SECTION 42A REPORT

Officer's written right of reply - 18 August 2024

Hearing 4 – Ecosystems and Indigenous Biodiversity

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1 Introduction

1. My name is Jerome Wyeth and I am the author of the section 42A report for the Ecosystems and Indigenous Biodiversity topic, which was considered at Hearing 4 on the Proposed Far North District Plan (**PDP**) held on 5-8 August 2024.

2. In the interests of succinctness, I do not repeat the information contained in Section 2.1 of the section 42A report and request that the Hearings Panel take this as read.

2 Purpose of Report

3. The purpose of this report is to respond to the evidence and statements of submitters that was pre-circulated and presented at Hearing 4 in relation to the Ecosystems and Indigenous Biodiversity topic. It also provides a response to questions raised by the Panel during Hearing 4 relating to this topic.

3 Consideration of evidence recieved

4. The following submitters provided evidence and/or attended Hearing 4 raising issues relevant to the Ecosystems and Indigenous Biodiversity topic:

    a. Bentzen Farm Limited (S167), Setar Thirty Six Limited (S069), The Shooting Box Limited (187), Matauri Trustee Limited (243), P S Yates Family Trust (333)**,** and Mataka Station Residents Association Incorporated (230)**,** collectively referred to as "**Bentzen Farm Limited and others**".

    b. Bay of Islands Watchdog (S354).

    c. Forest and Bird (S511).

    d. Green Inc Ltd (S164).

    e. Horticulture New Zealand (S159).

    f. J L Hays and Son Ltd (S18).

    g. John Andrew Riddell (S431) and Robert Adams (S150).

    h. KiwiRail Holdings Limited (S416).

    i. Lynley Newport (s192).

    j. Marianna Fenn (S542).

    k. Michael Winch (S67).

    l. New Zealand Agricultural Aviation Association (S182).

m. Northland Federated Farmers (S421).

n. Northland Fish and Game Council (S436).

o. Pacific Eco-Logic (S145).

p. Tane's Tree Trust (S157).

q. Te Aupouri Commercial Development Limited (S339).

r. The "**Teleco Companies**" (Chorus New Zealand Limited, Spark New Zealand Trading Limited, One New Zealand Group Limited, Connexa Limited and FortySouth) (S282).

s. Transpower New Zealand Limited (S454).

t. Top Energy (S483).

u. Vision Kerikeri (S521), Carbon Nuetral Trust (S529), and Kaipiro Conservation Trust (S442), collectively referred to as "**Vision Kerikeri and others**".

v. Waiaua Bay Farms Limited (S463).

5. A number of submitters generally support the recommendations in the Ecosystems and Indigenous Biodiversity Section 42A Report (**the section 42A report**) and raise common issues. As such, I have only addressed evidence where I consider additional comment is required and have grouped issues raised in submitter evidence where appropriate. I have grouped these matters into the following headings:

a. Issue 1 – General issues

b. Issue 2 - Objectives

c. Issue 3 – Policies

d. Issue 4 – Rules

e. Additional Information / Questions raised by the Hearing Panel.

6. In order to distinguish between the recommendations made in the section 42A report and my revised recommendations contained in Appendix 1 of this report:

a. Section 42A Report recommendations are shown in black text (with underline for new text and ~~strikethrough~~ for deleted text); and

b. Revised recommendations from this right of reply \ are shown in red text (with red underline for new text and ~~strikethrough~~ for deleted text)

7. For all other submissions not addressed in this report, I maintain my position set out in my original section 42A Report.

3.1 Issue 1: General issues

Overview

Relevant Document	Relevant Section
Section 42A Report	Various
Evidence and statements provided by submitters	Federated Farmers, Forest and Bird, J L Hays and Son Ltd, John Riddell, HortNZ, KiwiRail, Pacific Eco-lOgic, Te Aupouri, Top Energy, Transpower, Waiaua Bay Farms Limited, Vision Kerikeri and others.

Matters raised in evidence

General support for section 42A report recommendations

8. A number of submitters broadly support the recommendations in the section 42A report and the amended Ecosystems and Indigenous Biodiversity chapter (**the IB Chapter**) in Appendix 1.1. This includes:

    a. Ms Butler of behalf of KiwiRail Holdings Limited (KiwiRail).

    b. Ms Cook Munro on behalf of Northland Federated Farmers (**Federated Farmers**).

    c. Mr Hodgson on behalf of Horticulture New Zealand (**HortNZ**), including the recommendation to delete SCHED-4 (Schedule of Significant Natural Areas) on the basis this serves no purpose at this point of time.

    d. Mr Tuck on behalf of Waiau Bay Farms Limited.

    e. Ms Dalton on behalf Te Aupouri generally supports the section 42A report recommendations on the basis these improve clarity and interpretation of the IB Chapter as a whole. In particular, Ms Dalton supports the recommendation to remove references to Significant Natural Areas (**SNAs**) throughout the IB Chapter given that these areas have not been mapped (although Ms Dalton does request more specific relief as outlined addressed below).

SNA mapping

9. Forest and Bird maintain its position that the most efficient and effective way for Council to fulfil its RMA functions to protect and maintain indigenous

biodiversity is to identify and protect SNAs in the PDP. Forest and Bird acknowledge that there are substantial obstacles to achieving this outcome through the PDP but considers that it is still important for the PDP to retain some policy direction on the work that needs to be done by Council to map SNAs. Forest and Bird consider that this policy direction should include the principles in Clause 3.8(2) and the assessment criteria in Appendix 1 of the NPS-IB for assessing and mapping SNAs. Forest and Bird submit that this would be consistent with the requirement to give effect the NPS-IB "*as soon as reasonably practicable*".

10. Ms Froude on behalf of Pacific Eco-Logic raises a number of concerns with recommendation to exclude reference to SNAs in the PDP, and it appropriate to consider a plan variation given the scope of changes being recommended.

11. J L Hays and Son Ltd raised a number of general concerns at the hearing with SNAs.

Infrastructure

12. Mr Badham behalf of Top Energy supports the recommendation to delete references to SNAs from the IB Chapter given that these areas have not been mapped. However, Mr Badham has some concerns about the recommendation not to include additional objectives and policies specific to infrastructure in IB Chapter. While Mr Badham accepts and agrees that infrastructure objectives and policies should be located in the Infrastructure Chapter in the PDP, he is concerned that it is difficult to understand how these Hearing 4 submission points will be considered until the Infrastructure Chapter is considered (Hearing 12).

13. Mr Badham also notes inconsistencies in how infrastructure is referenced in the overlay chapters given that IB-P5 specifically refers to infrastructure and regionally significant infrastructure. Mr Badham is concerned that this inconsistency could indicate to plan users that there lack of support for infrastructure in other overlay chapters. For that reason, Mr Badham considers that all relevant chapters should consistently recognise the operational and functional needs of infrastructure

14. To address this concern, Mr Badham recommends that:

    a. The Top Energy submission points on infrastructure specific objectives and policies within the Hearing 4 topics are deferred until Hearing 12.

    b. An advice note be added to the IB Chapter to direct plan users to the Infrastructure Chapter.

15. Ms Dines on behalf of Transpower agrees with the general intent outlined in the section 42A report for the Infrastructure Chapter to provide a "*one-stop shop*" policy framework for the National Grid (to be considered in Hearing 12). Ms Dines agrees that this policy framework can clarify the relationship

between the infrastructure specific and overlay provisions throughout the PDP rather than cross-referencing the Infrastructure Chapter throughout the overlay chapters.

16. Ms Dines notes that the effectiveness of this approach will depend upon the specifics of the provisions in the Infrastructure Chapter provisions (including the policy specific to the National Grid). Consequential amendments to the IB Chapter may therefore be sought by Transpower if their primary relief is not supported by reporting officers and the Hearing Panel.

