

## **HEARING STREAM 1 – OPENING STATEMENT OF SECTION 42A REPORTING OFFICER**

My name is Stella Ann Luoni Morgan and I am the reporting officer for the Section 42A reports on Ecosystems and Indigenous Biodiversity; and Open Space and Recreation/ Public Access/ Activities on the Surface of Water. These chapters form part of the Natural Environment section of the PDP

### ***Ecosystems and Indigenous Biodiversity***

#### Submissions addressed in my Section 42A report

My report addresses submissions relating to the PDP provisions contained in the Ecosystems and Indigenous Biodiversity, as well as related Definitions contained with the ‘Interpretation’ chapter.

A number of submissions were also received on specific sites listed in Schedule ECO-SCHED5 – Schedule of Significant Natural Areas. Due to the need for a number of these sites to be ground-truthed by Council’s consultant ecologist, these submission points have been held over to Hearing Stream 6 that will address Miscellaneous, Introduction, Rezoning and SNA Schedule matters, to be held later in the year.

In addition, S120.020, S120.021 and S120.022 Ngā hapu me nga marae o Tamatea (and associated further submissions) have been moved for consideration to Hearing Stream 4 addressing Tangata Whenua and Historic Heritage provisions of the PDP. This is to enable these submission points to be considered alongside similar submissions.

#### Reasons for these provisions

In preparing a District Plan, Council is required to: ‘*recognise and provide for*’ matters of national importance including ‘*the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna*’ (s6(c)).

In addition, as an ‘other matter’ s7(d) requires that ‘*In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to – ... intrinsic values of ecosystems*’.

Further, section 31 (b)(iii) provides that ‘*Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:... the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of—...the maintenance of indigenous biological diversity*’.

As set out in the overview section of my section 42A report, these provisions update the Operative Plan scheduling (Appendix D) and mapping of ‘Areas of Significant Nature Conservation Value’ (ASNCV’s), and replace the ‘Nature Conservation’ provisions, contained within the ‘Rural’ zone provisions of the Operative District Plan.

Sites Scheduled in Appendix D, and associated identification on the District Plan maps is based on Department of Conservation information (Recommended Areas for Protection or ‘RAP’ (1994)) and other DoC Information available at that time.

The Operative District Plan rules provide that there shall be ‘no modification’ to Sites of Significant Conservation Value, being those sites mapped and listed in Appendix D, or sites with naturally occurring tree species of 30cm in diameter or more, over 1ha (if the canopy if over 6m) or 5 ha of any height.

Some ‘minor’ works are permitted in areas under 5 ha (maintenance or repair of existing roads, tracks fences or drains, and activities associated with plantation forestry).

My point in outlining these provisions to you is that both mapping / scheduling of sites, and rules are not new to the District, and the OPD provisions are quite restrictive. Despite this, I understand that there have been few if any resource consents received by Council in relation to these matters.

#### PDP approach

As set out in my Section 42A report, Consultant ecologist Gerry Kessels, was commissioned by Council to complete a review of the District’s natural heritage, as the basis for better understanding the District’s natural heritage resource that met the tests of section 6(c), and to provide guidance on methods for meeting Council’s section 6(c).

In doing so, he developed a set of assessment criteria (refer Policy ECO-P1 and Appendix ECO-APP1) as the basis for a GIS-based data set and schedule of sites for inclusion in the PDP.

The first review report provided an analysis and interpretation of aerial photography information from ecological reports and data, and applied local ecological knowledge to develop a provisional inventory of significant sites. These sites were then reviewed through consultation with the Council, landowners, and other stakeholders, including a series of landowner meetings, community workshops and the ‘Draft Plan’ process. Where requested, ground-truthing of a number of sites was completed and sites reviewed.

The second review report included analysis of additional vegetation, wetland and migrating river data sets, and provided a revised polygon data set, comprising a number of minor edits to increase the accuracy of the polygons and to better align with vegetation boundaries. It also took into account the approach advocated by the Draft National Policy Statement – Indigenous Biodiversity (NPS-IB) when it was released in 2019.

