SECTION 42A REPORT

Closing Statement

Hearing 21A: Natural Environment 1- Indigenous Vegetation and Habitats s42A

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Date: August 2021

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1 Introduction

1. Arising out of the discussions and evidence presented during Hearing 21 Natural Environment, this report addresses a variety of matters associated with the topic. These matters include the following:

    a. SNA mapping for properties that have not been groundtruthed.

    b. The definition of Significant Natural Areas and whether it is restricted to only those areas mapped or applies more widely to all areas meeting the Appendix 2: Criteria for Determining Significance of Indigenous Biodiversity.

    c. Indigenous vegetation clearance rules for outside an SNA.

    d. Vegetation clearance rules within the Coastal Environment, specifically manuka and kanuka.

    e. Kauri Dieback.

    f. The management of Long-Tailed Bats.

2. I address each of these matters in turn.

3. I have also included a summary of the evidence presented at the hearing on 20th and 24th November 2020 in Section 8 of this report.

2 Indigenous Biodiversity

General discussion

4. There is strong policy direction in higher legislation to protect/retain indigenous biodiversity. This is particularly clear in Section 11 of the Waikato Regional Policy Statement (RPS) and is signaled in the early drafts of the proposed National Policy Statement for Indigenous biodiversity. The policy direction of the RPS is to ensure that species, habitats and ecosystems are maintained and enhanced long term, and this requires Council to include provisions to manage indigenous biodiversity.

5. To meet the obligations of the RPS requires the promotion of positive indigenous biodiversity outcomes, and working towards achieving a no net loss of indigenous biodiversity at a regional scale. Therefore, I consider as part of the district plan review process that rule frameworks will be expected to be strengthened.

Background/History of Rules

6. The activities that have the greatest impact on indigenous biodiversity are earthworks and vegetation clearance. The rules are designed to manage the effects of these activities. The Operative Waikato Plan manages earthworks either in general terms, or if in the Landscape Policy Overlay, the rules have stricter thresholds. The Proposed District Plan (PDP) restricts earthworks within a Significant Natural Area (SNA) in response to the policy direction by allowing for minimal earthworks for specific activities within an SNA.

7. The main difference between the Operative Waikato Plan rules and the Proposed Waikato Plan rules in respect of earthworks are, in the PDP within an SNA, the rules only allow for maintenance of existing tracks, conservation activities and water reticulation. This compares to

the Operative Waikato Plan, where the earthworks rules only relate to amenity effects on the landscape as a consideration. Through the PDP review it was identified that the rules in the operative plan needed strengthening to be better aligned with the regional and national policy direction.

8. The main differences between the Operative Plan and the PDP in relation to vegetation clearance is the amount of clearance permitted for building development and for pasture maintenance (the latter applies only when managing manuka and kanuka). The ODP allows for management of these species by virtue of a stricter regime for sites within a Landscape Policy Overlay (LPA), and if outside the LPA a less stringent approach is applied.

9. The PDP vegetation clearance rules as notified allow for 1000m^2 clearance of manuka and kanuka if outside an SNA. However, with manuka and kanuka instantly meeting the criteria for being an SNA due to their classification as either a threatened or at-risk species, the vegetation clearance is limited to fundamentally track maintenance, and development of Maaori land.

10. To acknowledge s6(e) of the Resource Management Act, where there is a requirement to recognise the relationship of Maaori and their culture and traditions with ancestral lands etc., the PDP rule framework has a more lenient approach to Maaori Freehold Land in terms of earthworks and vegetation clearance, in order to enable development of Maaori purpose activities for example, Papakaainga.

3 Significant Natural Area Mapping and Definition of Significant Natural Area

11. In my s42A report I recommended broadening the definition of "Significant Natural Area" so that it was not limited to just those areas mapped, and would apply to any vegetation that met the criteria set out in Appendix 2 of the PDP. Several submitters provided evidence on the amended wording to the definition for an SNA.

    In support were:

    a. KCH Trust
    b. NZTA support using Appendix 2 as an interim method until accurate mapping is undertaken (ground truthing)
    c. –Transpower (Pauline Whitney) accepted the amended wording to the SNA definition, however pointed out some challenges.

    Not in support were:

    d. Hynds Pipes
    e. Surveying Company (Sarah Nairn)
    f. Genesis Energy Limited (Richard Mathews).