Giving effect to statutory requirements and higher order documents

17. A number of submitters presenting evidence at Hearing 4 consider that the recommended amendments to the IB Chapter represent an improvement but can still be better aligned with key provisions in the RMA and higher order documents. This includes:

    a. **Forest and Bird**: consider that recommended changes to IB-P2 and IB-P3 give effect to the NZCPS and RPS but consider that the further changes would be appropriate to better align with Policy 11 in the NZCPS, Policy 4.4.1(3) in the RPS and the "*effects management hierarchy*" in the NPS-IB.

    b. **Vision Kerikeri and others**: who consider that the provisions can be better aligned with key provisions in the RMA, including the requirements to safeguard the life supporting capacity of ecosystems in IB-P2 and IB-P3 and to strengthen the direction to "*consider*" the relevant matters in IB-P10.

    c. **John Riddell**: who requests a range of amendments to the IB Chapter objectives and policies to give effect to higher order documents.

Controls on pests and clearance for biosecurity purposes

18. Mr Hodgson on behalf of HortNZ agrees that it is not necessary to strengthen the wording of IB-P7 as per the request in the original submission of HortNZ (i.e. "provide for") as the stronger policy focused on regulatory options for pest control is IB-P9. However, Mr Hodgson considers that the recommended definition of "*pest*" does not address the gap in IB-P7 to enable a response to a biosecurity incursion of an unwanted organism. To address this gaps, Mr Hodgson recommends the following amendment to IB-P7: *"Encourage and support active management control of pests plants and pest animals and enable a timely and efficient response to biosecurity incursions of unwanted organisms."*

19. Mr Hodgson also recommends corresponding amendments to clause 4) in IB-R1 to enable indigenous vegetation clearance for the following in addition to pest control: "…*and the removal or burial, of material infected by*

unwanted organisms as a response to directions of a person authorised under the Biosecurity Act 1993".

20. The New Zealand Agricultural Aviation Association (NZAAA) is also concerned that the recommended definition of "*pest*" that refers to the Northland Pest Management Plan is too limiting as not all pests will be identified in this plan (e.g. unwarranted organisms under the Biosecurity Act 1993). NZAAA also does not agree with the recommendation to retain the direction in IB-P7 ("*encourage and support*") rather than the requested amendment to "*provide for*" on the basis that IB-P9 has a stronger regulatory focus. NZAAA therefore reiterates its request for IB-P7 to be amended to "*provide for*" the active management of pest plants and pest animals

Controls on pets

21. At the hearing, contrary statements and evidence were presented about the role of the PDP to control pets (in particular dogs) to protect indigenous fauna (in particular the Brown Kiwi). These submissions primary relate to IB-P9 (which relates to **pets** and **pests**) whereas IB-P7 discussed above only relates to **pests**.

22. Ms Excel on behalf of BOI Watchdogs raised a number of concerns that the PDP and FNDC are unnecessarily banning and controlling dogs across the District in a blanket and inappropriate way.

23. Kerikeri Vision and others presented contrary statements and evidence to demonstrate why controls on dogs are both necessary and appropriate to protect kiwi and other vulnerable indigenous fauna. Helpfully, Kerikeri Vision and others referenced DOC reports on how to protect kiwi from dogs and provided examples of kiwi killed by dogs in Northland to demonstrate why such controls are appropriate.

24. Mr Riddell is concerned that the directive in IB-P9 to prohibit and control pets to protect vulnerable species it too weak, noting his past experience at the Department of Conservation dealing with this issue. Mr Riddell is of the opinion that IB-P9 needs to be directive to be consistent with IB-P2(a)(i) and IB-P3(a)(i) and to give effect to Policy 15 and Clause 3.20(3) of the NPS-IB.

Sustainable management forestry

25. Mr Quinlan on behalf of Tane's Tree Trust presented evidence on the importance of allowing for sustainable harvesting of indigenous timber in accordance with the Forest Act 1946. Mr Quinlan is supportive of clause 12) in IB-R1 which provides for this clearance as a permitted activity. However, Mr Quinlan questions whether it is appropriate and necessary to add this permitted activity to other Hearing 4 chapters that manage indigenous vegetation clearance (Coastal Environment, Natural Features and Landscapes, Natural Character).

26. A number of questions were also raised during Hearing Panel as to how this indigenous timber harvesting is provided for under the NPS-IB and National Environmental Standards for Commercial Forestry 2017 (**NES-CF**).

Clearance being for "the minimum necessary"

27. Submitters express contrary views on the recommended reference to "*the minimum necessary*" in IB-R1. More specifically:

    a. Pam Butler on behalf of KiwiRail agrees this recommendation to reduce the risk of landowners undertaking excessive clearance.

    b. Mr Riddell agrees with the assessment in the section 42A report to include these words in IB-R1.

    c. Marianna Fern supports this amendment to IB-R1.

    d. Lynley Newport indicated some support for this concept in response to questions from the Hearing Panel.

28. Conversely, both Ms Dalton on behalf of Te Aupouri and Mr Badham on behalf of Top Energy oppose the inclusion of "*the minimum necessary*" in IB-R1. Concerns raised by Ms Dalton and Mr Badham include:

    a. The term is ambiguous and involves a level of discretion, whereas the permitted activity rules should be clear and measurable.

    b. This term is unworkable in a permitted activity standard and potentially *ultra vires*.

    c. The term presents significant risk in terms of interpretation, litigation and enforcement.

29. On this basis, both Ms Dalton and Mr Badham recommend that the words "*the minimum necessary*" are deleted from IB-R1.

Analysis

SNA mapping

30. I agree with Forest and Bird that the most effective and efficient way to protect SNAs is to map these areas using best practice criteria and principles as outlined in the section 42A report. However, I remain of the view that it is more appropriate, efficient and effective to undertake district-wide SNA mapping as part of a future plan change process to give effect to the NPS-IB. The reasons for this are set out in some detail under Key Issue 1 in the section 42A report.

Infrastructure

31. There is broad agreement that the Infrastructure Chapter should contain all provisions specific to infrastructure and provide somewhat of a "one-stop-shop". However, as noted in paragraph 90 of the section 42A report, in my view this is not an absolute rule, and infrastructure provisions can be included in other PDP chapters where this is considered necessary/appropriate for the particular topic. This includes IB-P5 in the IB Chapter which I recommend is retained (discussed further under Key Issue 3 below). The indigenous clearance rules in the IB Chapter also apply to any clearance associated with infrastructure activities.

32. During the hearing, the Panel recognised the important relationship between the Infrastructure Chapter and other PDP chapters (including the Natural Environmental Values chapters) and has directed further engagement and potential caucusing between Council and infrastructure providers ahead of Hearing 12 (Energy, Infrastructure and Transport). This will consider the above issues, the specific provisions within the Infrastructure Chapter, and may result in consequential amendments being recommended to other PDP chapters. On this basis, I do not recommend any advice notes within the IB Chapter directing plan users to the Infrastructure Chapter at this point in time.

<u>Giving effect to higher order documents</u>

33. I maintain my position set out in paragraph 155 to 164 of the section 42A report that the recommended amendments to IB-P2, IB-P3 and IB-P4 appropriately give effect to higher order direction in the RMA, NZCPS, NPS-IB and RPS. I also note that these recommended amendments are supported by a number of submitters that provided evidence and hearing statements on Hearing 4.

34. I do not consider that it is necessary to replicate all the adverse effects in Policy 11(a) and 11(b) in IB-P3 which Forest and Bird have suggested would be appropriate changes to make. IB-P2 gives effect to Policy 4.4.1 of the RPS which already gives effect to Policy 11 of the NZCPS. My understanding is that the reference to "areas of significant indigenous vegetation and significant habitat of indigenous fauna" in IB-P2(a) will also generally capture the species and ecosystems referred to in Policy 11(a) of the NZCPS.

35. IB-P3(b) mirrors Policy 4.1.1(3) in the RPS with the exception of the reference to avoiding adverse effects on "*habitats of indigenous species that are important for recreational, commercial, traditional or cultural purposes*". As discussed in paragraph 159 of the section 42A report, I recommend that the reference to "important" indigenous biodiversity is removed based on concerns that this is subjective and uncertain and is likely to problematic to assess through consenting processes. I have recommended that reference to the "*effects management hierarchy*" is referred to in the IB-P4 (which gives effect to Clause 3.16 of the NPS-IB) but consider that IB-P2 and IB-P3 should continue to focus on giving effect to the RPS (and NZCPS) until a future plan change process to give effect to the NPS-IB in full. The reasons

for this distinction are set out under Key Issue 1 and Key Issue 8 in the section 42A report.

