their full role as rangatira and kaitiaki.
- Prosperity is intrinsically linked with a thriving biodiversity.

The PDP’s s32 report on ecosystems and biodiversity (p.12) considers that the proposed PDP provisions are in line with the overarching aim of Te Mana o te Taiao. We disagree with that opinion.

Anticipated NPS for Indigenous Biodiversity: The objectives of the anticipated NPS for indigenous biodiversity seek to maintain indigenous biodiversity, improve the integrated management of indigenous biodiversity, restore or enhance it where possible and recognise the role of landowners, communities and tangata whenua as stewards and kaitiaki of indigenous biodiversity.

Regional Policy Statement: The RPS sets out a number of objectives/policies relating to indigenous ecosystems and biodiversity – examples are shown in Box 1 below. Section 75(3)(c) of the RMA requires district plans to ‘give effect’ to any RPS.

Environment Court decision: The s32 report highlighted a relevant Environment Court decision relating to Part 2 of the RMA which concluded that if an ecosystem is found to be significant then that ecosystem is to be protected

The Environment Court has attempted to explain (in summary) the scheme of Part 2 of the RMA with respect to indigenous biodiversity in *Director General of Conservation v Invercargill City Council*³. Some key extracts from that decision are provided below (emphasis added).

[44] In part 2 of the RMA there are three provisions that are particularly important and relevant to biodiversity issues. They are the obligations: “safeguard ... the life-supporting capacity of ... ecosystems” (section 5(2)(b) RMA); “ ... protect ... areas of significant indigenous vegetation and significant habitats of indigenous fauna” (section 6(c)); and ...to have particular regard to the “intrinsic values of ecosystems” (section 7(d) recalling that is a defined term).

[45] Five points should be made here about the scheme of the RMA in relation to indigenous biodiversity. First, the primary responsibility of local authorities when exercising their functions in respect of indigenous biodiversity is part of the very definition of “sustainable management”: to safeguard the life-supporting capacity of ecosystems.

[46] Second, **the recognition and protection of areas of significant indigenous vegetation, nationally important as it is, is an extension of that primary obligation. If an ecosystem or part of an ecosystem (being in either case an area of indigenous vegetation or a habitat of indigenous fauna) is found to be significant then that ecosystem is to be protected in itself, not merely to have its life-supporting capacity protected.**

[47] Third, safeguarding (or protecting) the life-supporting capacity of ecosystems includes in each case having particular regard to each of its components including – as the definition of ‘intrinsic values’ 6 implies.

Conclusion: The PDP provisions do not provide the level of protection noted in the RMA and policies above. Several examples are provided below. We share the many of the concerns expressed by Forest and Bird’s feedback in 2021 about provisions relating to ecosystems and biodiversity – please refer to Appendix 1 (attached).

PDP strategic direction on ecosystems and biodiversity

The PDP’s strategic objectives for the natural environment include the following objectives relating to ecosystems and indigenous biodiversity –



- SD-EP-O3: 'Active management of ecosystems to protect, maintain and increase indigenous biodiversity for future generations'
- SD-EP-O6: 'Areas of significant indigenous vegetation and significant habitats of indigenous fauna [are] protected for current and future generations'.

We support these objectives. However the PDP provisions, as currently drafted, contain very little that will actually implement the objectives to 'protect, maintain and increase indigenous biodiversity for future generations', or protect significant vegetation and fauna 'for future generations'.

The Overview in the PDP Ecosystems and Indigenous Biodiversity chapter notes that:

'Council has responsibilities under the RMA, the NZCPS and the RPS to identify and protect areas of significant indigenous biodiversity (Significant Natural Areas) and maintain indigenous biodiversity.'

PDP approach on protection of significant indigenous biodiversity

Due to issues with earlier Significant Natural Area (SNA) mapping (largely based on desk studies) and opposition by parts of the community,³ the PDP focuses on voluntary mapping/identification of SNAs. The main focus of the PDP provisions in the Ecosystems and Indigenous Biodiversity chapter is on the clearance of indigenous vegetation (four of the five rules in the Ecosystems and indigenous biodiversity chapter are for the permitted clearance of indigenous vegetation) -

- The chapter identifies quantitative amounts (areas) that can be cleared without resource consent. When the extent of indigenous vegetation clearance is above permitted thresholds, a landowner would need to provide an assessment of the ecological significance of indigenous vegetation/habitat.
- Landowners are encouraged but not required to include their SNA in PDP schedule 4 on a case by case basis.

The s32 report (s8.3.3 table) notes that this approach chosen for the PDP has a substantially higher long-term cost due to case by case ecological assessments/consenting etc: 'costs ... are ultimately expected to be substantially higher than the one-off SNA mapping approach'.