The third and final review sought to finalise the scheduling and mapping of ‘Significant Natural Areas’ (SNA) for inclusion in the PDP. It noted the limitations of the SNA identification, including being a desktop review with limited ground-truthing.

The PDP Ecosystems and Indigenous Biodiversity provisions have also sought to align provisions with the Draft NPS-IB. Of note, this draft was developed by a stakeholder led ‘Biodiversity Collaborative Group’, comprising representatives from Forest and Bird, Federated Farmers, the New Zealand Forest Owners Association, Environmental Defence Society, a representative of the Iwi Chairs Forum through the Pou Taiao Iwi Advisors Group, and representatives from infrastructure industries.

Despite being released in 2019, the NPS-IB has remained in draft form and therefore does not have any legislative weight. It is however considered to represent the current best practice approach to the maintenance of indigenous biodiversity and has been used as guidance in the development of these provisions.

The PDP rule framework applies a ‘cascade’ or ‘sieve’ approach, which requires any person who is considering trimming or clearing any indigenous vegetation, to work their way through the rules in the Plan to determine what type of consent (if any) will be required.

Consent is not required for trimming or clearance of any of the following:

- Areas of domestic or ornamental landscape planting; or
- Planted shelter belts; or
- Plantation forestry undergrowth; or
- Planted indigenous forestry.

However, consent is required for trimming and clearance of indigenous vegetation that:

- Comprises naturally regrown manuka or kanuka over certain thresholds (area, tree diameter and height. **Rule ECO-R2**)
- Is inside an ‘*area of significant indigenous vegetation and/or significant habitat of indigenous fauna*’ (excluding natural wetlands) or that meets one or more of

the Ecological Significance Determination Criteria (exceptions provided). **Rule ECO-R3**

- Is other manuka or kanuka over certain thresholds (area, tree diameter and height). **Rule ECO-R4**
- Is outside an ‘area of significant indigenous vegetation and/or significant habitat of indigenous fauna’ where sites exceed certain thresholds (area, tree diameter and height). **Rule ECO-R4**
- Is not otherwise provided. **Rule ECO-R5**
- Forms part of any natural wetland identified as an SNA in ECO-SCHED 5. **Rule ECO-R6**

### Submissions and Main Matters in Contention

27 submitters made a total of 161 original submission points on this topic, and there were 130 further submission points in support of or opposition to those submissions.

Of the original 161 submission points 76 of these were in support - with the remainder seeking amendments or opposing various aspects of the relevant provisions in the Proposed Plan.

The submissions opposing various aspects, cover a broad range of matters from minor corrections, through to requests to delete various aspects of the Proposed Plan.

As a very broad summary, matters in contention include:

- Amendments sought to definitions to clarify or change meaning
- Amendments to better recognise kaitiakitanga and the relationship of Māori with indigenous vegetation and fauna
- Development of Māori land within SNA
- General opposition to identifying SNA and imposing restrictions/ greater responsibilities on landowners as a result, including opposition to SNAs on land protected by QEII or similar.
- Lack of assessment (section 32) to justify provisions (or lack of) relating to plantation forestry activities, and lack of clarity as to when PDP rules apply to plantation forestry.
- Minor amendments to biodiversity ‘offsetting’ provisions
- Various amendments sought to clarify ‘Ecological Significance Determination Criteria’ in Policy ECO-P1
- Various amendments to Policies ECO-P2, ECO-P3, ECO-P4, and deletion of ECO-P3 and ECO-P4 and a new policy relating to sites already protected under other legal mechanisms
- Various amendments to ECO-Rules

- Other minor changes

I don't intend to traverse these matters in my opening statement, as they have each been addressed in my section 42A report, along with my recommendations in response – some of which were considered by Mr Kessels and covered in his statement attached to, and referenced in, my s42A report.