36. I acknowledge the concerns raised by Vision Kerikeri and others that the policies in the IB Chapter to not specifically replicate provisions in the RMA relating to indigenous biodiversity (e.g. safeguarding the life-supporting capacity of ecosystems). However, this reflects the hierarchy of planning instruments under the RMA where the PDP gives effect to the RPS and NZCPS which have already given effect to the purpose and principles of the RMA in Part 2[1]. The use of words such as avoiding adverse effects on "...*ecosystems that are particularly vulnerable to modification…*" is deliberate and gives effect to the wording in Policy 11(b)(iii) of the NZCPS and Policy 4.4.1(2)(c) and 4.4.1(3)(c) of the RPS.

37. I address the more specific requested amendments to the IB Chapter policies from John Riddell below.

Controls on pests and clearance for biosecurity purposes

38. Firstly, I retain my view that "*encourage and support*" is the appropriate level of direction in IB-P7 (rather than "*provide for*") noting that this wording is supported in the evidence of Mr Hodgson on behalf of HortNZ.

39. I acknowledge the concerns from HortNZ and NZAAA that the recommended amendments to IB-P7, combined with the recommended definition of "pests", may be too limiting. More specifically, I understand from these submitters that earthworks and indigenous vegetation clearance may also be required to address biosecurity risks from unwanted organisms[2] that are not identified in the Northland Pest Management Plan. I understand from the evidence of Mr Hodgson (paragraphs 19 to 32) that the best method to deal with biosecurity risks from unwanted organisms will be determined by a suitably qualified person and will depend on the circumstances, and may involve clearance, burning or burial. I also understand from the evidence of Mr Hodgson that, in these situations, there may not be time to wait for a resource consent application for earthworks or vegetation clearance which could create compliance issues between obligations under the RMA and the Biosecurity Act 1993.

[1] This hierarchy of planning instruments was reinforced by the Supreme Court in *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited & Ors* [2014] NZSC.

[2] Unwanted organism is defined in the Biosecurity Act 1993 as "***unwanted organism*** *means any organism that a chief technical officer believes is capable or potentially capable of causing unwanted harm to any natural and physical resources or human health; and* ***(a)*** *includes— **(i)** any new organism, if the Authority has declined approval to import that organism; and **(ii)** any organism specified in Schedule 2 of the Hazardous Substances and New Organisms Act 1996; but **(b)** does not include any organism approved for importation under the Hazardous Substances and New Organisms Act 1996, unless….".*

40. For these reasons, I support the recommended amendments from Mr Hodgson to amend IB-P7 and recommend that the following words are added to the policy "…*and enable a timely and efficient response to biosecurity incursions of unwanted organisms."* I also recommend clause 4) in IB-R1 is amended to as follows *"clearance for the control of pests when necessary for biosecurity reasons and to control unwanted organisms as a response to directions of a person authorised under the Biosecurity Act 1993*." I consider that this will address the relief sought by HortNZ and NZAAA. It also makes it clear that any indigenous clearance undertaken to control unwanted organisms must be a response to the directions of an authorised person under the Biosecurity Act 1993.

Controls on pets

41. In my opinion, the material provided by Vision Kerikeri and others at the hearing helpfully further confirmed that dogs and cats pose a risk to indigenous fauna (including Brown Kiwi) with specific examples to illustrate this a particular issue in Far North District. This further supports my view that it is appropriate to place restrictions on dogs in some circumstances when new development is proposed near known habitats of Threatened and At-Risk indigenous fauna.

42. I acknowledge that concerns from Ms Excel that the Dog Control Act 1996 is the primary legislation to control dogs. However, the controls under this legislation seem reactive and are generally used to address known dog behaviour problems based on my understanding. This may well be too late when such dogs come into contract with vulnerable indigenous fauna. It is also my understanding that many resource consent applicants, including larger subdivision developments, propose or are willing to accept consent conditions restriction pet ownership when they are proposing development near known habitats of Threatened and At-Risk indigenous fauna. Applicants also have the ability to challenge or object to such consent conditions when these are not agreed.

43. For these reasons, I retain my position that it is appropriate to retain IB-P9 with the recommended amendments set out in the section 42A report. These amendments to IB-P9 are intended to clarify that restrictions on pet ownership through consent conditions should only be imposed when necessary to avoid risks Threatened and At-Risk indigenous fauna. This will help ensure such conditions are imposed in appropriate circumstances – not a blanket ban on dogs with no ability to challenge this as suggested by BOI Watchdogs at the hearing.

Sustainable management forestry

44. Clause 12) in IB-R1 provides for harvesting of timber approved under the Forest Act 1949 as a permitted activity. My understanding is that the approvals under the Forest Act 1949 include registered sustainable forest management plan, a registered sustainable forest management permit or a

personal use approval from the Ministry for Primary Industries. This is broadly aligned with Clause 3.10(6)(e) in the NPS-IB which states that the protections for SNAs in the NPS-IB do not apply to "*the harvest of indigenous tree species from an SNA that is carried out in accordance with a forest management plan or permit under Part 3A of the Forests Act 1949*".

45. Clause 12) in IB-R1 is supported by Mr Quinlan on behalf of Tane's Tree Trust. The outstanding issue to consider is whether it is appropriate and necessary to add this as permitted activity to other Hearing 4 chapters that manage indigenous vegetation clearance (Coastal Environment, Natural Features and Landscapes, Natural Character). I have sought advice on this issue from Ministry for Primary Industries[3] who have advised that:

    a. Harvesting is minimal in Northland as for the plans/permits in that region the approved harvesting method for those types of forest are single tree/small group harvesting which is low impact. The allowable volumes for harvest are also quite small.

    b. The Ministry for Primary Industries are required to look at a range of forestry/ecological matters when approving a sustainable forest management plan or permit, and must consult with the Department of Conservation which may involve specific protections for flora and fauna.

46. On this basis, I consider that it is appropriate to include a similar permitted activity condition to Clause 12) in IB-R1 in the corresponding vegetation clearance rule in the Coastal Environment chapter (CE-R3) permitting this type of harvesting within the Coastal Environment outside Outstanding Natural Character and High Natural Character areas. The reporting officer for the Natural Features and Landscapes is also a similar amendment to NFL-R3 to allow this type of harvesting.

47. In terms of the question from the Panel as to how sustainable indigenous forestry is managed under the NES-CF, I note that:

    a. The NES-CF does not apply to permanent indigenous forestry as the definition of "*exotic continuous-cover forest*" is specific to exotic forests which is any forest with more than 50% exotic forest species.

    b. Low-intensity harvesting[4] of indigenous forestry is potentially captured by the plantation forestry regulations in the NES-PF. This will depend on whether the forest has been "*…deliberately established for commercial purposes…*" to meet the NES-CF definition of plantation forestry. However, as the sustainable management provisions of Forest Act 1949 only applies to existing

[3] Email from Alastair Kernahan, Manager, Indigenous Forestry, Te Uru Rākau – New Zealand Forest Service, dated August 14 2024.

[4] Defined in the NES-CF as "***low-intensity harvesting*** *means harvesting where a minimum of 75% canopy cover is maintained at all times for any given hectare of forest land*".

native or regenerating native forests, my understanding is that the low intensity harvesting referred to in clause 12) in IB-R1 is not regulated under the NES-CF as plantation forestry.

Clearance being for "the minimum necessary"

48. I understand that the concerns from Mr Badham and Ms Dalton that the requirements to limit indigenous vegetation clearance for the purposes in IB-R1 involves a level of discretion, whereas the permitted activity rules should be clear and measurable. However, on balance, I consider that this requirement should be retained as it sends a clear message to landowners that any indigenous clearance permitted under IB-R1 needs to be limited to what is necessary and this is not a "free pass" to undertake clearance without restriction.

49. I also consider that it serves as a useful backstop to assist with compliance and enforcement when IB-R1 is clearly being breached. In this respect, I consider that some of the concerns expressed about high levels of litigation and enforcement issues are overstated. My expectation is that Council will only monitoring and enforce "*the minimum necessary*" requirement when there are some clear compliance issues, rather than undertake detailed assessments for minor non-compliance.