The s32 report notes that the proposed PDP's reliance on voluntary collaboration 'increases the likelihood that SNAs will not be added to the schedule voluntarily and that [SNAs] will not receive the same level of protection as they would under Option 1', and noted that the chosen PDP approach 'will have an environmental cost', i.e. 'less ... protection of SNAs'.

Clearance of indigenous vegetation

Proposed rule IB-R1 allows indigenous vegetation clearance within and outside SNAs for a list of specified purposes which is too broad. For example:

- The rule allows clearance up to 1,000m² for building a residential unit in a SNA without requiring or considering whether existing clear areas can be used instead.
- The clearance of dead trees (if they are not unsafe) or indigenous vegetation less than 10 years old can be detrimental for *at risk* indigenous species/habitat.

Rules IB-R3 and IB-R4 allow clearance of indigenous vegetation up to 100m² per calendar year in areas confirmed (by ecological assessment) to be SNAs and in areas where a report has not been obtained. The cumulative effect of this rule, over time, would allow significant amounts of indigenous vegetation to be eliminated. In areas that are considered not to meet the criteria for a SNA, rule IB-R4 allows clearance of 500m² in most zones, and up to 5,000m² clearance of indigenous vegetation in rural production and horticulture zone if not in a remnant forest. We consider that the proposed rules on clearance are too lax.

Vegetation clearance in general

The PDP provisions do not address some on-going practical problems with vegetation clearance, which often involved heavy machinery. For example, local conservation groups have experienced cases in recent years where landowners claim they are only or primarily clearing exotic vegetation, even when

³ FNDC news release, 17 June 2021, <https://www.fndc.govt.nz/Whats-new/Latest-news/What-next-for-SNAs>



the destruction of a significant amount of indigenous vegetation is clearly visible on the site. To address this problem, PDP rules on clearance need to apply to vegetation that includes indigenous vegetation. The clearance of any type of vegetation, including plantation forests, can cause problems in areas where at-risk species are present. Local conservation groups have found that substantial areas of exotic or mixed vegetation have been cleared by large diggers or bulldozers without any precautions or regard for vulnerable types of indigenous species that are present or nesting on the ground or in the vegetation (eg. nesting kiwis, rare native lizards).

PDP rules should actively protect areas where kiwi or indigenous species classed as *threatened* or *at risk* (under NZ Threat Classification System) are present. For example, landowners should be required to contact DOC for a trained detection dog or other investigation, and agree with DOC a clear plan to protect vulnerable species, before any vegetation clearance starts. Where appropriate, clearance should be staggered over time, so that indigenous species are able to move to shelter. An appendix to the PDP could include, or refer to, a protocol that sets out guiding principles and procedures.

Threatened & at risk species and maintenance of indigenous biological diversity

A large number of indigenous species are currently classed as *threatened* or *at risk* under the national NZ Threat Classification System.⁴ About 50 indigenous bird species have become extinct in Aotearoa New Zealand as a result of human activities.⁵ Many technical and policy reports have noted that concerted action is required to prevent further deterioration.⁶

As noted above, RMA s31(1) applies to decision-making in relation to the use and development of land - District Council functions include *'the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of ... (iii) the maintenance of indigenous biological diversity'*.

The Regional Policy Statement for Northland and Regional Plan contain a number of provisions that refer to aspects of biodiversity that are not about mapped SNAs (Box 1, below, provides examples). As noted above, under s75 of the RMA, the DP is required to give effect to the Regional Policy Statement, and must avoid inconsistency with the Regional Plan. The DP can be more stringent than the RPS, but cannot be more relaxed.

Disappointingly, the PDP provisions pay insufficient attention to RPS s4.4 regarding *'Maintaining and enhancing indigenous ecosystems and species'* and *'indigenous taxa that are listed as threatened or at risk'*. We support policies IB-P7 – IB-P9. However, these seem to be almost the only policies that aim to protect indigenous biodiversity, and the PDP lacks rules to implement policies.

The draft PDP of 2021 contained a policy (IB-P10) that specifically aimed to *'Protect indigenous biodiversity by considering the following matters when assessing proposals for land use and subdivision:*

- a. the temporary or permanent nature of any adverse effects;*
- b. cumulative effects of activities that may result in loss or degradation of habitats...'*

It is a matter of concern that the PDP contains a weaker policy and the word *'protect'* was removed.

Box 1: Examples of biodiversity provisions in Regional Policy Statement & Regional Plan

The Regional Policy Statement and Regional Plan contain provisions that address the maintenance and protection of indigenous biodiversity and species that are listed as *threatened* or *at risk*. These provisions are relevant district-wide.

