



## **Central Hawke's Bay Proposed District Plan**

### **Hearing Stream 1: Natural and Coastal Environment**

#### **Speaking notes of Forest & Bird, submission S75 and further submission FS9**

09/03/2022

1. My name is Tom Kay. I am the 'conservation advocate – freshwater' for the Royal Forest and Bird Protection Society of New Zealand Incorporated (Forest & Bird). I was previously Forest & Bird's 'regional conservation manager' covering Hawke's Bay responsible for the submission on the Central Hawke's Bay (CHB) Proposed District Plan.
2. Today I am speaking on behalf of Forest & Bird in relation to our submissions and further submissions on the Proposed District Plan.
3. Forest & Bird's submissions addressed many matters throughout the proposed plan, including seeking retention of provisions we support, seeking clarification of wording, and seeking amendments. All of our submission were intended to ensure the plan provides for the protection, maintenance, and enhancement of the natural environment, including the protection of significant natural areas (SNAs) and natural character, features, and landscapes.
4. The officer's s42A report recommends accepting many of the points raised in our submission. In some cases, it recommends declining the points raised. While we accept and agree with the officer in some of these cases, we do not agree with them all. Our presentation to the hearing commissioners today (and these notes) is intended to clarify and provide further explanation of our submissions, having considered the s42A reports.
5. We have presented these points in a table below, with the exception of NFL-P5 (Mākāroro Gorge), which is also addressed in legal submissions.

Submission point and provision	Comments on officer's position in s42A report	Further relief sought
S75.002 Definition of 'clearance'	While the part of Forest & Birds submission to separate point 'f.' into two points was accepted by the officer, it does not appear to have been carried through to the suggested amendments (Officer's Report: Natural Environment – Ecosystems and Indigenous Biodiversity, paragraph 4.5.1).	Ensure the officer's recommendation to accept the change is carried through and the definition reads:  ... e. drainage f. drilling or excavation <u>g.</u> discharge of toxic substances <del>g.</del> <u>h.</u> mob-stocking...
	We do not have any particular issues with the additional text provided to define mob-stocking, at this time. However, we note that it can be problematic to have a definition within a definition.	Consider using a separate definition for the term "mob-stocking".
S75.090 Definitions of 'biodiversity offsetting' and 'biodiversity compensation'	Forest & Bird remains concerned that the relationship and application of these terms with the term "Environmental Compensation" remains unclear, as does the need for an additional/separate term for renewable energy provisions. However, we understand this be addressed at a subsequent hearing.	N/A
S75.030 ECO-O2 'Maintain indigenous biodiversity within Central Hawke's Bay District'	We disagree with officer's position for the reasons set out in our original submission. We also consider the need for enhancement and improvement of remaining indigenous biodiversity is only increasing in the current context of a biodiversity and climate crisis. The RMA direction is also supplemented by numerous international obligations (e.g. United Nations Convention on Biological Diversity) and national and regional commitments/goals (e.g. PF2050, NZ Biodiversity Strategy, Hawke's Bay Biodiversity Strategy). It would be consistent with these ambitions, and would help achieve them, if the plan were to reflect an ambition and need to enhance biodiversity. We note this still provides for 'maintenance' as the minimum, with scope for 'enhancement' as an addition (this sort of policy direction is relevant to the non-regulatory methods that include restoration goals/actions). Policy direction is needed to make up for loss that has and continues to occur.  We would accept alternative wording to that we had suggested.	Amend ECO-O2 to read:  Maintain <u>and enhance</u> indigenous biodiversity within Central Hawke's Bay District.  Alternatively  Maintain, <u>restore, and improve</u> indigenous biodiversity within Central Hawke's Bay District.