Recommendation

50. I recommend an amendment to IB-P7 and clause 4) IB-R1 to also capture the control of unwanted organisms for biosecurity reasons in addition to the control of "*pests*". The recommended amendments are shown above and in Appendix 1.

Section 32AA Evaluation

51. The recommended amendments to IB-P7 and clause 4) IB-R1 are in response to the section 42A report recommended definition of "pests", which unintentionally did not capture "unwanted organisms" that also need to be controlled when directed under the Biosecurity Act 1993. These amendments will better capture the policy intent and improve the alignment with the Biosecurity Act 1993. I therefore consider that the amendments are appropriate, efficient and effective to achieve the relevant objectives in accordance with section 32AA of the RMA.

3.2 Issue 2 - Objectives

Overview

Relevant Document	Relevant Section
Section 42A Report	Key Issue 5, paragraph 106 to 128
Evidence and statements from submitters	Federated Farmers, Green Inc Ltd, John Riddell

Matters raised in evidence

52. Ms Cook Munro on behalf of Federated Farmers supports the section 42A report recommendations in relation to IB-O1 to IB-O4.

53. John Riddell is of the opinion that it would be more accurate to widen the identified purpose of IB-O1 to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna to more than just anthropic reasons (i.e., for more than just "*current and future generations*"). Mr Riddell suggests that this can be achieved by referring to *…and intrinsic and natural values'* in IB-O1.

54. Mr Craig on behalf of Green Inc Ltd supports the intent of IB-O5 to restore indigenous biodiversity. However, at the hearing, Mr Craig expressed concerns that policies and rules in the IB chapter actually act as a disincentive to achieve this outcome.

Analysis

55. I understand the rationale for the requested amendment to IB-O1 from John Riddell, but I do not consider that it is necessary to amend the objective to refer to "*intrinsic and natural*". In my view, the reference to "*current and future generations*" does not mean that areas of significant indigenous vegetation and significant habitats of indigenous fauna are only protected for anthropic reasons. For example, I note that the supporting policy direction in IB-P10 refers to a range of ecological values, such as ecological function and ecosystems services.

56. I understand the concerns from Mr Craig on behalf of Green Inc Ltd that the IB Chapter does not provide sufficient incentives for the restoration of indigenous biodiversity and that rules that protect areas with significant biodiversity values may actually disincentivise this. I understand that the principal concern of Green Inc Ltd relates to the work being carried out through the Tupou Restoration Project which is a large-scale restoration project north of Taupo Bay. More specifically, Mr Craig raises concern that this restoration work may result in the land being identified as an area of significant indigenous vegetation and significant habitats of indigenous fauna and then protected as such.

57. I understand that the primary relief sought by Green Inc is "*Managed Indigenous Vegetation*" Special Purpose Zone or an alternative spatial layer that would enable the range of restoration activities and ecotourism activities envisaged by Green Inc Ltd for Tupou. This primary relief is being considered further as part of the rezoning topic. I also understand that Council intends to undertake further engagement with Green Inc ahead of the rezoning hearings on options for achieving this relief. This could potentially involve a more specifically and enabling rule framework for restoration activities within the IB Chapter without the need for an additional special purpose zone.

58. I also note that the IB Chapter does include some policy direction to encourage and support the restoration of indigenous biodiversity through IB-P6, IB-P7 and new IB-PX (with my recommended amendments below), including through non-regulatory methods such as working directly with landowners on ecological projects.

Recommendation

59. I do not recommend any further amendments to the objectives in the IB Chapter.

Section 32AA Evaluation

60. I do not recommend any further amendments to the objectives in the IB Chapter therefore no further evaluation is required under section 32AA of the RMA.

3.3 Issue 3 – Policies

Overview

Relevant Document	Relevant Section
Section 42A Report	Key Issue 7 – 11, paragraph 136 - 242
Evidence and statements provided by submitters	Bentzen Farm Limited and others, Federated Farmers, Forest and Bird, HortNZ, John Riddell, KiwiRail, Lynley Newport, Te Aupouri, Telco Companies,

Matters raised in evidence

Evidence and statements in support

61. The majority of submitters that presented evidence and/or attended Hearing 4 support the recommended amendments to the IB Chapter policies. This includes:

    a. Ms Dalton on behalf of Te Aupouri who supports the recommended deletion of notified IB-P1 and replacing it with a new policy that

recognises tangata whenua as kaitiaki and provides for the practice of kaitiakitanga in accordance with tikanga Māori.

b. Ms Butler on behalf of KiwiRail who supports the recommended amendments to IB-P4 to include policy direction relating to the "*effects management hierarchy*" and the recommended amendments to IB-P5.

c. Mr Horne on behalf of the Teleco Companies who supports the recommended amendments to IB-P5. Mr Horne considers that it is appropriate to retain the direction to recognise the functional and operational needs of regionally significant infrastructure.

d. Ms Cook Munro on behalf of Federated Farmers who supports the recommended amendments to IB-P5 and considers that this appropriately provides for existing primary production activities to continue without unreasonable restrictions.

e. Mr Hodgson on behalf of HortNZ who supports the section 42A report recommendation to clause a) in IB-P5 on the basis this improves the drafting, responds to the HortNZ submission point, and aligns with the NPS-HPL.

f. Mr Hodgson on behalf of HortNZ supports the recommended amendments to IB-P9 as this respond to HortNZ's requested relief. Mr Hodgson also considers that the amendments make it clear that consent conditions are the means to impose restrictions on pets and pests as per the scope of the PDP and FNDC controls.

g. Mr Riddell considers that the recommended amendments to policies IB-P1, IB-P2 and IB-P3 better reflect the policy directives in Policy 4.4.1 of the RPS.

IB-P1

62. Mr Riddell partially accepts the recommended amendment to IB-P1 to remove the reference to "*significant natural areas*" and replace it with "*areas of significant indigenous vegetation and significant habitats of indigenous fauna*". However, Mr Riddell considers that there still needs to be a consistent, agreed set of criteria for identifying "*significance*". To address this, Mr Riddell requests that part of the notified IB-P1 is retained.

IB-P4

63. Forest and Bird raise concerns that the recommended amendments to IB-P4 do not fully give effect to Clause 3.16 of the NPS-IB. This is because IB-P4 is limited to "*significant adverse effects*" whereas Clause 3.16(2) also requires "*all other adverse effects*" outside SNAs to be managed to give effect to the NPS-IB objective and policies. Forest and Bird submit that the

PDP is lacking policy direction to ensure indigenous biodiversity is maintained more generally.

64. Lynley Newport identifies inconsistencies between the section 42A report recommended amendments to IB-P4 and the amendments shown in Appendix 1.1. Lynley Newport considers that the drafting of IB-P4 in the main body of the section 42A report is preferable as this provides greater clarity on when the IB-P4 applies.

65. Mr Riddell outlines a remaining concern about IB-P4 only applying to "*significant"* adverse effects. Mr Riddel notes that Policy 3.10(3) of the NPS-IB does not limit the use of the effects management hierarchy to when there are significant adverse effects. As such, Mr Riddell supports the recommended amendments IB-P2, IB-P3 and IB-P5, subject to the word "*significant*" being deleted from IB-P4.

IB-P5

66. Forest and Bird submit that IB-P5 is problematic for a range of reasons, including creating tension with earlier policies, being too enabling and/or being better addressed in the Infrastructure Chapter. For example, Forest and Bird notes that there may well be circumstances when the upgrading of infrastructure may conflict with the relevant "*avoid*" policies.

New Policy IB: PX

67. Mr Hall on behalf of Bentzen Farm Limited and others supports the intent of the recommended new policy "Policy IB-PX" to enable subdivision where this results in legal protection of areas of significant indigenous biodiversity in accordance with SUB-R6. However, Mr Hall considers that the recommended policy direction is too narrow, and this should relate to restoration more generally (including areas which are currently degraded). Mr Hall also notes that there are other subdivision rules in the PDP (e.g. management plan subdivision under SUB-R7) which relate to the restoration of indigenous biodiversity more generally. To provide for this relief, Mr Hall recommends a replacement policy 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.*

IB-P10

68. Mr Riddell has reviewed the matters listed in the ODP Policies 12.2.4.1, 12.2.4.1, and 12.2.4.5 against the matters listed in IB-P10. Mr Riddell supports IB-P10(q) as it appropriately addresses the matters in 12.2.4.5 but considers that a range of matters in Policy 12.2.4.1 and 12.2.4.3 in the ODP are appropriate to add to IB-P10.

