

Before the Hearings Commissioners at Waipawa

Under: The Resource Management Act 1991

In the matter of: Proposed Central Hawkes Bay District Plan –
Ecosystems and Indigenous Biodiversity

STATEMENT OF EVIDENCE LYNETTE BAISH

Introduction

1. My name is Lynette Ann Baish. I have been an Environmental Planner at Ernslaw One Ltd (Ernslaw), Southern North Island Region since November 2021, and was a Senior Policy Planner at Horizons Regional Council since February 2017. I hold the qualifications of BA and Master of Resource and Environmental Planning (Massey). I am a member of the New Zealand Planning Institute. I have worked in resource management planning for 14 years.
2. I am presenting planning evidence on behalf of Ernslaw and Rayonier Matariki Forests (Rayonier).
3. I have read the Code of Conduct for Expert Witnesses issued as part of the Environment Court Practice Notes. I agree to comply with the Code and am satisfied the matters I address in my evidence are within my expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed in my evidence.

Involvement in the Proceedings

4. Ernslaw have participated in key stages of the plan change process. James Sinclair, former Environmental Manager, had submitted to the draft District Plan. Ernslaw has worked with Council's ecologist Gerry Kessels to ground truth areas of SNA identified within Te Uri Forest. A submission (S132) and further submission (FS22) were provided in respect of the proposed District Plan, in particular, the Eco-systems and Biodiversity Chapter, and the proposed (SNA) planning maps.
5. Rayonier has also participated in key stages of the process. A submission (S85) was provided in respect of the Proposed District Plan as a whole.

Summary of the Primary Issues for Ernslaw and Rayonier (and the forest companies)

6. Ernslaw and Rayonier support, in principle, the provisions regarding Significant Natural Areas (SNA) and the Natural Environment Chapter, or any alternative or consequential relief that achieves the same outcome. The proposal is generally consistent with the objectives and policy direction of the Regional Policy Statement and the Regional Plan, as well as with statutory requirements to recognise and provide for the protection of significant areas of indigenous vegetation and fauna as a matter of national importance.
7. In particular, the crux of Ernslaw and Rayonier's submission was concerned with an apparent disconnect with the National Environmental Standard for Plantation

Forestry (NES-PF), and consequent lack of clarity as to which provisions should apply for the plantation forestry sector in relation to SNA's. Contemplating the Section 42A report of Stella Morgan, I'm partially satisfied that the clearer direction initially sought, has now been provided in relation to the provisions ECO-R4, ECO-R5 and ECO-R6, however the Note prefacing the Rule framework, needs to be rewritten. I support the proposal set out in the legal submission by Trish Fordyce.

8. Ernslaw and Rayonier are generally supportive of the policy framework and I consider that the majority of landowners would appreciate the benefits of provisions (ECO-P5, ECO-M3 and ECO-APP2), which give effect to the Principles of Biodiversity Offsets (where proposed in resource consent applications), policy (ECO-P7), which recognises landowners' stewardship and current management practices, and policy (ECO-P8), which provides assistance and incentives to landowners to maintain areas of significant indigenous vegetation and habitat. I have no further issues to raise in respect of these policies.
9. Ernslaw had submitted that the absence of a policy mandate to exclude stock from indigenous vegetation and habitat identified as SNA constitutes a critical gap in biodiversity protection. While I accept that councils cannot compel fencing of SNA to occur, I consider that it would be appropriate to include stock exclusion as a discretionary criterion for resource consents for activities affecting SNAs.
10. Rayonier and Ernslaw had submitted that only areas that are mapped as SNA should be subject to the higher level of protection accorded to SNA. I am of the view that protection of SNA's should be contingent on clear and accurate mapping of areas that are to be designated as SNA, an expectation that aligns with the proposed provisions for mapping and identification outlined in the Draft National Policy Statement Indigenous Biodiversity (NPS-IB). It is critical that landowners, prospective or otherwise, have access to clear and accurate information on land holdings.
11. Rayonier had submitted that an exemption be included in Criterion 6 of the Ecological Significance Determination Criteria for the Central Hawkes Bay District in respect of plantation forestry, and more specifically fireponds. The statutory definitions of wetlands are changing, and these changes will have a bearing on this issue. I concur with the legal submission of Trish Fordyce and her analysis and interpretation of the issue.

