

**Before the Hearings Panel**

**At Central Hawke's Bay District Council**

**Under** Schedule 1 of the Resource Management Act 1991

**In the matter of** the Proposed Central Hawke's Bay District Plan

**Between** **Various**

**Submitters**

**And** **Central Hawke's Bay District Council**

**Respondent**

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**Statement of supplementary planning evidence of Stella Ann Luoni Morgan**

**On behalf of Central Hawke's Bay District Council**

**Date: 11 March 2022**

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## **Introduction**

1. My full name is Stella Ann Luoni Morgan. I am a Principal Planner and Director of Sage Planning (HB) Limited.
2. I have read the evidence and statement provided by submitters relevant to the Section 42 Reports on Natural Environment – Ecosystems and Indigenous Biodiversity, and Open Space and Recreation / Public Access / Activities on the Surface of Water, and the legal submissions relevant to both of these Section 42A Reports.
3. I have prepared this statement of evidence on behalf of the Central Hawke's Bay District Council (**Council**) in respect of technical matters arising from the submissions and further submissions on the Proposed Central Hawke's Bay District Plan (**PDP**).
4. Specifically, this statement of evidence relates to the matters in the Section 42A Report - Natural Environment – Part 2 District-wide Matters, ECO – Ecosystems and Indigenous Biodiversity (**ECO**), and the Section 42A Report Part 2 District-wide Matters, Open Space and Recreation / Public Access / Activities on the Surface of Water (**OSR / PA / ASW**).
5. I am authorised to provide this evidence on behalf of Council.

## **Qualifications, Experience and Code of Conduct**

6. My qualifications and experience are as set out in Section 1.1 of the Ecosystems and Indigenous Biodiversity Section 42A Report.
7. I can confirm that I am continuing to abide by the Code of Conduct of Expert Witnesses set out in the Environment Court's Practice Note 2014.

## **Scope of Evidence**

8. My statement of evidence addresses matters raised in submitter evidence and statements, and the Memorandum of Counsel for Ernslaw One Ltd and Rayonier Matariki Forests and Council.

## **Matters Raised in Submitter Evidence and Statements**

9. I confirm that I have read the submitter evidence and statements and as a result seek to change two of my recommendations, in relation to:
  - a. the PDP biosecurity response provisions (refer Section 42A report paragraphs 10.3.111 – 10.3.113); and
  - b. alignment of the Resource Management (National Environmental Standard – Plantation Forestry) Regulations 2017 (**NES-PF**) and PDP provisions (refer Section 42A report paragraphs 5.3.1 - 5.3.22 and 10.3.12 -10.3.18).
10. In particular, I refer to the evidence of Jordyn Landers for Horticulture New Zealand (**Hort NZ**), paragraphs 11-25, and the Memorandum of Counsel for Ernslaw One Ltd and Rayonier Matariki Forests and Council.
11. I also note the evidence of Rhea Dasent for Federated Farmers at paragraphs 40 and 41 addressing a 'typo' in their submission and seeking that submission point S120.020 be reconsidered.
12. I consider these matters below.