Analysis

69. The majority of submitters support the recommended amendments to the polices in the IB Chapter, and I have considered more specific requests from submitters to amend IB-P2 and IB-P3 above.

IB-R1

70. I agree with Mr Riddell that it is important to have an agreed set of criteria to assess the "*significance*" of indigenous biodiversity. I consider that this is already achieved through the recommended definition of "*areas of significant indigenous vegetation and significant habitats of indigenous fauna"* outlined in paragraph 68 and the table below paragraph 376 in the section 42A report which refers to the significance criteria in Appendix 5 in the RPS.

IB-R4

71. Firstly, I acknowledge the inconsistencies in the drafting of IB-P4 in the section 42A report and agree with Lynley Newport on reflection that the more specific drafting in paragraph 163 of the section 42A report is preferable. This makes it clear that IB-P4 applies to "*.adverse effects on indigenous biodiversity that are not otherwise avoided, remedied, mitigated, offset or compensated under IB-P2 and IB-P3…".*

72. Secondly, I acknowledge that there are two parts of Clause 3.16 in the NPS-IB that must be given effect to and there is a lack of policy direction to maintain indigenous biodiversity more generally, consistent with IB-O2 and Council's functions under section 31(1)(b)(iii) of the RMA. I therefore recommend that IB-P4 is amended as follows to give effect to both parts of Clause 3.16 in the NPS-IB (showing marked up amendments from Appendix 1.1 of the section 42A report):

> *Where adverse effects are not otherwise avoided, remedied, mitigated, offset or compensated under IB-P2 and IB-P3 ~~do not apply~~, maintain indigenous biodiversity by:*
> *a) ~~significant adverse effects on indigenous biodiversity must be managed by~~ applying the effects management hierarchy to any significant adverse effects; and*
> *b) managing any other adverse effects on indigenous biodiversity in a way that maintain indigenous biodiversity across the district.*

IB-P5

73. While I acknowledge the concerns with IB-R5 by Forest and Bird, I recommend it is retained as:

a. The policy is broadly supported by submitters.

b. In my opinion, it is broadly aligned with the overarching objective in NPS-IB which is to maintain indigenous biodiversity is a way that

(among other things) provides for "*the social, economic and cultural well-being of people and communities now and into the future*". IB-P5(d) is also broadly consistent with the direction in the NPS-IB relating to specified Māori land and providing for the well-being of tangata whenua (Policy 2, Clause 3.3, Clause 3.18).

c. It gives effect to Method 4.4.3(3) in the RPS for district plans to implement Policy 4.4.1 in a way that:

   i. Allows for the maintenance and use of existing structures, including infrastructure.

   ii. Does not unreasonably restrict the use of production land, including forestry.

d. The inclusion of specific direction relating to infrastructure is not solely limited to the Infrastructure Chapter as discussed under Issue 1 above.

74. Further, I do not envisage that IB-P5 will directly conflict with the "avoid" direction in IB-P2 and IB-P3 in a way that cannot be reconciled. These policies will need to be read together as relevant and reconciled as necessary based on the directiveness of the policies and the particular circumstances of the proposed activity[5].

IB-PX – new policy

75. I agree on reflection that the recommended new policy IB-PX in the section 42A report is too limiting in its reference to SUB-R6 (Environment Benefit Subdivision) as this subdivision rule only relates to the protection of existing areas of significant indigenous biodiversity. In my view, it is also important to provide incentives to undertake restoration and enhancement of indigenous biodiversity which may not currently qualify as an area of significant indigenous biodiversity under Appendix 5 of the RPS.

76. I acknowledge that SUB-R7 (Management Plan Subdivision) in the Subdivision Chapter provides a pathway for an integrated subdivision with additional development potential when this will result in positive environment outcomes. The subdivision management plan criteria in Appendix 3 of the PDP include requirements to identify existing "*areas of indigenous vegetation and habitats of indigenous fauna*" and proposed management measures include "*measures to protect, manage and enhance indigenous vegetation and habitats".* My understanding therefore is that SUB-P6 provides a pathway to enable subdivision when this will result in the restoration and protection of indigenous biodiversity.

[5] Recent case law provides clear guidance on how to undertake this structural analysis when required in planning and consenting decisions (i.e. *Port Otago Limited v Environmental Defence Society Incorporated* [2023] NZSC).

77. I therefore recommend that new policy IB-PX is amended to incorporate the relief sought by Benzten Farm and others. However, I consider that it is important to retain the links to the above rules in the Subdivision Chapter and the legal protection of indigenous biodiversity to ensure the policy is not applied too widely. In this respect, I consider that the policy direction should recognise both the incentive opportunities through these subdivision rules and incentives for other restoration and enhancement activities that where these achieve long-term benefits for indigenous biodiversity. I also consider that the policy direction needs to provide more flexibility/discretion as to when it is appropriate to enable subdivision and land use rather than imply it should apply whenever some form of indigenous biodiversity protection or restoration is proposed.

78. Accordingly, I recommend that the new policy IB-PX is amended as follows:

> *Enable s~~S~~ubdivision and associated land use is ~~where this:~~*
>
> *a) enabled where this results in the restoration, enhancement and legal protection ~~and/or restoration of areas of significant~~ of indigenous biodiversity vegetation ~~or significant habitat of indigenous fauna~~ in accordance with SUB-R6 or SUB-R7; or*
>
> *b) considered where this will achieve positive, secure and long-term benefits for indigenous biodiversity through active and ongoing restoration and enhancement activities.*

79. I note that the wording of this policy may need to be considered further as a result of any recommended amendments to SUB-R6 or SUB-R7 through the hearing on the Subdivision Chapter. I also discuss this policy under the "*Additional questions from the Hearing Panel*" section below.

IB-P10

80. While I acknowledge that there are policies in the ODP that may not be fully addressed in IB-P10, I am still of the view that IB-P10 provides a comprehensive list of matters to consider when resource consent is required under the indigenous vegetation clearance rules in the IB Chapter. Adding more matters to consider to an already comprehensive list is only like to add complexity and confusion in my view, rather than assist with the effective consideration and management of effects on indigenous biodiversity through resource consent processes. I therefore do not recommend any further amendments to IB-P10 in response to the evidence from Mr Riddell.

Recommendation

81. I recommend that IB-P4 and new policy IB-PX relating to incentives for protection and restoration of indigenous biodiversity are amended as set out above and Appendix 1.

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82. My recommended amendments to IB-P4 and new policy IB-PX are primarily to clarify the intent of the policies, better align with Council's RMA functions and higher order direction in the NPS-IB and provide a better link to other relevant provisions in the PDP. On that basis, I consider that the recommended amendments to these provisions are an appropriate, effective and efficient way to give effect to the relevant objectives in accordance with section 32AA of the RMA.

3.4 Issue 4 - Rules

Overview

Relevant Document	Relevant Section
Section 42A Report	Key Issues 12 – 17, paragraph 243 - 346
Evidence and hearing statements from submitters	Federated Farmers, Forest and Bird, HortNZ, John Riddell, KiwiRail, Marianna Fern, Micheal Winche, Lynley Newport, Te Aupouri, Top Energy

Matters raised in evidence

IB-R1

83. A number of submitters support the recommended amendments to IB-R1 in the section 42A report. This includes:

    a. Pam Butler on behalf of KiwiRail agrees with the proposed amendments to IB-R1 on the basis are consistent with the intent of the rule, and that new clause 13) will have efficiency benefits.

    b. Ms Cook Munro on behalf of Federated Farmers supports the recommended amendments to IB-R1 as these have retained the intent of the rule while providing additional clarity.

    c. Mr Badham on behalf of Top Energy supports clauses 13) and 14) of IB-R1 as these relate to infrastructure.