Regional Policy Statement for Northland

s4.4 Maintaining and enhancing indigenous ecosystems and species

Policy 4.4.1 includes the following general provisions -

⁴ NZ Threat Classification System, <https://nzctcs.org.nz/>

⁵ Parliamentary Commissioner for the Environment (2017) *Taonga of an Island Nation: Saving New Zealand's Birds*, p.20, <https://www.pce.parliament.nz/publications/taonga-of-an-island-nation-saving-new-zealands-birds>

⁶ PCE (2017) *Taonga of an Island Nation* (above).



'(1) In the coastal environment, avoid adverse effects, and outside the coastal environment avoid, remedy or mitigate adverse effects of subdivision, use and development so they are no more than minor on:

(a) Indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists; '...

'(3) Outside the coastal environment and where clause (1) does not apply, avoid, remedy or mitigate adverse effects of subdivision, use and development so they are not significant on any of the following:

(a) Areas of predominantly indigenous vegetation;

(b) Habitats of indigenous species that are important for recreational, commercial, traditional or cultural purposes;

(c) Indigenous ecosystems and habitats that are particularly vulnerable to modification, including ... floodplains and margins of freshwater bodies ...'.

Method 4.4.3 states: *'within two years after the Regional Policy Statement becomes operative the district councils shall amend district plans to the extent needed to ensure the plans implement Policy 4.4.1 on land outside of the beds of rivers and lakes, wetlands, and the coastal marine area.'*

Regional Plan

DP provisions on biodiversity must not be inconsistent with the Regional Plan.

The Regional Plan sD.2.18 *Managing adverse effects on indigenous biodiversity* sets out provisions for managing adverse effects of activities on indigenous biodiversity (in the Coastal Environment and areas outside the Coastal Environment, separately). For illustration, the following text quotes some of the provisions that apply to areas outside Coastal Environments –

'Manage the adverse effects of activities on indigenous biodiversity by: ...

(2) outside the coastal environment:

a) avoiding, remedying or mitigating adverse effects so they are no more than minor on:
i. indigenous taxa that are listed as Threatened or At Risk in the New Zealand Threat Classification System lists' ...

b) avoiding, remedying or mitigating adverse effects so they are not significant on:
i. areas of predominantly indigenous vegetation, and
ii. habitats of indigenous species that are important for recreational, commercial, traditional or cultural purposes, and

iii. indigenous ecosystems and habitats that are particularly vulnerable to modification...

4) recognising damage, disturbance or loss to the following as being potential adverse effects:

a) connections between areas of indigenous biodiversity, and

b) the life-supporting capacity of the area of indigenous biodiversity, and

c) flora and fauna that are supported by the area of indigenous biodiversity, and

d) natural processes or systems that contribute to the area of indigenous biodiversity ...' ⁷

Domestic predators

Policy 12.2.4.10 of the Operative DP currently provides for controls on domestic predators (such as dogs, cats, mustelids etc) in order to protect three indigenous species: kiwi, dotterel and brown teal:

' 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;...'

⁷ NRC, *Proposed Regional Plan for Northland*, appeals version May 2021, p.239, s.D.2.18, <https://www.nrc.govt.nz/your-council/about-us/council-projects/new-regional-plan/>



The Regional Policy Statement (Method 4.4.3(2)(b)) requires the DP to implement ‘*Controls on the introduction or keeping of species with recognised pest potential*’ as part of its implementation of RPS Policy 4.4.1 (examples in Box 1 above).

We consider that the DP should include Policy similar to Policy 12.2.4.10 of the Operative DP but with the aim of protecting not just kiwi, dotterel and brown teal, but also other indigenous species that are classed as *threatened* or *at risk* (under NZTCS) and vulnerable to this type of predation.

NATURAL CHARACTER

RMA (s6) matters of national importance include –

‘the preservation of the natural character of the coastal environment... wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development’

The regional council is responsible for waterbodies themselves, while the district plan ‘manages their margins and the activities that can occur in these areas’ (PDP Natural character chapter Overview). The chapter ‘seeks to manage these activities to ensure that the characteristics and qualities that contribute to the natural character values are preserved’.

We support the PDP objective NATC-O1, however overall, the PDP provisions will not preserve the natural character of waterways and wetlands.

For example, NATC-R3 PER-2 & NATC-S2 allow an excessive amount of earthworks and indigenous vegetation clearance up to 400m² within the margins of wetlands, lakes and rivers. This provision does not align with RMA s6 nor with NPS-Freshwater provisions.