#### S81.073 Hort NZ, PDP Biosecurity Response Provisions

13. S81.073 Hort NZ submission sought an amendment to the ECO Rules to add a new rule enabling a biosecurity response involving indigenous vegetation clearance, where that vegetation is infected by an unwanted organism as declared by the Ministry of Primary Industries Chief Technical Officer or an emergency declared by the Minister under the Biosecurity Act 1993. This was supported by Federated Farmers (FS25.53) and opposed by Ngā hapū me ngā marae o Tamatea (FS5.069).
14. My initial recommendation was to reject this submission on the basis of it being unclear how such an exemption relates to the Biosecurity Act 1993, which provides for the responsible Minister to exempt certain actions under that Act from the need to comply with the RMA.
15. Hort NZ were invited to clarify what a 'biosecurity response' would involve that would not also trigger an exemption under s 7A Biosecurity Act 2003, and clarify the relationship between the Biosecurity Act and The RMA.
16. Ms Landers' evidence for Hort NZ addresses these matters in paragraphs 14 -15 (clarifies a 'biosecurity response') and paragraphs 16-19 (clarifies the relationship of the Biosecurity Act and the RMA).
17. In summary, Hort NZ have clarified that there are occasions where a biosecurity response may be required in response to a plant pest, without a biosecurity emergency being declared under the Biosecurity Act. For example, Ms Landers refers to the PSA incursion which significantly altered the kiwifruit industry yet was not declared a biosecurity emergency.
18. In terms of relief sought, Ms Landers acknowledges that PDP Rule ECO-R3 1(b)(iv) partially addresses their concerns, in terms of providing for a biosecurity response within an area of 'significant indigenous vegetation and / or significant habitat of indigenous fauna'. However, they also seek a similar provision in relation to subsequent Rule ECO-R4 that applies outside of an area of 'significant indigenous vegetation and / or significant habitat of indigenous fauna'.
19. Having consider Hort NZ's evidence, I am satisfied that there are occasions where a biosecurity response will be required, that would not be deemed an emergency under the Biosecurity Act. Therefore, I also agree that an amendment to the ECO-Rules to address this is appropriate. This matter has also highlighted to me an unintended 'gap' in the PDP Rules with respect to Rule ECO-R4. The purpose of Rule ECO-R4 is to capture any areas of 'significant indigenous vegetation and / or significant habitat of indigenous fauna' that may have been missed in the desk-top review. However the series of exemptions provided for ECO-R3, including the biosecurity response exemption, has not been applied equally to ECO-R4, despite the same issues arising. I consider this to be an oversight, but amendable to correction as a consequential amendment arising from the HortNZ submission. In my opinion, the exemptions could usefully be relocated to a new rule ECO-R1A meaning if an activity complies with this, whether within or outside a Significant Natural Area, it is a permitted activity. If the activity does not fit within one of the exemptions, rules ECO-R2 – ECO-R6 apply. I consider this slight restructuring assists with the interpretation of the Plan and ensures exemptions to the rules apply equally to trimming or clearance of indigenous vegetation regardless of its location.
20. I therefore propose the following amendments, including a new 'permitted activity' ECO-Rule to address this:

<Recommended amendments in **bold underlined red** font>

#### ECO-R1 Trimming or clearance of indigenous vegetation within any of the following:

- Areas of domestic or ornamental landscape planting; or
- Planted shelter belts; or

- Plantation forestry undergrowth; or
- Planted indigenous forestry.

All Indigenous Vegetation Species

1. Activity Status: PER

Where the following conditions are met: N/A

2. Activity status where compliance not achieved: N/A

ECO-R1A Trimming or clearance of indigenous vegetation (excluding where it forms part of any natural wetland identified as a Significant Natural Area in ECO-SCHED5)

All indigenous vegetation species

1. Activity Status: PER

Where the following conditions are met:

a. Limited to trimming or clearance that is:

- i. required to achieve compliance with the requirements of the Electricity (Hazards from Trees) Regulations 2003; or
- ii. required to remove deadwood, wind-thrown trees, or chronically diseased indigenous vegetation, where an arborist who has attained the New Zealand Qualifications Authority National Certificate in Arboriculture Level 4 or equivalent qualification has certified in writing that the indigenous vegetation is no longer independently viable or poses a risk; or
- iii. carried out in accordance with a registered protective covenant under the Reserves Act 1977, Conservation Act 1986 or Queen Elizabeth the Second National Trust Act 1977; or a Reserve Management Plan approved under the Reserves Act 1977; or
- iv. required for pest control undertaken by or in conjunction with the Department of Conservation, Hawke's Bay Regional Council or Central Hawke's Bay District Council, or by landowners and personnel working with these organisations for this purpose; and or removal of material infected by an unwanted organism under the Biosecurity Act 1993; or
- v. necessary to avoid an imminent threat to the safety of persons or of damage to lawfully established buildings or structures; or
- vi. necessary to provide for the ongoing safe and efficient operation, maintenance and upgrading of telecommunication, radio communication and other network utilities, but excluding their expansion, where carried out by the respective network utility operator; or