12. I agree that the application of the recommended amendment to the SNA definition is onerous, and as was quite rightly pointed out, that in the absence of mapping, property owners are left not knowing whether provisions apply or not. I also agree with Hynds Pipes, the Surveying Company and Genesis Energy that the definition for SNA should not include reference to Appendix 2: Criteria for Determining the Significance of Indigenous Biodiversity.

13. This issue goes to the heart of the SNA issue and whether they should be mapped or not, particularly given the inaccuracy of the mapping in the PDP. I have considered the risk of removing the SNA mapping from properties that have not been ground truthed, and in my opinion, the risk of wholesale clearance is small. In my discussions with submitters, I have found that most rural property owners consider indigenous vegetation to be an asset, and value indigenous vegetation on their properties. I have previously mentioned that during my 15 years of employment at council, there has been one complaint that has been brought to Council's attention in relation to vegetation clearance. In my view, taking the approach of only mapping SNAs that have been ground truthed, and not referring to Appendix 2 in the definition for an SNA is a low risk to indigenous biodiversity within the Waikato District. This will mean that the earthworks rules and the vegetation clearance rules will only apply to the SNAs that have been identified on the proposed planning maps.

14. It is envisaged that the ground truthing of the remaining areas will be given priority by council staff, to ensure that the SNA spatial layer is fit for purpose, however this will be dependent on funding through the Long Term Plan and the up-and-coming requirements of the future National Policy Statement for Indigenous Biodiversity (NPSIB).

15. I therefore recommend amending the definition of an SNA as follows:

> Means an area of significant indigenous biodiversity that is identified as a Significant Natural Area on the planning maps

16. When considering the definition for SNA and what should be mapped on the PDP maps, in the section 42A rebuttal I am recommending removing the mapping, except for the sites where ground truthing has been undertaken. In these cases, I recommend that the mapping of SNAs be modified to better reflect the extent of the indigenous vegetation on the site, as confirmed through my site visits and discussions with the landowners. I also recommended in the s42A report retaining the mapping of SNAs where council is certain of the extent and quality of the indigenous vegetation. This would include the areas held in trust by the Queen Elizabeth Trust (QEII), and land that is managed by the Department of Conservation.

17. As a consequence of this, I recommend reverting to the notified version of the definition of Significant Natural Area, where only those areas mapped on the planning maps are deemed to be a Significant Natural Area.

4 Application of the Indigenous Vegetation Clearance Rules

18. Given the above discussion and to provide a level of assurance that the remaining potential SNAs are not under immediate threat, I have recommended a strengthening of the vegetation clearance rules for general indigenous vegetation (outside an SNA). The current rules for outside and inside an SNA allow as a permitted activity vegetation clearance for the purposes of track maintenance, conservation activities and for the development of Maaori Freehold Land. In my view these rules are appropriate.

19. The most significant difference between the rule framework inside or outside an SNA is the threshold for clearance for building development, which is:

    a. inside an SNA is 250m^2 and
    b. outside of an SNA is set at 500m^2.

20. In the absence of mapping and until such time as ground truthing is undertaken for all indigenous vegetation sites in the District, I recommend that vegetation clearance in relation to building development outside an SNA be lowered to 250m^2 if there is no practicable alternative development area. This is also an approach that Ms Foley of Waikato Regional Council supported in her evidence as a way to manage the current issue of the spatial data not being fit for purpose for the functions of a rule framework (the s32AA evaluation for this is later in this report).

4.1 Vegetation Clearance Rules Inside an SNA

21. The panel questioned providing for a permitted activity that allows for vegetation clearance inside an SNA for anything other than that in the Proposed District Plan Rule PC1 (existing track maintenance etc.). I consider it important to understand the journey that the provisions for clearance of vegetation have taken through the review process.

22. Starting with the Operative Waikato Plan, the purpose of the rules in the Operative District Plan is to ensure protection of remaining habitat. Indigenous vegetation cover is also an important component of many outstanding landscapes. The rules within the Pa, Rural, Coastal, Country Living zones, and within the Landscape Policy Area of the Industrial Zone, provide for a small area of clearance of indigenous vegetation as a permitted activity. Clearing a larger area requires a consent to be obtained so that various matters can be considered. These include natural character, significant vegetation and habitat, amenity in terms of visual effects, and erosion and sedimentation. The rules also provide for clearing former pasture lands that have recently reverted to indigenous vegetation. Where manuka, kanuka and tree ferns dominate the canopy, the presence of other indigenous species in the canopy will not change the activity status of any clearance, provided that those trees were present when the land was previously in pasture.