The PDP defines the margins of wetlands, lakes and rivers as 20 - 30m, depending on the zone. The definition should be based on 30m, especially in the industrial and residential zones where greater protection is needed.

A note under NATS-S2 states: ‘**Note:** The NESF requires a 10m setback from any natural wetland in respect of earthworks or vegetation clearance and may require consent from the Regional Council.’

However, this statement is incomplete and therefore misleading – it refers only to a 10m setback distance, when in fact the NES-F provisions also cover some activities within 100m of a natural wetland that require consent from the regional council. The Note should be amended to provide the correct information.

SUBDIVISION

PDP subdivision policy SUB-P4 refers to ‘manage’ subdivision as detailed in the district-wide natural environment values, but there are very few rules that put any effective environmental protection policies into effect. Those do not take account of the need to, at least, maintain indigenous biodiversity or ecosystems.

Environmental benefit subdivision

SUB-P8 and SUB-R6 create a type of subdivision called ‘Environmental benefit subdivision’ as a restricted discretionary activity. This appears to be poorly conceived provision – the protection of SNAs should be an essential prerequisite for any rural subdivision to be approved, not a means of getting additional lots.

Management plan subdivision

SUB-P9 and SUB-R7 encourage inappropriate subdivision in the rural production and lifestyle zones if the development achieves so-called environmental outcomes of the management plan subdivision rule. This provision is also poorly conceived. The management plan criteria proposed in Appendix 3 (APP3) are vague, low-reaching and don’t set clear expectations for either developers, land owners, or planning officers. The proposed elements and criteria for Management Plans are less than we should expect for all subdivisions in today’s world. We consider that management plan subdivisions, to date, have historically failed to achieve quality development or environmental outcomes. If the concept of management plan subdivision is retained, they criteria need to be greatly improved to provide superior environmental outcomes.



COASTAL ENVIRONMENT

The Coastal environment chapter of the PDP notes that:

'Council has a responsibility under the RMA, the NZCPS and the RPS to preserve and protect the natural character of the coastal environment from inappropriate land use and subdivision.'

The NZ Coastal Policy Statement (NZCPS) 2010, for example, contains key objectives/policies for environmental protection, such as Objective 1: *To safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems.*

NZCPS policies include the following:

- Avoid adverse effects of activities on indigenous taxa that are listed as threatened or at risk in NZ Threat Classification System lists, and indigenous ecosystems and vegetation types that are threatened in the coastal environment or are naturally rare, and other significant indigenous community types.
- Avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on areas of predominantly indigenous vegetation in the coastal environment, as well as vulnerable habitats, habitats that are important for different purposes, migratory species and ecological corridors.
- Preserve the natural character of the coastal environment, which may include protecting areas of indigenous biodiversity that contribute to natural character.

Greatly diminished area of coastal zone

The Operative DP defined large areas of coastal land as coastal zones. In contrast, the mapped area of the PDP regards only a narrow band of land as 'Coastal environment'.

Much of the coastal land in the ODP coastal zones is now Rural Production or other zone. This change greatly reduces the area of coastal land that can be protected by coastal provisions/rules. Large areas of coastal land visible from the marine area will have little or no protection for their visual qualities, character or other coastal values.

Earthworks and indigenous vegetation clearance

PDP standard CE-S3 allows an excessively large area (up to 400m²) earthworks or indigenous vegetation clearance in areas that are not high or outstanding natural character areas.

A Note under CE-S3 incorrectly refers only to a 10m setback distance in the NES-F in relation to regional council consent, when in fact the NES-F provisions also cover some activities within 100m of a natural wetland that require consent from the regional council. The Note should be amended.

NATURAL RESOURCES – PRODUCTIVE LAND AND SOIL

Loss of highly productive land

Productive soil and land are essential but finite natural resources. It is important to conserve these natural resources for future generations, to support food needs of an ever-increasing population in NZ and globally, as well as providing an important economic resource.

The PDP's Introduction notes that:

'A permissive planning framework has led, in some areas, to incompatible land uses, land fragmentation and significant adverse effects on rural character In some cases, highly productive land (which includes versatile soils) have been used in a way that compromises the future viability of primary production activities...'

From a national perspective, MfE & Stats NZ reported that the area of highly productive land that was no longer available for agriculture, due to housing development, increased by 54% between 2002 and 2019.⁸

About fifteen years ago, NRC's *State of the Environment* report of 2007 warned about the substantial loss of prime soils due to subdivision, particularly around Kerikeri:

'Based on subdivision data supplied by the region's three district councils,... about 9% of Northland's prime soils for horticultural and agricultural (includes land resource inventory soil



classes 1c1, 2e1, 2w1, 2s1, 3e1, 3s1 and 3s2) have been subdivided into 2,209 lots over approximately the last six years, particularly around Whangarei and Kerikeri.⁹

NRC's *State of the Environment* report 2015 noted that:

'The most significant economic asset we have in Northland is our land.'