84. Forest and Bird raise a range of concerns with IB-R1 noting that the specified permitted activities must be appropriate both within and outside SNAs (as it applies to all indigenous vegetation clearance). Forest and Bird note that the reference to "the minimum necessary" does not address their concerns that IB-R1 is overly permissive and therefore maintains the position set out in its original submission. The submission from Forest and Bird also:

    a. Reiterates concerns that clause 6) and 9) in IB-R1 are overly permissive.

b. States that clear, numeric thresholds are more appropriate and enforceable and are less likely to result in debates between landowners and Council.

c. Raises concerns that new clause 13) in IB-R13 is inconsistent with IB-P2, IB-P3 and IB-R5 (and higher order documents) which require certain adverse effects to be avoided and envisage a more appropriate balance rather than enabling clearance associated with upgrading existing infrastructure without restriction.

85. Marianna Fern expressed similar concerns at the hearing with IB-R1 being too permissive, including:

a. The benefits of leaving dead trees in situ as a habitat from some indigenous fauna (which clause 2) enables the removal of.

b. That it is not onerous to get a resource consent when clearance is required for a new dwelling under clause 7).

c. That clearance of 3.5m either side of a new fence is too excessive.

86. Mr Riddell reiterates his initial concerns with IB-R1(6) applying to all buildings. Mr Riddell agrees that the PDP needs to address wildfire buffer around all buildings but considers that clause 6) should apply only to *existing lawfully established* buildings consistent with the provisions in the Natural Hazards chapter (NH-R5 and NH-R6) which should work in tandem with IB-R1.

87. Ms Froude on behalf of Pacific Eco-Logic is also concern that IB-R1(6) is too permissive and will enable an excessive amount of indigenous vegetation clearance to be undertaken as a permitted activity. Ms Froude considers this should be reduced to 5m with a requirement to plant and maintain non-flammable native vegetation in this space.

88. Mr Riddell disagrees that the 1,000m^2 permitted activity clearance for a single residential unit in clause 7) of IB-R1 broadly aligns with the NPS-IB. Mr Riddel notes that, in providing for a single residential unit on an existing lot, Clause 3.11(2) in the NPS-IB includes qualifications to that construction (e.g. there being no practicable alternative location) which, in his opinion, precludes district plans from providing for it as a permitted activity. As such, Mr Riddell considers it is necessary to qualify provision clause 7) in IB-R1 to ensure that the NPS-IB is given effect to. Mr Riddell suggests an amendment to clause 7) to state *"and there is no clearance of areas of significant indigenous vegetation or significant habitats of indigenous fauna."*.

89. Conversely, Lynley Newport raises concerns that the 1,000m^2 threshold is too limiting when considering the clearance that is often required for access in more remote rural sites. Lynley Newport considers that this should be increased as requested in her original submission. Lynley Newport also raises questions about how these thresholds interface with Fire and

Emergency New Zealand (FENZ) requirements and whether clearance directed by FENZ should be permitted under IB-R1.

90. The hearing statement of M J Winche reiterates his concerns that clause 7) in IB-R1 would enable indigenous vegetation to be cleared for a dwelling on a site, even if there is already a more suitable area without existing indigenous vegetation. To address this, Mr Winch seeks that clause 7) of PER-1 is deleted and replaced with controlled and discretionary rules that apply "*where there is no existing cleared land suitable for the purpose…".*

91. Ms Davis on behalf of Fish and Game considers that clearance associated with maimai need to be permitted under IB-R1 as IB-R4 only applies outside SNAs whereas wetlands almost always meet the criteria to be a SNA.

IB-R2

92. Ms Dalton on behalf of Te Aupouri considers that my amendments more appropriately give effect to section 6(e) while still giving effect to section 6(c) of the RMA, and more appropriately align with the direction in Clause 3.18 of the NPS-IB relating to "*specified Māori land*". Ms Dalton supports the approach to allowing for clearance for additional residential units and removing the references to SNAs from the rule title. Further, Ms Dalton recommends an amendment to delete the reference to "*complex*" as the definition of "*marae*" refers to a "*complex of buildings*".

IB-R3[6]

93. Ms Dalton on behalf of Te Aupouri supports the recommended deletion of IB-R3 for the reasons set out in the section 42A report.

IB-R4[7]

94. Forest and Bird consider that the proposed thresholds in IB-R4 are too permissive, noting that these thresholds also apply to areas that would qualify as a SNA. Forest and Bird note that the Auckland Unitary Plan, for example, does not permit clearance in SNAs unless this is for a specified purpose. Forest and Bird also raise concern that the definition of remnant forests is unclear, too limiting and a weak proxy for SNAs, as there are many areas that may have been clear-felled is the past that would meet the criteria in Appendix 5 of the RPS as an area of significant indigenous biodiversity. Forest and Bird also note that the PDP indigenous vegetation clearance thresholds are very permissive compared to other district plans.

95. Accordingly, Forest and Bird submit that Council needs to adopt a more nuanced approach to meet its statutory obligations to protect indigenous biodiversity and give effect to IB-P3 and IB-P4. This includes a suggestion

[6] The rule number notified in the PDP (section 42A report recommends the rule is deleted).
[7] The rule number notified in the PDP (rule numbering is IB-R3 is Appendix 1.1 of the section 42A report).

that there should be no permitted clearance of indigenous vegetation within remnant forests unless for a specified purpose and use of ecological assessments to ensure the thresholds are set an appropriate level.

96. Marianna Fern raises similar concerns that IB-R4 is too permissive and considers that the 500m^2 threshold should apply over a 5-year period, noting the importance this rule as an interim measure.

97. Ms Froude on behalf of Pacific Eco-Logic considers that the thresholds in IB-R4 are confusing and recommends that these are limited to 100m^2 per year per site.

98. Ms Dalton on behalf of Te Aupouri supports the recommendation to delete notified clauses IB-R1-PER-1(1) and (2) based on the reasons the section 42A report. Ms Dalton's opinion is that the notified approach to require all landowners to effectively obtain an expert ecological assessment to determine whether a rule applies or not is ineffective, inefficient and inappropriate for a permitted activity rule.

99. However, Ms Dalton disagrees with the recommendation to reduce the indigenous vegetation clearance thresholds in the absence of SNA mapping and ecological advice to support the thresholds. Ms Dalton considers that a 5,000m^2 threshold is more appropriate in the Māori Purpose Zone and Treaty Settlement Overlay and that this will better give effect to Clause 3.18 of the NPS-IB.

100. Lynley Newport is also concerns that the 500m^2 threshold is too limiting, particularly for larger areas of indigenous vegetation and sites that may have a high portion of indigenous vegetation cover. While acknowledging it is difficult to identify an appropriate threshold that strikes the right balance, Lynley Newport considers that 1,000m^2 may be more appropriate in the productive rural zones. Lynley Newport also considers that there should be a separate threshold for the Rural Lifestyle Zone as this zone sites somewhere between the rural zones referred to in clause i) and the "*other zones*" referred to in clause ii).

Analysis

101. Firstly, I note that the indigenous vegetation rules in the IB Chapter are important to give effect to higher order documents and implement the policies in the IB-Chapter. For example, Method 4.3.3(2) in the RPS makes it clear that controls on indigenous vegetation clearance are required to implement Policy 4.4.1 while also providing for those activities specified in Method 4.3.3(3).

102. As outlined above, several submitters expressed support for the recommended amendments to the indigenous vegetation rules in the IB Chapter (particularly removing references to SNAs). However, there are some outstanding concerns that the exemptions and thresholds in IB-R1 and IB-R4 are too permissive or too restrictive.

IB-R1

103. I agree with Forest and Bird that clear numeric thresholds for indigenous vegetation clearance thresholds are more certain, effective and enforceable. However, there is limited scope or supporting evidence from submitters to assign numeric thresholds for indigenous vegetation clearance to the range of activities listed under IB-R1, much of which are based on a similar rule in ODP (as discussed in the section 42A report)[8]. In my view, it is also very problematic to assign numeric thresholds to some of the activities listed in IB-R1 (e.g. clearance to address an immediate risk to health and safety of the public, clearance to maintain existing farming tracks).

104. The table below provide further analysis and commentary on the issues raised specific clauses in IB-R1 in submitter evidence and statements presented at Hearing 4. In broad terms, while I acknowledge that some of the clauses could be more certain and enforceable, I recommend that the IB-R1 is largely retained as the alternatives suggested by submitters present more practical issues than they solve in my opinion.