23. In terms of the PDP, the rules take a similar approach, however lower thresholds for permitted clearance have been imposed in recognition of the Regional Policy Statement. For example, within an SNA, vegetation removal is limited to providing for 250m^2 for a building development if there is no alternative development area and if outside an SNA the threshold is 500m^2 (this area has been recommended to be amended above in paragraph 20).

24. A matter that was discussed during the hearing was whether clearing for a building development within an SNA could generate adverse effects and which controls should be imposed on this activity. This would mean no permitted activity for clearance for building development within an SNA. I am mindful of section 85 clause (3B) of the RMA which states the following:

> *The grounds are that the provision or proposed provision of a plan or proposed plan*
> *(a) makes any land incapable of reasonable use; and*
> *(b) places an unfair and unreasonable burden on any person who has an interest in the land.*

25. However, I have reflected on the discussions of the hearing, and agree that a permitted activity for a building development may have potential to create a risk for an SNA if not managed appropriately. I am also cognisant that this places a property owner in a position where resource consent will be required to build on a property that is potentially entirely bush-clad or where the topography may be a limiting factor.

26. I have considered the Auckland Unitary Plan approach where a controlled activity has been imposed on this activity. I consider that this could be a reasonable approach, as consent must be granted, which would provide certainty for the landowner. Under a controlled activity status an ecological assessment can provide guidance, and controls relevant to the vegetation that has been sought to be removed can be placed on the consent.

27. In Hearing 28 Other Matters, I recommended deleting Schedule 30.5 (Urban Allotment Significant Natural Area) from the PDP (this is discussed in detail in that Hearing report), and therefore all references to this Schedule would be deleted. The rule would then read as follows:

~~P3~~ C1

(a) Indigenous vegetation clearance for building, access, parking and manoeuvring areas in a Significant Natural Area identified on the planning maps ~~or~~ in ~~Schedule 30.5 (Urban Allotment Significant Natural Areas)~~ must comply with all of the following conditions:
  (i) There is no practicable alternative development area on the site outside the Significant Natural Area; and
  (ii) The total indigenous vegetation clearance does not exceed 250m^2.
  (iii) The vegetation clearance is at least 10m from a natural waterbody

Recommended amendments

28. The following amendments are recommended:

Rule 22.2.7 Indigenous vegetation clearance inside a Significant Natural Area

~~P3~~ C1	Indigenous vegetation clearance for building, access, parking and manoeuvring areas in a Significant Natural Area identified on the planning maps or ~~in Schedule 30.5 (Urban Allotment Significant Natural Areas)~~ must comply with all of the following conditions: (i) There is no practicable alternative development area on the site outside the Significant Natural Area; and (ii) The total indigenous vegetation clearance does not exceed 250m^2. (iii) The vegetation clearance is at least 10m from a natural waterbody	(a) Council's control shall be restricted to the following matters (i) The location of the building platform and accessway (ii) The area of indigenous vegetation to be cleared (iii) The measures to remedy or mitigate adverse effects of the clearance (iv) Whether the clearance can be carried out in a way that avoids high quality vegetation

Rule 22.2.8

P1	(a) Indigenous vegetation clearance outside a Significant Natural Area identified on the planning maps ~~or in Schedule 30.5 (Urban Allotment Significant Natural Areas)~~ must be for the following purposes: (i) Removing vegetation that endangers human life or existing buildings or structures; (ii) ~~Maintaining productive pasture through the removal of up to 1000m² per single consecutive 12 month period of manuka and/or kanuka that is more than 10m from a waterbody, and less than 4m in height;~~ (iii) Maintaining existing tracks and fences; (iv) Maintaining existing farm drains; (v) Conservation fencing to exclude stock or pests; (vi) Gathering of plants in accordance with Maaori custom and values; or (vii) A building platform and associated access, parking and manoeuvring up to a total of ~~500m²~~ 250m² clearance of indigenous vegetation and there is no practicable alternative development area on the site outside of the area of indigenous vegetation clearance. (viii) In the Aggregate Extraction Areas, a maximum of 2000m² in a single consecutive 12 month period per record of title (ix) Conservation activities

4.2 Section 32AA evaluation

29. The two rules analysed relate to the clearance of indigenous vegetation for the purposes of a building development. The amendment to Rule 22.2.7 P3 to be a Controlled Activity recognises the importance of managing effects on indigenous biodiversity when clearance for a building platform and associated access way and manoeuvring occurs.