The report noted that retaining prime soil areas for primary production is one of the two main challenges facing Northland's land.¹⁰

FNDC has also noted the loss of large areas of horticultural land around Kerikeri, noting that it is vital to protect the remaining areas of highly productive rural land -

*'Kerikeri has converted large areas of horticulture land into residential and rural lifestyle activities over the last 20 years. Therefore it is vital to protect this remaining finite resource and other rural land that is highly productive.'*¹¹

Obligations of NPS-HPL and RMA

The National Policy Statement for Highly Productive Land (NPS-HPL) came into force on 17 October 2022. HPL is normally defined as LUC class 1-3 land, but may include additional types of productive land. The objective is to protect HPL for us in primary production, both now and for future generations. The NPS sets out a range of provisions to avoid subdivision of HPL and protect it from inappropriate use or development. Each regional council must map HPL in their region, however in the interim, territorial authorities are expected to apply the NPS provisions to relevant land mapped by NZ Land Resource Inventory (which is normally compiled and updated by Landcare Research).

In addition, the RMA specifies several broader goals for protecting natural resources and soil. The purpose of the RMA (s5) specifically includes sustaining the potential of natural resources for future generations and safe-guarding the life-supporting capacity of soil:

'managing the ... protection of natural and physical resources ...

(a) Sustaining the potential of natural and physical resources ... to meet the reasonably foreseeable needs of future generations; and

(b) Safeguarding the life-supporting capacity of ... soil ...'

PDP provisions for productive land

We support the PDP's definition of *highly productive land* which includes versatile soils, LUC Class 4 land and other LUC classes that have the potential to be highly productive having regard to soil type, physical characteristics, climatic conditions and water availability. However, the name could perhaps be changed (throughout the PDP) to 'priority productive land' or 'significant productive capacity' or other phrase to reduce potential confusion with the new NPS-HPL.

We support HZ-P2 which *avoids* land use that will result in the loss of productive capacity and does not have a functional need in that zone. However, that policy refers only to land use, not subdivision. Policy HZ-P5 only seeks to 'manage' subdivision in relation to the viability of productive land, but the policy should 'avoid' subdivision of such land.

We consider that all zones, except urban zones, need to be covered by firm PDP policies and rules to protect a key natural resource - productive land - now and for future generations. This means preventing fragmentation and loss of productive land from productive use, especially LUC Class 1-3 land and productive types of soil/land suitable for horticulture. It is not necessary to wait until the regional council has implemented the NPS-HPL.

⁸ MfE & Stats NZ (2021) *Our Land 2021*, p.18.

⁹ NRC, *State of the Environment 2007*, section 14 Land & Soils, p.353,
<https://www.nrc.govt.nz/media/nxgilzp4/14landandsoils.pdf>

¹⁰ NRC, *State of the Environment Report 2015*, p.8,
<https://www.nrc.govt.nz/media/opbpljxu/stateoftheenvironmentreport2015website.pdf>

¹¹ FNDC submission to MPI & MfE on proposed National Policy Statement for Highly Productive Land, p.1,
https://www.mpi.govt.nz/assets/dmstemp/HPL_submissions/00061_Far_North_District_CouncilSargent_Darrell_Redacted.pdf



We consider that it would be appropriate to add the NZ Land Resource Inventory maps (as updated) as overlays in the PDP map now to provide an essential guide until the regional council has completed its mapping of HPL. This would make sense because the regional council is very likely to adopt NZ LRI mapping as the recognised standard.

LIGHT

Street lights for subdivisions/developments should be energy-efficient, suitable for nocturnal wildlife such as kiwi,¹² and 'dark sky friendly' to minimise glare, minimise upward light and scattered light, and retain the visibility of stars.¹³

NATURAL OPEN SPACE ZONE

The PDP replaces the Conservation zone with the term *Natural Open Space* zone (as specified in National Planning Standards). The PDP Overview section states that 'The Natural Open Space zone generally applies to public land ... and includes a variety of parks and historic reserves. In most cases these areas have a high degree of biodiversity requiring active management.'

We support, in particular, objective NOSZ-01 and policy NOSZ-P1 which state –

'The ecological, historic heritage, cultural and natural character values of the Natural Open Space zone are protected and enhanced for the benefit of current and future generations'

'Enable land use that conserves, protects and enhances the natural, ecological, historic heritage, cultural and natural character values of the zone'.