<p>S121.017 (Federated Farmers) FS9.17 (Forest &amp; Bird)  ECO-P2</p>	<p>The officer recommends amending ECO-P2 to read:          “To protect areas of significant indigenous vegetation and/or significant habitats of indigenous fauna from the adverse effects of landuse and development, including earthworks and vegetation clearance-, <u>whilst providing for limited trimming and clearance opportunities where it is necessary for the economic, social and cultural wellbeing of people and their health and safety.</u>’</p> <p>We disagree with this recommendation.</p> <p>The widening of this policy to allow ‘limited clearance’ for ‘economic and social wellbeing’ could be broadly interpreted and lead to much more trimming and clearance than would be appropriate, and is inconsistent with s5 and 6 of the RMA.</p> <p>This amendment proposed by the officer is also inconsistent with their position at paragraph 9.3.5 of the Officer’s Report: Natural Environment – Ecosystems and Indigenous Biodiversity:          “...The policy as proposed in the PDP, in my view, clearly reflects the intent of section 6(c) and the rule framework or methods for achieving this (in this case the protection of significant indigenous vegetation and significant habitats of indigenous fauna) provide the tests or the thresholds for what is acceptable trimming and clearance, whilst still protecting the overall resource.”</p> <p>and their recommendation at paragraph 9.4.1 that          “Policies ECO-P2, ECO-P3, ECO-P4, ECO-P6, ECO-P7, ECO-P8 and ECO-P9 be retained as notified.”</p>	<p>Reject Federated Farmers’ submission and retain ECO-P2 as notified, viz:</p> <p>“To protect areas of significant indigenous vegetation and/or significant habitats of indigenous fauna from the adverse effects of landuse and development, including earthworks and vegetation clearance.”</p>
<p>S75.031 (ECO-P1)</p>	<p>We accept the position of the officer and consider this policy should be retained largely as notified, though with a slight amendment for clarity.</p>	<p>Amend for clarity to read:  <b>ECO-P1</b></p>

	<p>We understand that the intent of this policy that indigenous vegetation or habitat for indigenous fauna set aside by Government statute or covenant, etc. (criterion 1) is not significant in terms of this policy unless another criteria is also met. However, as it currently reads it could be interpreted that areas that meet criterion 1 do not need to meet at least one other criteria.</p>	<p>To identify Significant Natural Areas (being areas of significant indigenous vegetation and/or significant habitats of indigenous fauna), in the District where they meet one or more of the criteria below and describe these areas in <a href="#">ECO-SCHED5</a> and show their location on the Planning Maps (<del>except for areas that meet where Criterion 1 is met</del>, <b>at least one other of Criteria 2-7 must also be met</b>).</p>
<p>S75.034 (ECO-P4)</p>	<p>The officer invited us to provide additional notes on why we think this policy should be changed to remove the qualifiers “large” and “intact”. We consider these qualifiers do not accurately reflect the s6(c) requirement to “recognise and provide for... the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna”. I.e. the RMA does not discriminate on the basis of size or ‘intact-ness’. We also note S5(2)(c) of the RMA, which notes sustainable management includes “avoiding, remedying, or mitigating <b>any adverse effects of activities on the environment</b>” [emphasis added]. We also note that “large” and “intact” are arbitrary.</p> <p>The officer suggests the methodology for identifying SNAs, which included only areas over 0.5ha, justifies the qualifier “large”. In our view, the method used to determine SNAs should not drive the wording of the policy – the policy should sit above the methodology. Therefore, we consider the wording below is more appropriate. The details of the method (i.e. what can practicably be mapped, etc.) is a detail that is worked out later, and should not be written into the plan.</p> <p>“ECO-P4 To avoid, remedy or mitigate adverse effects, including cumulative adverse effects of subdivision, use and development that would result in a loss of indigenous biodiversity values from:</p>	<p>Amend to read:</p> <p>“ECO-P4 To avoid, remedy or mitigate adverse effects, including cumulative adverse effects of subdivision, use and development that would result in a loss of indigenous biodiversity values from:</p> <ol style="list-style-type: none"> <li>1. Clearance, modification, damage or destruction of <del>large</del> areas of <del>intact</del> indigenous vegetation or habitats of indigenous fauna;</li> <li>2. Clearance of indigenous vegetation in and on the margins of Lake Whatuma, <del>and</del> other natural wetlands, and <del>braided</del> rivers – <u>including braided rivers;</u>” </li></ol>