Clause	**Comment and recommendation**
Clause 2) – removal of dead trees	While I acknowledge that dead trees can provide habitat for indigenous fauna, I retain my position in the section 42A report that it is appropriate to allow landowners to remove dead trees when this deemed appropriate/necessary. This still allows for dead trees to be retained in situ when there is no reason to remove them, which I anticipate will generally be the case.
Clause 6) – clearance for creating or maintaining setback for vulnerable activities	There are three issues to consider with clause 6) in my view: • Whether it should be limited to existing buildings • Whether 20m setback enables excessive clearance • How this requirement aligns with FENZ requirements. I retain the view that the clause 6) should not be limited as new buildings also need to manage potential fire risks. It is also likely to have limited practical effect as once a new building becomes established it could then be argued that it is an "existing building" and clearance to create a setback can then be undertaken. As outlined in the section 42A report, a 20m setback is based on an existing rule in the ODP and there has been no evidence presented to justify a reduction to 10m other than to say it is excessive. The 20m setback is also consistent with the corresponding rules in the Natural Hazards chapter (NH-R5 and NH-R6) which require buildings used for vulnerable activities to be setback "*at least 20m from the dripline of any*

[8] Rule 12.2.6.1.1 in the ODP.

Clause	Comment and recommendation
	contiguous scrub or shrubland, woodlot or forestry". A reduction in the setback in clause 6) in IB-R1 could therefore create internal conflict between these PDP rules. I also note that IB-R1 is supported in the submission from Fire and Emergency New Zealand. I therefore recommend that clause 6) is retained as notified. I acknowledge that there is a risk that clause 6) and 7) are used together to collectively clear more indigenous vegetation than intended. However, this risk is somewhat mitigated by the requirement for clearance to be "*the minimum necessary*" and the maximum distances (20m) and area thresholds (1,000m^2) specified in each clause.
Clause 7) – clearance for a single residential unit on existing title	Firstly, I note that clause 7) in IB-R1 differs from Clause 3.11(2) in the NPS-IB as that relates to a single residential dwelling in an allotment that would have adverse effects in a SNA whereas clause 7) applies to indigenous vegetation more generally. I retain the view that it is appropriate to allow for indigenous vegetation clearance for a **single residential unit** on an **existing title** as a permitted activity. I acknowledge that 1,000m^2 may not be sufficient on some allotments to provide for the associated infrastructure and access for the new residential dwelling (depending on where it is sited and existing indigenous vegetation coverage). However, 1,000m^2 provides an appropriate threshold as a permitted activity status in my view above which a resource consent process may be appropriate to help minimise the amount of indigenous vegetation clearance and associated adverse effects. I therefore recommend that clause 7) is retained as notified.
Clause 9) – clearance for new fence	As stated in the section 42A report, clause 9) is appropriate to retain for a range of reasons, including the need to comply with national and regional regulations. The outstanding from Forest and Bird and from Marianna Fern is that allowing for 3.5m of clearance either side if the fence is too permissive. My understanding is that indigenous clearance under clause 9) will be primarily on one side of the fence given that the purpose of the fencing is to exclude stock and pests from an area of indigenous vegetation (which will be located on one side of the fence). I also understand that clause 9) is based on an existing rule in the ODP and there has been no evidence or examples provided to demonstrate that this is leading to poor outcomes. However, I agree that 3.5m either side of the fence seems excessive (i.e. 7m in total) and recommend that is this is reduced in line with other Hearing 4 topics (i.e. 3.5m in total). This will still allow small farm

Clause	Comment and recommendation
	vehicle and machinery to operate on one side of the fence while limiting unnecessary clearance of the other.
Clause 13) clearance for the upgrade of existing infrastructure	I understand the concerns from Forest and Bird that clearance for the upgrade of existing infrastructure seems contrary to the direction to avoid certain adverse effects in IB-P2 and IB-P3. However, in my view, it is difficult to assign a numeric threshold for clearance associated with the upgrade of existing infrastructure given that this can involve a range of activities much of which are minor in nature. As outlined above, Method 4.3.3(3) in the RPS directs that Policy 4.4.1 is implemented in a way that provides for existing activities, including infrastructure and Method 5.5.3(2) directs that the maintenance and upgrading of established regionally significant infrastructure should be enabled wherever it is located provided adverse effects are not significant. I consider that a pragmatic option to avoid the risk of significant adverse effects from indigenous vegetation clearance under clause 12) is to limit it to the upgrading of infrastructure to upgrades that can be undertaken as a permitted activity under IB-R3[9] in the Infrastructure Chapter of the PDP. The rationale for this change is that this would limit the indigenous vegetation associated with an upgrade of existing infrastructure to a scale of upgrade that is permitted. Indigenous vegetation clearance associated with a large-scale infrastructure upgrading project would therefore not be permitted under this clause. I therefore recommend that clause 12) is amended to add the words "*…where this is permitted under the relevant rule in Infrastructure chapter*". This may need to be revisited as part of the Infrastructure chapter hearing as outlined above in terms of how these chapters interact and may be appropriate to specifically cross-reference IB-R3 depending on the outcome of those hearings.
Maimai	IB-R4 is not limited to SNAs (as these have not yet been mapped) therefore the thresholds in IB-R4 would apply to any indigenous vegetation clearance associated with the establishment or maintenance of a maimai. Therefore, my understanding, which was confirmed at the hearing, is that the indigenous vegetation clearance thresholds will enable the scale of clearance required for maimai structures (which are generally less than $10m^2$).

[9] I-R3 is specifically focused on the upgrading of existing network utilities. However, I am aware that there are a number of submissions on that rule requesting a range of amendments which will be considered in Hearing 12.

IB-R2

105. I recommend a minor amendment to IB-R2 to delete "*complex*" based on the PDP definition of "*marae*" as requested by Ms Dalton. I also agree that defined terms should be in the interpretation section of the PDP. My understanding of the glossary in the PDP is that this generally captures Māori concepts, which is why the definition of marae is located within this section. As such, I consider that this is a wider issue for the PDP that needs to be considered further through the hearings on the "*Interpretation*" topic (Hearing 18).

IB-R4 (IB-R3 in Appendix 1.1 of section 42A report)

106. In Key Issue 16 in the section 42A report (paragraph 300 to 333), I set out some of the challenges associated with developing appropriate, numeric thresholds for indigenous vegetation clearance, particularly where SNAs have not been mapped. These challenges remain.

107. While submitters have expressed contrary views on whether the thresholds in IB-R4 are too permissive or too restrictive, there is an absence of any clear evidence to support more appropriate thresholds that "strikes the right balance" to protect indigenous biodiversity while avoiding unnecessary consent requirements and associated costs. I therefore recommend that the thresholds in IB-R4 recommended in the section 42A report are generally retained, noting that this represents a significant reduction in the permitted thresholds compared to the ODP (e.g. from 2ha over a 10-year period to 500m^2 per calendar year in the Rural Production Zone).

108. I agree with Forest and Bird that "*remnant forest*" is a somewhat problematic terms and a "*poor proxy*" for SNAs. However, this is a concept that is currently used in the ODP and, in my view, it is problematic to introduce a new category of significant vegetation at this point ahead of district-wide SNA mapping.

109. I also agree with Forest and Bird that "*remnant forests*" are highly likely to meet the significance criteria in Appendix 5 of the RPS. On this basis, I consider that clearance of indigenous vegetation within these areas should be more restricted so that must be for a specified purposes otherwise a resource consent is requited to ensure adverse effects can be appropriately managed. I therefore recommend that IB-R4 is amended to include a new condition 1) that indigenous vegetation must not occur within a remnant forest (regardless of the underlying zone). In practical terms, this means that any clearance within these areas of remnant forest must be for one of the purposes specified in IB-R1 otherwise a resource consent is required as a discretionary activity

110. I agree with Ms Dalton that a more enabling approach indigenous vegetation on Māori Purpose Zone and Treaty Settlement Overlay land is consistent with the intent of Clause 3.18 in the NPS-IB. This direction in the NPS-IB anticipates that Council will work in partnership with tangata whenua and

Māori landowners to develop provisions that protect, maintain and restore indigenous biodiversity on specified Māori land while also enabling the use and development of that land to support the social, cultural and economic wellbeing of tangata whenua.