However, some policies/rules do not support those points. For example, the rule on vegetation planting (rule NOSZ-R7, permitted activity) states that 'planting of indigenous species is preferred'. When planting takes place in reserves and the Natural Open Space zone, indigenous species should be required, in order to conserve and enhance indigenous biodiversity. Planting exotic vegetation in this zone should be a non-complying activity. Conservation land, in particular, should be planted only with indigenous species, and even for parks there is a range of suitable indigenous plant species.

NPS FOR FRESHWATER MANAGEMENT

RMA s74((1) states that: '*A territorial authority must prepare and change its district plan in accordance with ... a national policy statement*'.

District councils manage the margins of water bodies and the activities that can occur in these areas. Several parts of the National Policy Statement for Freshwater Management 2020 (NPS-FM) give national direction to *district councils* specifically.

The NPS-FM contains objectives and policies to ensure that natural and physical resources are managed in a way that prioritises:

- (a) First, the health and well-being of water bodies and freshwater ecosystems
- (b) Second, the health needs of people (such as drinking water)
- (c) Third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

The implementation of the NPS-FM and managing freshwater to give effect to Te Mana o Te Wai is primarily the responsibility of the regional council, however clause 3.5(4) specifically requires that every territorial authority includes objectives, policies, and methods in its district plan to promote positive effects, and avoid, remedy, or mitigate adverse effects (including cumulative effects), of urban development on the health and well-being of water bodies, freshwater ecosystems, and receiving environments –

¹² For example, some wildlife-friendly lights avoid white or blue light by using a colour temperature below 3000 Kelvins, while newer techniques use light of a specific wavelength which is not visible to animals but provides sufficient light for humans (around 590 nanometers).

¹³ Examples of certified dark sky friendly lighting products: <https://www.darksky.org/our-work/lighting/lighting-for-industry/fsa/fsa-products/>



‘Every territorial authority must include objectives, policies, and methods in its district plan to promote positive effects, and avoid, remedy, or mitigate adverse effects (including cumulative effects), of urban development on the health and well-being of water bodies, freshwater ecosystems, and receiving environments.’ (s3.5(4))

Recent government guidance on the NPS-FM¹⁴ (p.8) notes that *district plans* must be reviewed/amended to give effect to the NPS-FM, including the following aspects:

‘District plans must be reviewed and, if necessary, amended to give effect to the NPS-FM “as soon as reasonably practicable”.

‘The NPS-FM applies to all freshwater, and Te Mana o te Wai is relevant to all resource management where it affects freshwater, including in city and district planning.

‘Clause 3.5 Integrated management requires a ki uta ki tai (integrated approach) to give effect to Te Mana o te Wai. It also sets out requirements relevant to city and district councils. This includes encouraging the coordination and sequencing of urban growth, and promoting positive effects and managing adverse effects of urban development on freshwater bodies.

‘To give effect to Te Mana o te Wai, councils must consider matters such as how urban growth and increases in impervious surfaces will impact on stormwater flows, how stormwater affects the water bodies it is discharged to, and methods to manage urban growth and stormwater discharge. The identification and control of urban growth areas must prioritise the health and well-being of water bodies.’

We consider that the new PDP should address the above issues now – these issues must not be put on the shelf for another 10 years. The NPS Freshwater Management of 2020 needs to be given effect in all relevant parts of the DP, including the Ecosystems & Biodiversity chapter and Natural Character chapter.

Box 2. Principles of NPS-Freshwater Management and Te Mana o te Wai

The NPS for Freshwater Management (NPS-FM) came into force on 3 Sept 2020,¹⁵ and s4.1 says that every local authority must give effect to this NPS as soon as reasonably practicable.

The NPS for Freshwater Management (s3.1) allows a local authority to adopt more stringent measures than required by that NPS.

The NPS for Freshwater Management contains a number of important principles, such as -

Fundamental concept of Te Mana o te Wai:

The NPS FM (s.1.3(1)) specifies the fundamental concept of *Te Mana o te Wai* which refers to the importance of water, as follows –

‘Te Mana o te Wai is a concept that refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. It protects the mauri of the wai. Te Mana o te Wai is about restoring and preserving the balance between the water, the wider environment, and the community.’