	<p>1. Clearance, modification, damage or destruction of <del>large</del> <b>large</b> areas of <del>intact</del> indigenous vegetation or habitats of indigenous fauna;”</p> <p>We also continue to consider that recognition of all rivers (not just braided) is appropriate, particularly given the RMA s6 direction “recognise and provide for... the preservation of the natural character of ... <b>rivers and their margins,</b>” [emphasis added]. A possible way to address our concern, without taking away the important recognition of braided rivers, would be to recognise both explicitly (see proposed amendment).</p>	
<p>S75.038 (ECO-R1) Trimming or clearance of indigenous vegetation...</p>	<p>Forest &amp; Bird is concerned that the inclusion of “plantation Forest undergrowth” clearance as a permitted activity could result in adverse effects that are inconsistent with provisions on the protection of areas meeting the significance criteria in ECO-P1, and would be inconsistent with the NZCPS in the coastal environment. Plans can have rules that are more stringent than the NES-PF in both these circumstances.</p> <p>The s42A officer appears to be recommending two versions of a note (‘Note 1’) be added about the relationship of the Plan rules with the NES Plantation forestry. The first version note relates to where there is a conflict (paragraph 10.3.13/10.3.18) and the second version attempts to clarify when vegetation clearance is a permitted activity (paragraph 10.5.1). However only the former seems to be carried in to Appendix A amendments.</p> <p>Both of these recommendations are concerning because they constitute a more permissive approach and could result in the loss of vegetation and fauna that meets the criteria for significance in ECO-P1. For example, our understanding is that vegetation clearance can occur through “afforestation” (i.e. when using overplanting methods) such that separate clearance before afforestation would not be required.</p>	<p>Trimming or clearance of indigenous vegetation within Plantation forestry undergrowth should be excluded from Rule ECO-R1 so that it is considered under the subsequent rules.</p> <p>Add a note to clarify that Trimming or clearance of indigenous vegetation within Planted indigenous forestry is subject to NES-PF Regulations 93(2) and (3).</p>
<p>S75.039</p>	<p>An indigenous NZ tree takes a long time to exceed a diameter of 30cm at 1.4m above ground and can have important biodiversity values before reaching that</p>	<p>Amend ECO- R2 by adding the following permitted activity conditions for both Activity 1 and 2:</p>