I have read the evidence and legal submissions and have filed supplementary evidence in response with respect to 3 matters including:

- S81.073 Hort NZ – Evidence from Hort NZ with regard to PDP biosecurity provisions. This has resulted in a change to my original recommendation from 'reject' to 'accept' and includes proposing amendments to Rule ECO-R3.
- S85.008 Rayonier Matariki Forests and S132.002, S132.003, and S132.002 Ernslaw One Limited – Evidence and legal submissions from Ernslaw One Ltd and Rayonier Matariki Forests on clarification of the relationship between the NES-PF and PDP ECO-Rules, and subsequent agreed revised wording for an advice note to precede the rules.
- S121.020 Federated Farmers – Evidence from Federated Farmers submitting a corrected version of their amendments to Policy ECO-P2 and requesting that it be reconsidered.

Other than these matters, I do not have anything further to add at this point but anticipate returning to these matters in my formal reply following the hearing.

### ***Open Space and Recreation/ Public Access/ Activities on the Surface of Water.***

This report addresses submissions on the following chapters of the PDP:

- **OSR** – Open Space and Recreation
- **PA** – Public Access
- **ASW** – Activities on the Surface of Water

In general, these chapters represent a 'rollover' of the Operative District Plan provisions, with any changes generally reflecting the requirements of the National Planning Standards.

#### **OSR – Open Space and Recreation**

As set out in my Section 42A report, the OSR provisions of the PDP outline the values of public open space and recreation to Central Hawke's Bay and the District Plan approach to the provision of open spaces and recreational activities. Many of Council's open spaces and activities /facilities are 'designated' in the PDP and also shown on the

planning maps. Community and recreation facilities are also identified in SCHED 8 – Schedule of Identified Community Facilities and shown on the Planning Maps (for information purposes only).

‘Recreational activities’ fall within the definition of ‘community facilities’, being a definition determined by the national planning standards. and are generally permitted across the zones subject to standards. Accordingly, this chapter does not have any rules.

2 submission points were received on this chapter, both in support. No further submissions points were received.

### PA Public Access

The PA provisions respond to section 6(d) matter of national importance requiring Council to recognise and provide for *‘the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers.’*

The PDP Planning Maps identify the district’s important waterbodies and, in this chapter and associated subdivision provisions, seek to prioritise the creation of esplanade areas to provide public access to and along these areas.

15 submission points and 12 further submission points were received on this chapter. 10 of these submission points support the PDP provisions and 5 seek amendments.

Key matters in opposition are summarised as follows:

1. The need to address access by mana whenua to wāhi tapu on private land or to cross private land to sites of particular significance.
2. Clarification of matters related to esplanade reserves (Policies PA-P1 and PA-P2) and a request for a new policy regarding compensation for esplanade reserves provided.
3. A request to include reference to private land in Policy PA-P4, and request for a new policy to advocate and educate about public access.

My report also notes a mapping error that has resulted in sections of the ‘priority water bodies’ being left off the Planning Maps, including Lake Whatuma and key rivers east of the main townships of Waipawa and Waipukurau. This will be addressed through a ‘washup’ variation to the PDP. The error does not affect the content of my report which relates to the PDP provisions that will apply to priority waterbodies. I note there were no submission received on this matter.

That matter of 'correction of errors' has also been addressed by Ms Davidson at paragraphs 56- 64 of her opening legal submissions.

### ASW Activities on the Surface of Water

The ASW section of the PDP addresses the Council's RMA responsibilities (s31(e)) to manage the control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes.

13 submission points and no further submission points were received on these provisions. 11 submission points are in support, one seeks an amendment, and one is in opposition.

The key matter in opposition to these provisions is from jet Boating NZ seeking amendments to allow for jetboating outside of the fishing season, and to provide performance standards for commercial jet boating.

I have read the statements and submissions. I do not have anything to add at this point, but anticipate returning to these matters in my formal reply following the hearing.

### ***Conclusion***

To conclude, I anticipate the Panel may have additional questions of the reporting officers following the submitter presentations over the course of the next couple of days.

I note that Mr Kessels will also be available to the Panel for questions at the end of hearing submissions.

I will provide the Panel with a formal written reply on matters raised during this hearing, where additional commentary is requested by the Panel, or where there are matters raised where a response would be helpful to the Panel.

I understand our replies on behalf of Council are to be provided to the Hearings Panel no later than 10 working days following adjournment of this hearing.



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Stella Morgan