Te Mana o te Wai is relevant to all freshwater management:

s1.3(2) states that *Te Mana o te Wai* is relevant to all freshwater management, not just the specific aspects referred to in the NPS:

‘Te Mana o te Wai is relevant to all freshwater management and not just to the specific aspects of freshwater management referred to in this National Policy Statement’

Managing freshwater under Te Mana o te Wai:

s2.2 Policy 1 states that freshwater is managed in a way that gives effect to *Te Mana o te Wai* -

¹⁴ MfE Guidance on the National Objectives Framework of the NPS-FM (2022), <https://environment.govt.nz/assets/publications/NOF-Guidance-ME1658-Final-28.7.pdf>

¹⁵ NPS for Freshwater Management, <https://environment.govt.nz/assets/Publications/Files/national-policy-statement-for-freshwater-management-2020.pdf>



'Policy 1: Freshwater is managed in a way that gives effect to Te Mana o te Wai.'

Hierarchy of obligations:

s1.3(5) specifies a fixed hierarchy of obligations -

'There is a hierarchy of obligations in Te Mana o te Wai that prioritises:

(a) first, the health and well-being of water bodies and freshwater ecosystems

(b) second, the health needs of people (such as drinking water)

(c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.' (s1.3(5))

Box 3. Effects of sediment on river ecosystems

Sedimentation of rivers due to human activities (such as development) 'is known to have wide-ranging impacts on river ecosystem health, particularly river biota'.¹⁶ Fine sediments have wide-ranging impacts on aquatic biota, both when in suspension and when they are deposited on the river-bed. These impacts have been described comprehensively in a number of reviews, including those by Wood & Armitage (1997), Waters (1995), Newcombe & MacDonald (1991) and Ryan (1991).

Fine sediment deposited in stream environments has the potential to alter water chemistry, increase turbidity and decrease light penetration. The deposition of sediment can easily smother instream surfaces and decrease the amount of suitable habitat available for benthic invertebrates. A common impact on aquatic plants is a reduction in photosynthesis due to reduced light. For some fish species, sediment has negative effects on their feeding.¹⁷

Water quality, water-sensitive and low impact designs

Stormwater and wastewater should be fully managed to avoid sediment/pollutants being carried to waterways and wetlands, especially during high rainfall events which are expected to become more extreme due to climate change. Under s7(i) of the RMA, councils must have particular regard to the effects of climate change.

In general, water sensitive and low impact designs should be a standard requirement, not just encouraged. For example, stormwater and water from wastewater disposal fields can carry pollutants and silt into waterways during high rainfall events. They should not be discharged directly into waterways but be retained in constructed wetlands (vegetated retention ponds) or other water sensitive and low impacts features.

Sewage treatment plants – Infrastructure chapter

The disposal of wastewater from sewage treatment plants into wetlands and water bodies has been a matter of concern to communities for some time. The Council's Infrastructure Committee requested further investigation of disposal-to-land options for several wastewater schemes, and requested a wastewater disposal-to-land workshop in late 2021 to cover methodologies and processes associated with establishing a disposal-to-land scheme.¹⁸

The Infrastructure chapter includes rule I-R17 on construction and upgrading of wastewater systems. However, the rule does not refer to the need to protect water and waterways from pollution due to discharge or disposal of treated wastewater. The PDP should support future transition to disposal-to-land schemes, which is anticipated to start within the life of the PDP. The PDP should include provisions to encourage and progressively require disposal-to-land wastewater treatment methods (based on

¹⁶ Effects of Fine Sediment on River Biota, Cawthron Institute, report 951, sections 1 and 2, <https://icm.landcareresearch.co.nz/knowledgebase/publications/documents/SedimentReview.pdf>

¹⁷ Effects of Fine Sediment on River Biota, Cawthron Institute

¹⁸ FNDC Infrastructure Committee meeting 16 June 2021, Resolution 2021/14, https://infocouncil.fndc.govt.nz/Open/2021/06/INC_20210616_AGN_2405_AT.htm



coagulation and flocculation) and ensure the responsible use of solid waste from treatment plants as fertilizer and the use of wastewater for irrigation purposes.

SUBMISSIONS BY OTHER ORGANISATIONS

We share many of the concerns raised in the submissions by Forest & Bird, Pacific Eco-Logic and Marianna Fenn, and we consider that the PDP should take on board their comments. In cases where the changes we seek differ, we support the changes that will provide the strongest level of protection for the natural environment.

I seek the following decision from the Council:

Provisions relating to vegetation clearance:

Policies and rules relating to vegetation clearance are too permissive and do not provide sufficient protection for even the minimal maintenance of (a) indigenous vegetation and ecosystems, (b) kiwi and indigenous species classed as *threatened* or *at risk* (under the NZ Threat Classification System), (c) freshwater, and (d) other ecological, landscape, character and amenity values.