<p>ECO-R2 Trimming or clearance of indigenous vegetation that has naturally re-grown on land that was cleared within the previous 15 years</p>	<p>size. We disagree with the officer’s position that the rule shouldn’t be strengthened.</p> <p>As it stands, a large area of regenerating native bush could be cleared in its entirety, or an area could effectively be cleared with only ‘large’ trees left. This is a serious loophole that means succession of large trees will never be able to occur as the understory (along with its valuable functions as habitat) can continually be cleared. It also means regenerating areas may never actually regenerate to their full potential as restoration is prevented by ongoing clearance (e.g. because trees take so long to reach 30cm in diameter and can be cleared before reaching that size). While we accept that some clearance can be permitted, conditions are needed to ensure that the adverse effects of doing so are no more than minor.</p> <p>In addition, if an area of vegetation has regrown in 15 years it could now qualify as an SNA and permitted activity conditions are needed to trigger an assessment through a consent process, for example: where larger trees are included within the regenerated area, clearance is of an area more than 500m<sup>2</sup>, or clearance could conflict with Policy 11 of the NZCPS.</p> <p>We suggest the introduction of further permitted activity conditions to address these concerns</p>	<ul style="list-style-type: none"> <li>• <u>The area cleared does not exceed 500m<sup>2</sup>; and</u></li> <li>• <u>The area to be cleared does not include any trees of 30cm in diameter measured at 1.4m from the highest point of ground level at the base of the tree; and</u></li> <li>• <u>The area to be cleared is not within 50m of an SNA; and</u></li> <li>• <u>Proof of previous clearance is provided (e.g. through LINZ aerial imagery) to the Council before trimming or clearance is undertaken; and</u></li> <li>• <u>No part of the area to be cleared is within or within 10m of a natural wetland ; and</u></li> <li>• <u>Any previous clearance of the area was undertaken lawfully; and</u></li> <li>• <u>No part of the area to be cleared is in the Coastal Environment.</u></li> </ul>
<p>S75.040 (ECO-R3)</p> <p>ECO-R3 Trimming or clearance of indigenous vegetation inside any area of significant indigenous vegetation and/or significant habitat of indigenous fauna</p>	<p>We still have concerns with this rule, including:</p> <ul style="list-style-type: none"> <li>• We consider “and/or” should be retained in the rule topic heading as this ensures that areas that are significant for either vegetation or habitat are captured as how s6(c) is interpreted. Because this is a rule and not a policy for protection it needs to be worded so that both circumstances apply. Changing this to “and” as recommended by the s42A officer could result in the exclusion of areas that are significant. It should revert as notified to “Trimming or clearance of indigenous vegetation inside any area of significant indigenous vegetation <b>and/or</b> significant habitat of indigenous fauna (excluding natural wetlands)” (emboldened – i.e. it does not need to be “and”)</li> </ul>	<p>Amend rule as follows:-</p> <ul style="list-style-type: none"> <li>• Change the “OR” between condition a. and b. to “<u>AND</u>”</li> <li>• Delete Condition ii or amended so that it only applies where there is a risk to health and safety.</li> <li>• Delete Condition iii.</li> <li>• Conditions vi, vii, viii should only allow for this clearance where the activity it is required for was lawfully established.</li> </ul>

<p>(excluding natural wetlands)</p>	<ul style="list-style-type: none"> <li>• The proposed conditions do not adequately account for cumulative effects (e.g. allows incremental clearance over years)</li> <li>• Clearance within a significant area should only be provided at the permitted level where it is for a valid reason and within limits to ensure that adverse effects are no more than minor. As proposed, compliance with condition (a) does not require a reason to clear vegetation.</li> <li>• The proposed limits and purposes are not sufficient to give effect to NZCPS</li> <li>• The purposes listed, while acceptable in some cases, need to be within appropriate limits.</li> <li>• We consider that 4 metres of clearance to construct a fence is excessive and that 2m is (more than enough and) appropriate to minimise effects on the significant area. As written the condition could encourage fences to be built into/through an SNA rather than at the edge (and even if 2m of clearance was permitted, this could provide for the reduction of the diameter of an SNA by 2m around its entirety. Indigenous vegetation clearance is unlikely to be required on the paddock side of a fence. The overall limit in condition a. should also apply to avoid substantial clearance being permitted so this sort of clearance doesn't readily occur.</li> <li>• Condition ii: vegetation should not be removed where it (e.g. deadwood, windfall) provides values to the SNA or where removal would cause damage that would out-weigh any benefit to the SNA. This condition should be deleted or amended so that it only applies where there is a risk to health and safety.</li> <li>• Condition iii. is inappropriate as these covenants are not established under the RMA and do not necessarily include measures for protection of the values of the SNA.</li> <li>• Conditions vi, vii, viii should only allow for this clearance where the activity it is required for was lawfully established</li> </ul>	<ul style="list-style-type: none"> <li>• Amend Condition ix. "required to construct new fences (including post holes) to exclude stock and/or pests from the area of indigenous vegetation, or to maintain existing fences, provided that the trimming or clearance does not exceed 2 metres in width <del>either side of the fence line; or</del>"</li> </ul>
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	<p>With respect to our amendment to ensure that both condition a. AND b. apply to all activities under this rule, we note it is not clear from the officer's report whether they agree with this change.</p> <p>In the officer's assessment it states they "do not agree" with the DOC request to make it "AND" (para 10.3.68). However, "AND" is included in their recommended changes at para 10.3.75.</p>	
ECO-R4	<p>It is unclear how a plan user determines that clearance under ECO-R4 is outside of an area of significant indigenous vegetation and/or significant habitat of indigenous fauna.</p> <p>This may require an assessment to ensure the area does not meet the criteria in ECO-P1. However, this may be difficult to manage at the permitted activity level for both those wanting to undertake the activity and for council enforcement.</p> <p>We also consider the conditions need rewording to ensure that large areas of vegetation are not cleared, with only the large trees left standing (we have also commented on this regarding ECO-R2).</p>	<p>For both permitted Activity 1 and 3 in ECO-R4:</p> <p>Clarify how a determination is to be made that the area is outside an area of significant indigenous vegetation and/or significant habitat of indigenous fauna (i.e. not only that it isn't listed as an SNA, but also that it doesn't <i>qualify</i> as one).</p> <p>Consider adding a condition to limit activities to "<u>areas that do not meet the criteria in ECO-P1.</u>"</p> <p>Amend and add conditions as set out in respect of ECO-R2 above.</p> <p>Amend condition ii. b. "must <u>only include areas of vegetation with have an average a canopy height of less than 64 metres.</u>"</p>
ECO-SCHED5	<p>We are concerned that mapping of SNAs only occurred for areas over 0.5ha. While we appreciate comprehensive mapping is difficult, we consider this means strong tests are required for clearance/modification of indigenous vegetation</p>	<p>Amend permitted vegetation clearance rules to</p>