111. In the absence of these bespoke provisions being developed (which I anticipate will occur as part of a future NPS-IB plan change), I support a more enabling approach being applied to Māori Purpose Zone and Treaty Settlement Overlay land in IB-R4. However, I recommend that this is limited to 1,500m^2 noting that this rule applies in addition to IB-R1 and the indigenous vegetation clearance for papakainga permitted under IB-R2.

112. On reflection, I agree with Lynley Newport that a separate threshold for the Rural Lifestyle Zone is appropriate given the more rural nature of this zone compared to the "all other zones" listed under clause ii). I consider that a 250m^2 threshold is an appropriate "middle ground" between the two categories of zones, acknowledging that these thresholds remain somewhat arbitrary, and recommend that IB-R4 is amended accordingly.

Recommendation

113. I recommend that clause 9) in IB-R1 is amended to reduce the amount of indigenous vegetation clearance permitted for new fences to 3.5m in width in total (rather than 3.5m either side of the fence).

114. I recommend that new clause 13) in IB-R1 is amendment to limit indigenous vegetation clearance associated with the upgrading of infrastructure to upgrade activities that are permitted under the relevant rules in the Infrastructure Chapter.

115. I recommend a minor amendment to IB-R2 to delete reference to "*complex*".

116. I recommend that IB-R4 is amended as follows (showing amendments from Appendix 1.1 of the section 42A report):

Activity status: Permitted
Where:
PER-1

1. It does not occur in a remnant forest; and.
2. It does not exceed the following amounts per site over a calendar year ~~5-year period~~:
   i. Māori Purpose zone and Treaty Settlement Land Overlay – 1,500m^2;
   ii. Rural Production zone~~,~~ and Horticulture zone~~, Māori Purpose zone and Treaty Settlement Land Overlay~~ — 5,~~0~~00m2 ~~if not in a remnant forest, otherwise 500m2 in a remnant forest~~;
   iii. Rural Lifestyle Zone – 250m^2; or
   iv. All other zones — ~~5~~100m2

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117. The recommended amendments to IB-R1, IB-R2 and IB-P4 retain the general intent while seeking to refine how the indigenous vegetation clearance rules apply. This includes additional restrictions on some of the permitted clearances under IB-R1 for new fences and the upgrading of existing infrastructure and greater restrictions on clearance within any remnant forest while also providing a bit more flexibility for certain zones (Māori Purpose Zone, Treaty Settlement Land Overlay, Rural Lifestyle). On this basis I consider that the recommended amendments to indigenous vegetation clearance rules are an appropriate way to achieve the relevant objectives under section 32AA of the RMA, noting that the intent is that this is a "interim rule framework" until district-wide mapping of SNAs is undertaken.

3.5 Additional Information / Questions from the Hearing Panel

118. At the conclusion of the Hearing 4, the Hearing Panel asked the following questions relating to the IB Chapter:

    a. *What is required in practical terms for indigenous vegetation clearance in terms of managing the risk from fire hazards?*

    b. *Can you advise on the practicality of the 1,000m^2 threshold for the establishment of a new dwelling and associated infrastructure and access?*

    c. *Are there other incentives in addition to subdivision rules that can be used to incentivise the protection of indigenous biodiversity, such as additional development rights for residential or commercial activities?*

<u>Clearance for fire risk purposes</u>

119. This has been discussed to some extent above in relation to clause 6) in IB-R1 above under Issue 4. My understanding from Fire and Emergency New Zealand is that the clearance required for managing and addressing fire risk varies based on a range of factors. For example, Fire and Emergency New Zealand's submission on the PDP in relation to IB-R1 states that (**emphasis added**):

    Fire and Emergency may be required to remove vegetation in the event of an emergency or to reduce fire risk. This is enabled under Section 65 and 68 of the Fire and Emergency New Zealand Act 2017. ***The exact quantities of vegetation disturbance required cannot be determined in advance, and will be unique to the risk or***

emergency response required. *Fire and Emergency considers that this approach provides for these activities and so support the references to addressing immediate risks to health and safety, and managing fire risk. This aligns with the Fire and Emergency New Zealand Act 2017*.

120. My understanding is that the 20m setback for vulnerable activities in clause 6) in IB-R1 is intended to be consistent with the setback standards in the Natural Hazards chapter (NH-R5 and NH-R6) and these rules are both based on corresponding rules in the ODP[10]. I also understand that these rules and setbacks are broadly supported by Fire and Emergency New Zealand in terms of allowing clearance of indigenous vegetation and creating setbacks to manage the risk from fires.

Indigenous vegetation clearance required a new dwelling

121. As with indigenous vegetation clearance associated with fire risk, my understanding is that the amount of clearance needed for a single residential unit and associated infrastructure and access on an existing title will vary based on a range of site-specific factors. This includes:

    a. The extent of indigenous vegetation coverage on the site. The expectation is that new residential units will be established away from existing indigenous vegetation coverage where practicable.

    b. The size of the property and the size of the residential unit. In this respect, my expectation is that a 1,000m^2 threshold would be more than sufficient for a large residential unit and associated clearance around the construction area.

    c. The location of the residential unit within the site and extent of access required. In this respect, I acknowledge the concerns of Lynley Newport that 1,000m^2 may not be sufficient for more remote rural sites with a higher portion of indigenous vegetation cover and larger access requirements. However, in my view, the thresholds in IB-R1 need to be set at a level that is appropriate for most circumstances and er on the side of caution, rather than be more permissive to allow for situations where more clearance may be needed.

122. As stated in my section 42A report, developing appropriate, numeric indigenous vegetation clearance thresholds is challenging, particularly in the absence of SNA mapping, as the actual ecological value of the indigenous vegetation being cleared varies significantly. However, on balance, I consider that the 1,000m^2 threshold in clause 7) of IB-R1 is appropriate, noting that this is to be read together with the other permitted clearances in IB-R1 (including clearance for fire risk setbacks discussed above).

[10] Rule 12.4.6.1.2, fire risk to residential units and Rule 12.2.6.1.1(f) (indigenous vegetation clearance throughout the district).

Other options to incentivise protection of indigenous biodiversity

123. Incentives for the protection and restoration of indigenous biodiversity have been discussed in the section 42A report and above in relation to Issue 2 (objectives) and Issue 3 (policies). Under Issue 2 of this reply, I recommend further amendments to a new policy IB:PX as follows:

> ~~*Enable*~~ *s*~~*S*~~*ubdivision and associated land use is* ~~*where this:*~~
>
> a. *enabled where this results in the restoration, enhancement and legal protection* ~~*and/or restoration of areas of significant*~~ *of indigenous biodiversity vegetation* ~~*or significant habitat of indigenous fauna*~~ *in accordance with SUB-R6 or SUB-R7; or*
>
> b. *considered where this will achieve positive, secure and long-term benefits for indigenous biodiversity through active and ongoing restoration and enhancement activities.*

124. My expectation is that clause b) will provide policy level support to incentivise the restoration and enhancement of indigenous biodiversity by allowing for consideration of opportunities to enable subdivision and land use when this occurs. However, developing a supporting rule framework to incentivise the protection and restoration of indigenous biodiversity through greater land use development rights at this point of the PDP process is more challenging/problematic in my opinion.

125. As indicated at the hearing, it is much more common from my experience for district plans to incentivise the protection and restoration of indigenous biodiversity through subdivision rather than land use rules. This is reflected in SUB-R6 and SUB-R7 referred to above which provide specific rule frameworks and conditions that must be met before any subdivision proposal can access additional development potential. For example, SUB-R6 includes conditions relating to the area to be protected, ecological assessments, ecological management plans, legal protection via covenants etc. This rule will be considered further at the Subdivision hearing.

126. Developing a corresponding land use rule framework to incentivise the protection and restoration of indigenous biodiversity is not a straightforward exercise as there are a range of trades off to consider. For example, greater development potential for commercial development and rural lifestyle development in productive rural environments can have a range of adverse effects and may compromise other objectives in the PDP.

127. For these reasons, I consider that the development of a land use rule framework to incentivise the protection and restoration of indigenous biodiversity through greater development rights requires further consideration and this is best addressed through a future plan variation or plan change process.