2. Activity status

where compliance not achieved: ECO-R2 to ECO-R5 apply

Commented [SM1]: S121.030 Fed Farmers SNA Topic Key Issue 7

Commented [SM2]: S121.030 Federated Farmers  
SNA Topic Key Issue 7

	<p>vii. <u>necessary to provide for the maintenance and safe and efficient operation of existing tracks, stock crossing and bridges, drains, firebreaks, formed public roads, private accesses, driveways, right of ways and walkways; or</u></p> <p>viii. <u>necessary to maintain buildings, provided that the trimming or clearance of vegetation is limited to within 3 metres of a wall or roof of a building; or</u></p> <p>ix. <u>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 either side of the fence line; or</u></p> <p>x. <u>for use by tangata whenua for cultural purposes (e.g. for Rongoā, Waka, traditional buildings and marae-based activities) and does not result in the removal of more than 25m<sup>3</sup> of timber per site per 10-year period.</u></p> <p><u>Note (1): The Council recommends that trimming or clearance of indigenous vegetation is carried out by an arborist who has attained the New Zealand Qualifications Authority National Certificate in Arboriculture Level 4 or equivalent qualification.</u></p> <p><u>Note (2): Any trimming or clearance work within the vicinity of a network utility should be undertaken by a network utility approved arborist.0</u></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>Manuka and Kanuka Species Only</p>	<p>1. Activity Status: PER</p> <p>Where the following conditions are met:</p> <p>a. Limited to:</p> <p>i. trees no more than 30cm in diameter measured at 1.4m from the highest point of ground level at the base of the tree.</p> <p><i>Note: If the requirements of this rule are complied with then there is no limit on the area of vegetation that can be trimmed or cleared.</i></p>	<p>2. Activity status where compliance not achieved: RDIS</p> <p>Matters over which discretion is restricted:</p> <p>a. ECO-AM1.</p>
<p>All Other Indigenous Vegetation Species</p>	<p>3. Activity Status: PER</p> <p>Where the following conditions are met:</p> <p>a. Limited to:</p> <p>i. trees no more than 30cm in diameter measured at 1.4m from the highest point of ground level at the base of the tree.</p>	<p>4. Activity status where compliance not achieved: ECO-R3 to ECO-R6</p>

	<p>Note: If the requirements of this rule are complied with then there is no limit on the area of vegetation that can be trimmed or cleared.</p>	
<p><b>ECO-R3 Trimming or clearance of indigenous vegetation inside any <u>areas of significant indigenous vegetation and/or significant habitat of indigenous fauna</u> (excluding natural wetlands)</b></p>		
<p><b>All Indigenous Vegetation Species</b></p>	<p><b>1. Activity Status: PER</b></p> <p><b>Where the following conditions are met:</b></p> <p>a. Limited to (whichever is the lesser):</p> <ul style="list-style-type: none"> <li>i. clearance of no more than 500m<sup>2</sup> of indigenous vegetation per site per calendar year; or</li> <li>ii. clearance of no more than 1% of the area of a Significant Natural Area identified in ECO-SCHED5 per calendar year.</li> </ul> <p>OR</p> <p>b. Limited to trimming or clearance that is:</p> <ul style="list-style-type: none"> <li>xi. required to achieve compliance with the requirements of the Electricity (Hazards from Trees) Regulations 2003; or</li> <li>xii. required to remove deadwood, wind-thrown trees, or chronically diseased indigenous vegetation, where an arborist who has attained the New Zealand Qualifications Authority National Certificate in Arboriculture Level 4 or equivalent qualification has certified in writing that the indigenous vegetation is no longer independently viable or poses a risk; or</li> <li>xiii. carried out in accordance with a registered protective covenant under the Reserves Act 1977, Conservation Act 1986 or Queen Elizabeth the Second National Trust Act 1977; or a Reserve Management Plan approved under the Reserves Act 1977; or</li> <li>xiv. required for pest control undertaken by <u>or in conjunction with</u> the Department of Conservation, Hawke's Bay Regional Council or Central Hawke's Bay District Council, <u>or by landowners and personnel working with these organisations for this purpose</u>; and <u>or</u> removal of material infected by an unwanted organism under the Biosecurity Act 1993; or</li> <li>xv. necessary to avoid an imminent threat to the safety of persons or of damage to lawfully established buildings or structures; or</li> <li>xvi. necessary to provide for the ongoing safe and efficient operation, maintenance and upgrading of telecommunication, radio communication and other network utilities, but excluding their expansion, where carried out by the respective network utility operator;</li> </ul> <p>or</p>	<p><b>2. Activity status where compliance not achieved: DIS</b></p>