Provisions relating to ecosystems and indigenous biodiversity:

PDP provisions in all relevant chapters should be revised to address elements such as -

- Policies/rules to *control any actual or potential effects* of the use and development of land, or protection of land, for the purpose of *the maintenance of indigenous biodiversity* (under s31 of RMA) and *protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna* (RMA s6).
- Policies/rules that will give better effect to biodiversity/ecosystem provisions in the Regional Policy Statement (which became operative from May 2016) and ensure that the district plan implements RPS Policy 4.4.1 (as required by RPS Method 4.4.3).
- Adopt provisions specifically for maintaining and protecting indigenous species that are classed as *threatened* or *at risk* in NZTCS lists to be consistent with Regional Plan provisions on this topic (as required under s75 of RMA). Examples of relevant provisions are given in Box 1.
- Adopt rules to control and place consent conditions on subdivision, land use or development in, or adjacent to, locations where indigenous species classed as *threatened* or *at risk* (under the NZTCS) are present.

Additional specific provisions include -

- Rules for banning potential predator pets (dogs, cats, mustelids, etc) from areas where kiwi or other *at risk/threatened* species are present and vulnerable to these predators (e.g. shore birds such as dotterel, wetland birds such as bittern and dabchick, at-risk lizards, and other animals).
- Consent conditions should require fencing on the boundaries of public land, such as esplanade reserve, and around areas of wetlands and waterways.
- Consent conditions for areas of significant vegetation/habitat etc. should set high standards of protection for indigenous vegetation, kiwi, *at risk/threatened* species and biodiversity, including appropriate types of fencing, predator control, protection and restoration of native vegetation, weed control, restrictions on planting exotic vegetation, etc. Covenants should be legally binding in perpetuity and should include provisions for monitoring implementation and enforcement.
- Fencing needs to be appropriate for vulnerable species in the area, for example, fencing that allows free movement of kiwi; or in other cases fencing to stop dogs entering a kiwi area.
- Signage to help protect kiwi and other vulnerable species, such as wetland species, shore birds.
- Street lights for subdivisions/developments should be suitable for nocturnal wildlife, such as kiwi, and dark-sky-friendly (certified to minimise glare, reduce light trespass and protect the visibility of stars).

Provisions relating to freshwater:

\$429.001 to
\$429.003



In areas where freshwater issues are relevant to District Council functions and the DP:

- The NPS Freshwater Management of 2020 needs to be given effect in all relevant parts of the DP, including the Ecosystems & Biodiversity chapter and Natural Character chapter.

When subdivision, land use or development is considered, ensure that the DP gives effect to:

- the NPS FM's fundamental concept of *Te Mana o te Wai* (including the principles and the hierarchy of obligations) should be applied to all freshwater issues that may be affected by development, not just the aspects of freshwater management referred to in the NPS (this point is stated in NPS FM s1.3(2))
- Policies and rules to promote positive effects and avoid, remedy, or mitigate adverse effects (including cumulative effects) of urban development on the health and well-being of water bodies, freshwater ecosystems, and receiving environments (NPS FM s3.5(4))
- Avoiding the loss of wetlands and protecting their values: *'The loss of extent of natural inland wetlands is avoided, their values are protected, and their restoration is promoted...'* (NPS FM s3.22). We note, in particular, that some provisions of the Natural Character chapter seem to contradict the NPS-FM.
- Requirements to use water sensitive and low impact designs for stormwater and wastewater, including constructed wetlands (vegetated retention ponds) to retain stormwater and runoff and prevent silt and pollutants being carried into waterways.
- To avoid/reduce freshwater pollution generated by wastewater emissions, it should be a requirement to use enclosed wastewater systems that use disposal-to-land (i.e. systems that do not rely on dispersal via water or disposal into water) such as electrocoagulation methods involving coagulation and flocculation, widely used in parts of Europe. If not a requirement, these systems should at minimum be given priority over systems that rely on dispersal or disposal via water.
- When subdivision or development takes place, all waterways should be protected by requirements for native planting and other measures.

S429.004 to
S429.011

Submissions by other organisations:

We consider that the PDP should take on board the changes proposed in submissions made by Forest & Bird, Pacific Eco-Logic and Marianna Fenn. In cases where our proposed changes differ, we seek the changes that will provide the strongest protection for the natural environment.

S429.012

Other issues:

Please refer to our detailed comments above for additional changes that we seek in the PDP.

- I **wish** to be heard in support of my submission
 I **do not wish** to be heard in support of my submission
(Please tick relevant box)

If others make a similar submission, I will consider presenting a joint case with them at a hearing

- Yes No

Do you wish to present your submission via Microsoft Teams?

- Yes No

Signature of submitter: Rob Wilson
(or person authorised to sign on behalf of submitter)

Date: 21 October 2022