Alignment of the Proposed District Plan with the National Environmental Standards for Plantation Forestry 2017 (with regard to indigenous vegetation and SNA)

12. The NES-PF provides a national set of regulations that apply to land under plantation forestry. The regulations are intended to ensure that forestry activities including earthworks, harvesting, silviculture and quarrying, are managed appropriately and transparently, and that any effects beyond the identified permitted baseline are captured in a structured consenting regime to avoid, remedy or mitigate adverse environmental outcomes.
13. The NES-PF also contains provisions designed to safeguard any adverse effects on indigenous vegetation and habitat. Over the time a forest matures, upwards of 25 years, an exotic plantation can act as a nursery crop for a diversity of non-forest species. Many forests contain large areas of indigenous vegetation in gullies and areas that are inaccessible for forestry operations. Although these areas might be seen as non-productive, forestry companies, particularly those who are Forest Stewardship Council (FSC) accredited, appreciate the eco-system services provided by such areas of vegetation, particularly as habitat for indigenous fauna within the forest.
14. Regulation 93 sets out the circumstances in which indigenous vegetation can be cleared (including understory, failed crop areas, crop areas established within 5 years or where vegetation is overhanging tracks), and applies thresholds (not exceeding 1 ha or 1.5% (whichever is the greater) of the total area of indigenous vegetation) which apply to the clearance of large areas of indigenous vegetation within and adjacent to a plantation crop.
15. Indigenous vegetation clearance is not permitted to occur in Significant Natural Areas (SNA). Incidental damage to indigenous vegetation associated with plantation forestry activities, including to vegetation recognised as SNA, can occur as a permitted activity, subject to caveats on the extent of the damage. Regulation 94 outlines the circumstances where a resource consent will be required for indigenous vegetation clearance that would be beyond the scope of the permitted criteria, including clearance of any indigenous vegetation beyond the stated thresholds, or any incidental damage to SNA that would be detrimental to the values of the SNA, or which would compromise the ecological recovery of the damaged vegetation within an SNA.

16. While section 74 of the RMA requires that a district plan must be prepared in accordance with any regulations, NES-PF Regulation 6(2)(b) does provide for district plan rules to be more stringent if the rules recognise and provide for the protection of significant natural areas.
17. The proposed plan change concerning the Chapter *Natural Environment – Ecosystems and Indigenous Biodiversity*, did not contain an assessment of how the NES-PF is functioning within the District to regulate and protect areas of SNA and indigenous vegetation.
18. The proposed provisions also lacked clarity as to whether plantation forestry activities would be subject to the rules ECO-R4, ECO-R5 and ECO-R6, or whether the NES-PF would prevail.
19. The author of the Section 42A report, Stella Morgan, has clarified that the proposed district plan (PDP), does not seek to duplicate the provisions of the NES-PF; nor does the PDP seek to impose more stringent rules than the NES-PF.¹ Stella Morgan further notes, that the intention is that the PDP complement the NES-PF, and not replicate it.² I agree with this approach.
20. The 42A Report additionally states that where the NES-PF does not regulate activities, the ordinary PDP rules will apply.³ For example, NES-PF Regulation 5(3) states that the regulations do not apply to vegetation clearance that is carried out before afforestation; and unless clearance within an SNA is for the purpose of forestry tracking, the NES-PF does not provide for the regulation of vegetation clearance within an SNA. I agree that where the NES-PF does not contain a rule for an activity, the assessment of that activity must therefore be subject to a rule in a district or regional plan, where that rule stipulates a regulatory requirement for the same activity. Where I take issue, is the manner in which the 42A report, appears to skim over the NES-PF in a way that muddles its provisions.
21. Stella Morgan proposes to clarify the standing of the PDP rules in relation to the NES-PF regime with a note referring specifically to Plantation Forest Activities.⁴ Essentially, the note clarifies that, in the case of conflict with any rule in the Chapter, the provisions of the NES-PF will prevail, including in the case of vegetation clearance during or after afforestation, and with forestry activities

¹ Morgan, Stella. Officers Report: Natural Environment – Ecosystems and Indigenous Biodiversity. Para 5.3.9, p 22.

² Morgan. Para 5.3.17, p 23.

³ Morgan. Para 5.3.17, p 23.

⁴ Morgan. Para 5.3.17, p 23.

within, or near to SNA which are not affected by the rules in the Chapter. The note continues to describe where the NES-PF/PDP prevails, as the case may be, however this is not explained either succinctly or clearly. I believe a more concise note, linking back to the NES-PF to let the regulation speak for itself would work better.

22. I concur with the alternate, and much simplified wording presented in the legal submission of Trish Fordyce.

Exclusion of stock from Significant Natural Areas

23. The absence of provisions requiring the exclusion of stock from indigenous vegetation and habitat identified as SNA constitutes a critical gap in biodiversity protection. Biodiversity values would only further degrade where stock are allowed unmitigated access to areas of indigenous vegetation and habitat.
24. While territorial authorities may not be able to compel fencing of SNA to occur, in my view it would be appropriate to include stock exclusion as a discretionary criterion for resource consents for any activities affecting SNAs.
25. This would not be out of alignment with the proposed NPS-IB which recognises (Matter (h)), that “*disruption to indigenous fauna by people and their pets and livestock and changes that increase the risk of disruption*”⁵ is a matter adversely impacting indigenous biodiversity.
26. The proposed NPS-IB therefore requires that regional councils must “*make or change their policy statements to specify where, how and when plans must provide for existing activities that may adversely affect indigenous biodiversity*.”⁶
27. The proposed NPS-IB further requires that in providing for existing activities in their policy statements and plans, local authorities must “*(a) ensure the continuation of an existing activity will not lead to the loss, including through cumulative loss, of extent or degradation of the ecological integrity of any SNA; and b) ensure the adverse effects of an existing activity are of no greater character, intensity or scale than they were before the National Policy Statement commencement date.*”⁷ I consider, and with particular reference to Matter (h), that this would include a situation where an area categorised as SNA remained accessible to stock.