30. The amendment to Rule 22.2.8 Indigenous vegetation clearance outside an SNA recognises the removal of the SNA mapping until ground truthing of areas has been undertaken, as well as the potential effects on indigenous biodiversity when creating a building platform and associated access way and manoeuvring areas.

Other reasonably-practicable options

31. In consideration of Rule 22.2.7, there are there are four main options to address Clearance of indigenous vegetation:

Option 1: A permitted activity with no limits

This option would not enable the management of areas of vegetation that may have high value and not give effect to section 11 of the Regional Policy Statement.

Option 2: Permitted activity with limitations on the amount of clearance

This option is the notified version where the limit of clearance is set at 250m². Although there is a restriction on the limit, there are no controls to manage the effects on the area and what may be high-value indigenous vegetation.

Option 3: Controlled activity

This option allows for the clearance of 250m², however the controlled activity status enables the management of the type of indigenous vegetation clearance in terms of whether the vegetation is of high value or not when building development occurs within an SNA. A controlled activity provides confidence for the landowner, as consent must be granted.

Option 4: A more restrictive activity status

Consideration should be given to landowners who have properties that are entirely bush-clad. With a more restrictive activity status there is no guarantee that consent will be granted. This will not be consistent with section 85 of the RMA.

32. In respect of Rule 22.2.8, an option would be to retain the area as notified, however in lieu of mapping, the value of areas is unknown. An option therefore is to reduce the threshold in the rule to 250m^2 to manage any potential adverse effects.

Effectiveness and efficiency

33. Option 3 is the preferred option, as the recommended amendments to the rules give effect to the policies within section 11 of the Regional Policy Statement to ensure that the adverse effects on indigenous biodiversity are minimised. The amendments improve the effectiveness of the policy in implementing Objective 3.1.1 and Objective 3.2.1, and provide suitable guidance to plan users for the assessment of activities that affect the management of indigenous biodiversity.

Costs and benefits

34. There are additional costs, as consent will be needed to undertake building development within an SNA. If outside of an SNA there will be potential additional costs if a building development requires more than 250m^2 to be cleared, as consent will be required. However, there are benefits to the environment with the revised rule, as it is clearer about how the effects will be managed.

35. Other benefits are that if vegetation clearance is undertaken within or outside of an SNA consideration can be given to the value of the indigenous vegetation to be cleared.

36. Other benefits are clearer guidance to plan users regarding the effects of indigenous vegetation clearance.

Risk of acting or not acting

37. There are no additional risks in not acting. There is sufficient information on the costs to the environment, and benefits to people and communities, to justify the amendment to the rule.

Decision about most appropriate option

38. The amendment gives effect to the Waikato Regional Policy Statement. It is considered to be more appropriate in achieving the purpose of the RMA than the notified version of the rule.

4.3 Manuka and Kanuka

39. I am mindful of the issue of manuka and kanuka and the challenges that these species have caused to the farming industry, with them being included as threatened or at-risk species. The initial approach in the PDP was that as threatened species, manuka and kanuka instantly met the requirement under Appendix 2 to be identified as an SNA. The notified rule within an SNA was to allow for a small amount of clearance of these species within an SNA for the purposes of firewood or arts and crafts. In my rebuttal s42A report I recommended clearance of kanuka and manuka up to 2000m^2 per single consecutive year for pasture maintenance within an SNA, but if inside the Coastal Environment there was no clearance of this species permitted due to Policy 11 in the New Zealand Coast Policy Statement.

40. As discussed above, I have recommended retaining the definition of SNA as it was notified, which relies on the spatial identification of SNAs on the planning maps. This will mean that the rules

apply only where an SNA is identified on the planning maps. I am aware that manuka and kanuka instantly meet the criteria for being identified as SNA, however in the absence of ground truthing of SNAs, I am aware that there are many areas of these species that have not been mapped. I recommend including a rule to enable management of manuka and kanuka that have not been mapped, in the general indigenous vegetation clearance rule that applies to outside an SNA,.