**Commented [SM3]:** S64.064 Department of Conservation  
SNA Topic Key Issue 7

**Commented [SM4]:** S75.040 Forest and Bird  
SNA Topic Key Issue 7

**Commented [SM5]:** S121.030 Fed Farmers  
SNA Topic Key Issue 7

- xvii. necessary to provide for the maintenance and safe and efficient operation of existing tracks, ~~stock crossing and bridges, drains, firebreaks, formed public roads, private accesses, driveways, right-of ways and walkways;~~ or
- xviii. necessary to maintain buildings, provided that the trimming or clearance of vegetation is limited to within 3 metres of a wall or roof of a building; or
- xix. 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 either side of the fence line; or
- xx. for use by tangata whenua for cultural purposes (e.g. for Rongoā, Waka, traditional buildings and marae-based activities) and does not result in the removal of more than 25m<sup>3</sup> of timber per site per 10-year period.

*Note (1): The Council recommends that trimming or clearance of indigenous vegetation is carried out by an arborist who has attained the New Zealand Qualifications Authority National Certificate in Arboriculture Level 4 or equivalent qualification.*

*Note (2): Any trimming or clearance work within the vicinity of a network utility should be undertaken by a network utility approved arborist.*

*Note (3): Afforestation and vegetation clearance of indigenous vegetation associated with plantation forestry, is subject to the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017.*

**Commented [SM6]:** S121.030 Federated Farmers SNA Topic Key Issue 7

**ECO-R4 Trimming or clearance of indigenous vegetation outside any area of significant indigenous vegetation and/or significant habitat of indigenous fauna**

**Manuka and Kanuka Species Only**

**1. Activity Status: PER**

**Where the following conditions are met:**

- a. Limited to:
  - i. clearance of no more than 1 hectare per site per calendar year.
  - ii. Trees to be cleared must be:
    - a. no more than 15cm in diameter measured 1.4m from the highest point of ground level at the base of the tree; and
    - b. must have an average canopy height of less than 6 metres.

**2. Activity status where compliance not achieved: RDIS**

**Matters over which discretion is restricted:**

- a. ECO-AM1.

**Commented [SM7]:** As a result of amendment made to note above preceding rules, in response to submissions from: S85.008 Rayonier Matariki Forests; S132.002 Ernslaw One Limited ; S132.003 Ernslaw One Limited; S132.004 Ernslaw One Limited SNA Topic Key Issue 7

All Other Indigenous Vegetation Species	<p><b>3. Activity Status: PER</b></p> <p>Where the following conditions are met:</p> <p>a. Limited to:</p> <ul style="list-style-type: none"> <li>i. clearance of no more than 1 hectare per site per calendar year.</li> <li>ii. Trees to be cleared must be: <ul style="list-style-type: none"> <li>a. no more than 15cm in diameter measured 1.4m from the highest point of ground level at the base of the tree; and</li> <li>b. must have an average canopy height of less than 6 metres.</li> </ul> </li> </ul>	<p><b>4. Activity status where compliance not achieved: DIS</b></p>
ECO-R5 Trimming or clearance of indigenous vegetation not otherwise provided for		
All Indigenous Vegetation Species	<p><b>1. Activity Status: DIS</b></p> <p>Where the following conditions are met: N/A</p>	<p><b>2. Activity status where compliance not achieved: N/A</b></p>
ECO-R6 Trimming or clearance of indigenous vegetation which forms part of any natural wetland identified as a Significant Natural Area in ECO-SCHED5		
All Indigenous Vegetation Species	<p><b>1. Activity Status: NC</b></p> <p>Where the following conditions are met: N/A</p> <p><i>Note1: Wetland restoration work managed by the Department of Conservation, Hawke's Bay Regional Council or Central Hawke's Bay District Council is regulated by the Regional Resource Management Plan and the NES Freshwater 2020 and therefore exempt from this rule.</i></p> <p><i>Note (2): This rule does not apply to vegetation clearance associated with construction of, and ongoing safe and efficient operation, maintenance and upgrading of a network utility, but is subject to the (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 (NESETA) (refer Regulations 30, 31 and 32), and / or Resource Management (National Environmental Standards for Freshwater) Regulations, 2020 (NES-FM), (refer Regulations 46 &amp; 47).</i></p>	<p><b>2. Activity status where compliance not achieved: N/A</b></p>