⁵ Draft National Policy Statement Indigenous Biodiversity (October 2019). Section 1.7(4)(h). P 9.

⁶ Draft National Policy Statement Indigenous Biodiversity (October 2019). Section 3.12(2). p 23.

⁷ Draft National Policy Statement Indigenous Biodiversity (October 2019). Section 3.12(3)(a), (b). p 23.

28. In my opinion, methods to achieve stock exclusion should be added to the assessment matters in ECO-AM2 in respect of the trimming and clearance of Indigenous Vegetation that is a discretionary activity pursuant to ECO-R3.
29. Council is not restricted to the matters identified in ECO-AM2, but may consider them (among other factors), and apply the consideration if, and where appropriate⁸. This would provide Council with the grounds to require fencing, or other means of exclusion, in cases where continued access by stock would be detrimental to areas recognised as having high conservation value, or which are rare, distinctive, and at risk.
30. I consider that this aligns with Stella Morgan's assertion that "*fencing could be offered or required as a condition of consent for activities affecting SNAs, but this would need to be considered on a case-by-case basis through the resource consent process.*"⁹
31. In summary, a discretionary consideration of stock exclusion in the assessment matters for discretionary trimming and clearance within an SNA, would enable the council to achieve a considerable gain for biodiversity protection within SNA's, and would further align the PDP with the proposed NPS-IB.

Biodiversity offsets

32. Ernslaw is supportive of the policy framework giving effect to biodiversity offsetting to achieve 'no net loss', or a 'net gain', for indigenous biodiversity where adverse effects cannot be avoided, remedied or mitigated.
33. The provisions (ECO-P5, ECO-M3 and ECO-APP2), give effect to the Principles of Biodiversity Offsets, and where proposed in resource consent applications, will bring appreciable benefits for landowner management and SNA protection.
34. I agree with the wording change proposed by Forest and Bird to cross reference between ECO-M3 and ECO-APP2.

Recognition of Landowners Stewardship

35. Ernslaw supports policy ECO-P7 which provides for the recognition of the efforts of landowners who maintain and enhance indigenous vegetation including weed management and pest control. Considerable resource is channelled into predator

⁸ PDP, Assessment Matters, P ECO-13.

⁹ Morgan, Stella. Officers Report: Natural Environment – Ecosystems and Indigenous Biodiversity. Para 5.3.48, p 27.

and pest control which has benefits for both crop management and indigenous flora, fauna and habitat.

36. I agree with the provision as proposed.

Non-regulatory Methods and Incentives

37. Ernslaw supports Policy ECO-P8, which provides assistance and incentives to landowners to maintain areas of significant indigenous vegetation and habitat.
38. I agree with the provision as proposed.

Mapping and Identification of SNA's

39. Rayonier and Ernslaw seek amendment of ECO-P2 to protect areas identified and mapped in the district plan as otherwise there is uncertainty for landowners (and potential landowners). This will ensure the PDP is in complete alignment with the NPS-IB¹⁰ as well as provide necessary certainty for existing and prospective landowners and land managers, acknowledging that the identification and mapping of SNA is an ongoing, evolving process involving consultation, assessment, and identification, and one which is proposed to be repeated every two years, where practicable, to accurately reflect and incorporate SNA.
40. Stella Morgan asserts the review of SNA has limitations being a desktop review, with "some ground-truthing".¹¹ The identified and mapped SNAs are therefore acknowledged as representing most, but likely not all, of the District's significant indigenous vegetation or significant habitat. A lack of methods to protect areas outside of identified SNA could lead to significant environmental costs. This is why Rayonier and Ernslaw see future work in this area, including a future plan change, as imperative to continue to capture SNA's identified subsequent to this plan change, within a protective framework.
41. Rayonier and Ernslaw accept that the depletion of indigenous vegetation and habitat is a direct threat to many under-represented eco-system types, and that remaining flora and fauna is highly likely to be within the nationally threatened categories.
42. However, as stated in the PDP, except where high conservation values exist, and are mapped as SNA, the PDP seeks to accommodate a wide range of activities

¹⁰ Draft National Policy Statement Indigenous Biodiversity (October 2019). Section 3.8(8). P20.

¹¹ Morgan, Stella. Officers Report: Natural Environment – Ecosystems and Indigenous Biodiversity. Para 9.3.9. p 55.

with appropriate standards to ensure adverse effects on significant indigenous vegetation and habitat are avoided, remedied or mitigated.

43. The provisions of the NES-PF, Regulation 93 highly limit and, clearly quantify acceptable and appropriate limits on clearance of indigenous vegetation and habitat in plantation forests.
44. I consider not only that mapping provides certainty, but additionally that all mapping must be searchable, and meet the requirements for presentation and mapping conventions outlined in the National Planning Standards (2019).