41. The approach I took was somewhat absolute, as I provided for no permitted activity for the clearance of manuka or kanuka within the Coastal Environment. My position reflected the working of Policy 11 of the New Zealand Coastal Policy Statement and the King Salmon Decision where "avoid" means "avoid". However, this approach caused much concern to the farming community.

42. The Hearing Panel requested a legal opinion on the interpretation and application of Policy 11(a) of the New Zealand Coastal Policy Statement. Ms Bridget Parham of Tompkins Wake prepared a legal opinion which indicates that there is scope to allow a more practical approach to managing manuka and kanuka within the Coastal Environment (attached). Ms Parham's advice has caused me to reconsider the approach proposed in the s42a report when managing these species within the Coastal Environment. Consequently, I consider it appropriate to allow a certain level of clearance of kanuka and manuka in the coastal environment without contradicting Policy 11(a) of the New Zealand Coastal Policy Statement.

What is an appropriate amount to clear as a permitted activity?

43. I have considered what is the most appropriate level of clearance as a permitted activity both in the Coastal Environment and outside of this area. I sought input from Federated Farmers of New Zealand, however they are of the opinion that there should be no activity standard or threshold imposed for the clearance of these species. I consider that such an approach would not be in alignment with the policy direction, either regionally and nationally. This has created somewhat of a dilemma as to what is an appropriate level of clearance of these species, and this must be justified through the s32AA evaluation.

44. The notified threshold is proposed to be 1000m^2 per 12 months if outside an SNA. Through the analysis of submissions, I then recommended increasing the threshold to 2000m^2 (if outside the Coastal Environment). The purpose was to better provide for the farming industry. I note that the Operative Waikato plan thresholds for inside a Landscape Policy Area is set at 3000m^2 per year, and if outside of the Landscape policy area there is no restriction on area, rather a performance standard regarding the age and height of the species. I consider that not restricting removal of kanuka and manuka would not be giving effect to the policy direction of higher legislation. So, what is appropriate?

45. I have further reflected on the most appropriate area, and in my opinion using the threshold as set within the Waikato Operative Plan Landscape Policy Area overlay seems both reasonable and appropriate, this being 3000m^2 for the purposes of maintaining or reinstating productive pasture. I recommend that this threshold apply to manuka and kanuka. The 3000m^2 per year limit would also apply within the Coastal Environment, regardless of whether the manuka and kanuka are identified as an SNA on the planning maps or not. To the best of my knowledge, this level of clearance has not led to a decline in population of either species, and I am persuaded by the analysis of Mr John Turner as to the prevalence of these species. I believe this is justifiable through a s32AA evaluation, as this is the most appropriate way to achieve both the objectives applicable to primary productive activities in the Rural Zone, and the biodiversity objectives in Chapter 3. This approach has required a consequential amendment to Policy 3.2.6 providing for vegetation clearance.

46. This will mean that the rules for vegetation clearance will read as follows:

Rule 22.2.7
P7 Removal of manuka and/or kanuka to maintain productive pasture complying with the following:
(i) up to ~~2000m2~~ 3000m² per single consecutive 12 month period; and
(ii) plants are less than 4m in height; and
~~(iii) outside of the Coastal Environment;~~ and
(iii) outside a wetland; and
(iv) more than 10m from a waterbody.

Rule 22.2.8

(b) Indigenous vegetation clearance outside a Significant Natural Area identified on the planning maps ~~or in Schedule 30.5 (Urban Allotment Significant Natural Areas)~~ must be for the following purposes:

(x) Removing vegetation that endangers human life or existing buildings or structures;

(xi) Maintaining productive pasture through the removal of up to 3000m² per single consecutive 12 month period of manuka and/or kanuka that is more than 10m from a waterbody, and less than 4m in height;

(xii) Maintaining existing tracks and fences;

(xiii) Maintaining existing farm drains;

(xiv) Conservation fencing to exclude stock or pests;

(xv) Gathering of plants in accordance with Maaori custom and values; or

(xvi) A building platform and associated access, parking and manoeuvring up to a total of 500m² clearance of indigenous vegetation and there is no practicable alternative development area on the site outside of the area of indigenous vegetation clearance.