	<p>outside of scheduled SNAs (see our comments on the permitted rules for vegetation clearance). We also consider this means a clear and precautionary trigger is needed for a resource consent requirement, as noted by the officer</p> <p>“The approach to mapping SNAs, including only mapping areas greater than 0.5 ha, with a margin of error at most of +/-30m, and with assigned confidence criteria, combined with landowner consultation and opportunity to further refine prior to the public notification process, is an appropriate method of mapping for a District the size of Central Hawke’s Bay. <b>Further scrutiny can be applied through a resource consent application, should one be required...</b>” [emphasis added]</p>	<ol style="list-style-type: none"> <li>1) ensure small areas are not cleared and cumulative effects of clearance are avoided as far as possible.</li> <li>2) ensure a precautionary approach and clear trigger for resource consent is present in the plan.</li> </ol>
<p>S75.061 (NFL-P2)</p> <p>To allow activities within the District's outstanding natural features and landscapes where they are for existing land uses...</p>	<p>We are not opposed to the suggested wording from the s42A report but consider it could be clarified regarding what land use(s) of most relevance. Clarification is also required as to what an “existing” land use is. I.e. Is it the operative date of the plan? Is it lawfully established?</p>	<p>Amend to read:</p> <p>To allow activities within the District's outstanding natural features and landscapes where they are for:</p> <p><u>(1) existing land uses such as farming,</u>  <u>(2) conservation purposes and</u>  <u>(3) customary activities; and</u>  <u>provided the activities maintain or enhance the identified characteristics and values in NFL-SCHED6</u></p> <p>Clarify the requirements for how an ‘existing land use’ is determined.</p>
<p>S75.064 (NFL-P5)</p>	<p>We disagree with the officer’s position and recommendation to retain NFL-P5.</p> <p>The Mākāroro Gorge has significant biodiversity and landscape values. These are recognised in part of its status as part of the Ruahine Forest Park, which is home to many of Aotearoa’s indigenous species, including threatened species. We</p>	<p>Delete NFL-P5.</p>