**Commented [SM8]:** S11.019 HBRC SNA Topic Key Issue 7

**Commented [SM9]:** S79.066 Transpower New Zealand Ltd SNA Topic Key Issue 7

21. On the basis of the further information provided by Hort NZ, I now recommend that S81.073 Hort NZ be accepted.

*Section 32 Evaluation*

22. In my opinion, the amendments as proposed will provide more logically for the trimming and clearance activities of indigenous vegetation in a way that was intended by the policy and rule



framework in the PDP as notified. The changes will improve the effectiveness of provisions without changing the policy approach. As such, no S32AA re-evaluation is warranted.

S85.008 Rayonier Matariki Forests and S132.002, S132.003, and S132.002 Ernslaw One Limited, Clarification of the relationship between the NES-PF and PDP ECO-Rules

23. I discuss the clarification of the relationship between the NES-PF and PDP ECO-Rules at paragraphs 10.3.12 -10.3.18 of my Section 42A report in response to submission points S85.008 Rayonier Matariki Forests and S132.002, S132.003, and S132.002 Ernslaw One Limited. As a result of these submissions, I proposed an amendment to the advice note preceding the ECO-Rules and on that basis recommended these submission points be accepted in part. I also invited feedback from the submitter on these amendments.
24. As outlined in the Memorandum of counsel for Ernslaw One Ltd and Rayonier Matariki Forests and Council, agreement for alternative wording has been reached between:
- Trish Fordyce, counsel for Ernslaw One Ltd and Rayonier Matariki Forests (**Submitter**);
  - Lynette Baish, planner for the submitter;
  - Asher Davidson, counsel for Central Hawke's Bay District Council (Council);
  - Stella Morgan, reporting officer; and
  - Helen O'Shaughnessy, on behalf of Council.
25. The agreed wording for the advice note is as follows:

**'Note – Plantation Forestry Activities - In the case of conflict with any rule in this Chapter, the provisions of the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017, (NES-PF) particularly regulations 93 and 94, apply instead of the rule.**

**For the avoidance of doubt, the NES-PF does not apply to the following activities, and they are therefore subject to the rules in this chapter:**

- **Vegetation clearance of indigenous vegetation that occurs before afforestation (see Reg 5(3));**
- **Vegetation clearance of indigenous vegetation within a significant natural area, except that clearance of a forestry track described in Reg 93(2)(d) NES-PF, or incidental damage described in Reg 93(5), are covered by the NES-PF under Reg 93 or 94.'**

26. I recommend the Hearings Panel adopt the proposed agreed advice note on the basis that it further clarifies for plan users the circumstances when the PDP ECO-Rules apply to plantation forestry activities.
27. For these reasons, my recommendation to 'accept in part' remains, albeit the amendments to the advice note have changed.

S121.020 Federated Farmers

28. At paragraphs 40 - 41 of their evidence, Federated Farmers have highlighted a 'typo' in their submission in relation to Policy ECO-P2, and on that basis seek it be reconsidered by the Section 42A reporting officer. Their corrected amendment reads as follows:

ECO-P2 To protect areas of significant indigenous vegetation and/or significant habitats of indigenous fauna from **the inappropriate** adverse effects of landuse and development, including earthworks and vegetation clearance, **while providing for some appropriate activities.**

29. At paragraph 9.3.5 of my Section 42A report, it states:

*'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.'*

30. I do not consider the amendments sought provide greater clarity to ECO-P2 and for the same reasons outlined above from my Section 42A report, I do not wish to change my position regarding this submission point.

**Date: 11 March 2021**



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