(xvii) In the Aggregate Extraction Areas, a maximum of 2000m² in a single consecutive 12 month period per record of title

(xviii) Conservation activities

Policy 3.2.6 - Providing for vegetation clearance

(a) Provide for the clearance of indigenous vegetation in Significant Natural Areas when:
  (i) maintaining tracks, fences and farm drains
  (ii) avoiding loss of life injury or damage to property
  (iii) collecting material to maintain traditional Maaori cultural practices
  (iv) collecting firewood for domestic use
  (v) (iv) operating, maintaining or upgrading existing infrastructure
  (vi) Provide for the removal of manuka and kanuka for pasture maintenance

(b) Provide for the clearance of indigenous vegetation in Significant Natural Areas for the construction of building platforms, services, access, vehicle parking and on-site manoeuvring and for the development of Maaori Freehold Land by:
  (i) using any existing cleared areas on a site that are suitable to accommodate new development in the first instance;
  (ii) using any practicable alternative locations that would reduce the need for vegetation removal;
  (iii) retaining indigenous vegetation which contributes to the ecological significance of a site, taking into account any loss that may be unavoidable to create a building platform, services, access, vehicle parking and manoeuvring on a site;

~~(iv) †Firewood.~~ ~~(iv) operating, maintaining or upgrading existing infrastructure~~

Recommended amendments

Policy 3.2.6 - Providing for vegetation clearance

Rule 22.2.7

P7	Removal of manuka and/or kanuka to maintaining productive pasture complying with the following: (i) up to ~~2000m²~~ 3000m² per single consecutive 12 month period; and (ii) plants are less than 4m in height; and ~~(iii) outside of the Coastal Environment; and~~ (iii) outside a wetland; and (iv) more than 10m from a waterbody.

Rule 22.2.8

P1	(a) Indigenous vegetation clearance outside a Significant Natural Area ~~identified on the planning maps or in Schedule 30.5 (Urban Allotment Significant Natural Areas)~~ must be for the following purposes: (i) Removing vegetation that endangers human life or existing buildings or structures; (ii) Maintaining productive pasture through the removal of up to ~~1000m²~~ 3000m² per single consecutive 12 month period of manuka and/or kanuka that is more than 10m from a waterbody, and less than 4m in height; (iii) Maintaining existing tracks and fences; (iv) Maintaining existing farm drains; (v) Conservation fencing to exclude stock or pests; (vi) Gathering of plants in accordance with Maaori custom and values; or (vii) A building platform and associated access, parking and manoeuvring up to a total of 500m² clearance of indigenous vegetation and there is no practicable alternative development area on the site outside of the area of indigenous vegetation clearance. (viii) In the Aggregate Extraction Areas, a maximum of 2000m² in a single consecutive 12 month period per record of title (ix) Conservation activities

4.4 Section 32AA evaluation

47. The amendment to the vegetation clearance Rules 22.2.7 and 22.2.8, and Policy 3.2.6 - Providing for Vegetation Clearance, recognises the importance of farming in rural areas, inclusive of the

coastal environment where manuka and kanuka are abundant. The recommended area for a permitted activity is 3000m^2 per year for the purposes of maintaining pasture.

48. The 3000m^2 area has been based on the application of the current Waikato Operative rule, which has proven to be an appropriate amount of area to clear. There has been no evidence to suggest that this much area has resulted in a decline in the population of this species.

49. The proposed rule framework has been strengthened when compared to the Operative District Plan, where there is no restriction on the area if outside of the Landscape Policy Areas. The restriction within the Landscape Policy Areas is set at an area of 3000m^2. The PDP does not contain a Landscape Policy overlay. Landscape considerations in the PDP are managed separately from SNAs.

Other reasonably-practicable options

50. One option is to retain the rules as notified; however, this will not enable a permitted activity to occur, which in this regard is farming.

51. The other option regarding the rules is to provide for a permitted activity to enable the management of manuka and kanuka clearance for the purposes of maintaining pasture.

Effectiveness and efficiency

52. The recommended amendments to the rules effectively enable rural activities to continue.

53. The rule is specific to two abundant indigenous species (manuka and kanuka), therefore clearance will have minimal effect on areas of indigenous vegetation that have a greater biodiversity. The amendments improve the effectiveness of the policy in implementing Policy 3.1.2 and Policy 3.2.6. The amendment will also give effect to Objective 5.1.1 (a) (ii), which supports productive rural activities. The amended rule allows for the removal of only manuka and kanuka for a specific purpose, and will provide suitable guidance to plan users on the assessment of activities that affect the management of indigenous biodiversity.