	<p>have been deeply involved in the process of protecting the values of this area from the damage that would be done to these values through a dam and reservoir, including taking a case to the Supreme Court, which we won. This policy attempts to pre-empt and 'lock-in' an activity which, while consented, is not possible or appropriate for a variety of other reasons, including because of the recognised values in the Forest Park. This plan should not attempt to 'pave a way' for consenting of a similar proposal in future.</p> <p>See our original submission and legal submissions for further reasoning.</p>	
<p>S75.069 FS9.56 (CE-O2)</p> <p>“Protection of the natural character of the coastal environment of Central Hawke’s Bay from inappropriate subdivision, use and development, and identify and promote opportunities for restoration or rehabilitation.”</p>	<p>We are concerned with the officer’s recommendation to amend this objective to refer to “natural <u>and rural</u> character”.</p> <p>We disagree with the officer’s position (at para. 5.3.4 - 5.3.5) that ‘preserving natural character’ means keeping something in its current state, including where that current state has been modified by rural activities. We consider that ‘preservation’ in this context means preservation of <i>remaining</i> natural character. Direction for ‘restoration or rehabilitation’ suggests the restoration of natural character where it has been degraded. This is supported by the Natural Character Assessment Report (para. 5.3.3 of the officer’s report):</p> <p>“Overall, the coastal margin and adjacent inland area have seen a significant amount of terrestrial land cover modification through human intervention, with the majority of native vegetation having been cleared. Almost all the original native vegetation within the coastal environment has been lost, settlements have been introduced, grazing has been developed, drainage patterns have been modified and in some places the dunes have been intentionally recontoured to assist irrigation and farming activities. <b>These factors have diminished the natural character value from its natural state.</b>” [emphasis added].</p>	<p>Reject the suggestion of the officer and retain CE-O2 as notified.</p>

If natural character included existing activities/land uses, the “restoration” of natural character would not be possible.

While there may be ‘some merit’ in a community recognising rural character for town planning or zoning, it should not be recognised alongside an RMA s6 matter.

Policy 13 of the NZCPS notes:

“...natural character is not the same as natural features and landscapes or amenity values and may include matters such as:

- a. natural elements, processes and patterns;
- b. biophysical, ecological, geological and geomorphological aspects;
- c. natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs and surf breaks;
- d. the natural movement of water and sediment;
- e. the natural darkness of the night sky;
- f. places or areas that are wild or scenic;
- g. a range of natural character from pristine to modified; and
- h. experiential attributes, including the sounds and smell of the sea; and their context or setting.”

While we accept this does include “a range of natural character from pristine to modified”, it does not suggest the recognition of human-induced changes to land. Rather, it suggests the character of an area could be recognised even if it is degraded from its ‘natural’ state.

Policy 14 of the NZCPS covers the ‘Restoration of natural character’. It suggests “possible approaches” to restoration or rehabilitation include:

- i. “restoring indigenous habitats and ecosystems...

- ii. encouraging natural regeneration of indigenous species, recognising the need for effective weed and animal pest management; or
- iii. creating or enhancing habitat for indigenous species; or
- iv. rehabilitating dunes and other natural coastal features or processes...
- v. restoring and protecting riparian and intertidal margins; or
- vi. reducing or eliminating discharges of contaminants; or
- vii. removing redundant structures and materials...
- viii. restoring cultural landscape features; or
- ix. redesign of structures that interfere with ecosystem processes; or
- x. decommissioning or restoring historic landfill and other contaminated sites..."

None of these suggested approaches implies that elements of 'rural character' should or could be restored as part of the NZCPS direction on natural character. In fact, many elements and activities that might be recognised as constituting 'rural character' have been extremely damaging to 'natural character'.

Suggesting that rural character is equivalent to natural character in the coastal environment could also lead to conflicts between (1) activities that may be consistent with 'rural character' and (2) the effects of such activities, which would be inconsistent with the preservation or restoration of natural character.