Costs and benefits

54. There are additional costs, as removal of any vegetation can lead to some amount of indigenous vegetation loss.

55. There are benefits to rural property owners, in that the rule will enable day-to-day farming activities, as clearance of up to 3000m^2 will be permitted for the purposes of maintaining pasture.

Risk of acting or not acting

56. There is the potential risk that Myrtle Rust will suddenly affect manuka and kanuka and the population of these species is compromised. However, evidence to date suggests that these species have not been affected by this disease. The rule is based on practical experience and seeks to avoid unnecessary consents for common activities, such as farming. The amendment will provide for sustainable use of land in the rural environment. There are benefits to people and communities to justify the amendment to the policy.

Decision about most appropriate option

57. The amendment gives effect to the Waikato Regional Policy Statement section 11. In particular Policy 11.2.2 (g), where district plans are to have regard to the functional necessity of activities being located in or near areas of significant indigenous vegetation. In this regard, it is considered that farming has a functional need to be located in areas where manuka and kanuka are

constantly re-establishing. It is considered to be more appropriate in achieving the PDP objectives than the notified version of the rule.

5 Kauri Dieback

58. The evidence provided by Department of Conservation was informative and suggested a suite of rules for the management of this disease. However, much of what was suggested in my opinion is impractical and would be difficult to implement. The Hearing panel explored alternative approaches such as strengthening the policy framework to establish non-regulatory methods, for example education. To this I agree. I would like to think that property owners who may have a kauri tree on their property would be interested in ensuring that activities in the vicinity of the tree will have no adverse effects on the tree and would seek advice in this regard. I consider it would be useful if the Proposed District Plan provided direction as to where this information can be obtained and who to contact.

59. I have read the National (Kauri Dieback) Pest Management Proposal (NPMP), which is a proposal to meet the requirements of Section 61 of the Biosecurity Act. This proposal is yet to be ratified and is in its third round of consultation. The current feedback indicates concerns from landowners in respect of the implementation of the plan, mainly around the practicality of the proposed rules, and there are concerns as to what/who a "Management Agency" is. There are indications that a preferred approach would be for an independent agency that focuses solely on Kauri Dieback, in preference to an agency that is subject to a three-year political cycle or differing political focus.

60. However, the NPMP does contain thinking that is relevant to the PDP, although my understanding is that the NPMP will be implemented by Regional Councils. The NPMP contains a proposed approach to earthworks that relates to district plans, which currently reads as follows:

> *5. Obligation to have earthworks risk management plan if applicable*
>
> *A person who intends to undertake earthworks in a kauri forest area must - a) cooperate with the management agency in preparing an earthworks risk management plan; and b) implement the plan as agreed with the management agency; and c) report on the implementation as required by the management agency.*
>
> *This rule does not apply if the relevant district plan already contains a rule that the management agency considers to be equivalent to these requirements.*
>
> *Policy Intent*
>
> *Earthworks are automatically considered high risk and it is the responsibility of the owner to self-designate and work with the management agency to develop and implement a risk management plan. This is not required if the council already has a definition of earthworks and processes for managing to prevent the spread of KD in its Plan.*

61. In my rebuttal s42A report I indicated that I consider that the management of this disease is more appropriate at the national level. This approach is also supported by Federated Farmers of New Zealand. I realise that the proposed NPMP has no legal status, however it is clear that the issue will likely be a national consideration where a preferred tactic is a coordinated approach involving relevant agencies at a level above a territorial authority, in other words, Regional Councils and Department of Conservation.

62. It is unfortunate that the NPMP is still a work in process, as the implementation of the NPMP specific to Kauri Dieback would arguably be the best outcome for all. I have considered the Thames Coromandel District Council environment court outcome and the rationale for the inclusion of complex earthworks rules in conjunction with the NPMP, and I have not been persuaded to change my recommended approach for the Waikato PDP. I am mindful that Thames Coromandel District Council has incorporated earthworks rules to manage this disease into their Plan. In this regard, the Coromandel Peninsula is an area that has a much larger population of kauri than the Waikato District. The Coromandel Peninsula stands out from other ecological regions in the Waikato for having a diverse and unique array of indigenous plant and animal species which can be attributed to the large and interconnected remnant areas of indigenous forests. According to the Thames Coromandel District Council plan, more than half of their District is still covered in indigenous forest and scrubland. As pointed out by Mr Turner, most of the natural kauri stands within the Waikato District are within bush reserve areas, and the protection of these is best managed by the bodies responsible for those areas, including Department of Conservation.

63. There is no doubt that kauri have been widely planted either for amenity purposes or as part of restoration plantings within the Waikato District, and Mr Turner, in his technical response, has indicated that there are many other means by which the disease can be spread other than via earthworks.

64. I believe that until such time as the NPMP is implemented, any rule within the PDP should be kept relatively fluid. This will ensure that there is no conflict with an approach that may (or may not) manifest in the NPMP in terms of managing the disease. I have appended the Proposed NPMP to this report. In my opinion, the recommended consideration of Kauri Dieback within the PDP in conjunction with a non-regulatory policy framework would be the most effective and efficient method, and enable an approach that ensures that the latest information can be implemented. I note that there is a Kauri Dieback Programme which is a multi-agency government and community response to managing the spread of kauri dieback disease. This programme was established in 2006 and is a collaborative partnership between Ministry for Primary Industries, Department of Conservation, and various Regional Councils. The programme is run by a governance group which has representation from all partners.

65. I recommend a Non-regulatory Policy in relation to Kauri Dieback as follows:

3.1.2E- Non-regulatory Policy 3.1.2E

The Council will support the provision of biodiversity advice and information to landowners on Kauri Dieback. The Council will incorporate information on Kauri Dieback in their Conservation Strategy and include reference to the Kauri Dieback Programme.

6 Bats

66. The evidence provided by Mr Riddell on behalf of the Department of Conservation in relation to bats outlined the issue of Long-Tailed bats in the Waikato District, and was further supported by Ms Thurley (bat expert for the Department of Conservation). The evidence states that much

of the Waikato district has not been surveyed for the presence of this species of bats. The Department of Conservation has a statutory obligation under the Wildlife Act to protect Long-Tailed bats. Mr Riddell considers that district plans have a role in the recognition and protection of long-tailed bat habitat, however without good data it would be difficult to incorporate anything meaningful into the PDP.

67. In my view the rules managing activities within an SNA - earthworks and vegetation clearance - are appropriate to ensure that the habitat of Long-Tailed Bats is protected.

68. I note that the draft NPS-IB (National Policy Statement for Indigenous Biodiversity) does not specifically mention bats, but does speak to "highly mobile fauna". The draft NPS-IB states in Section 3.15 Highly Mobile Fauna the following:

> *(1) Every regional council must work together with the territorial authorities in its region to survey and record areas outside SNAs where highly mobile fauna have been, or are likely to be, sometimes present (in this clause referred to as highly mobile fauna areas).*
>
> *(2) If it will help manage highly mobile fauna, a territorial authority must (where possible) include in its district plan a map or description of the location of highly mobile fauna areas.*
>
> *(3) Local authorities must provide information to their communities about*
>
> *a) highly mobile fauna and their habitats; and*
>
> *b) best practice techniques for managing adverse effects on any highly mobile species in their regions and districts, and their habitats.*
>
> *(4) Local authorities must include objectives, policies or methods in their policy statements and plans for managing the adverse effects of subdivision, use and development in highly mobile fauna areas, as necessary to maintain viable populations of highly mobile fauna across their natural range.*

69. The NPS-IB is expected to be released later in 2021, and it does indicate that there will be a requirement for regional councils to work with territorial authorities to survey and record areas outside of SNAs that may contain highly mobile fauna. Until such time that the surveying is undertaken for this species, it would be difficult to expect there to be rules imposed on an unknown habitat extent.

70. However, I do have sympathy for the issue, and suggest a similar approach to that taken with Kauri Dieback, where non-regulatory policies are included in the PDP to ensure that the communities are aware of Long-Tailed bat habitats. This could read as follows:

3.1.2F- Non-regulatory Policy 3.1.2E

The Council will support the provision of biodiversity advice and information to landowners on Long-tailed Bat Habitat. The Council will incorporate information on Long-Tailed Bats in their Conservation Strategy.

6.1 Section 32AA evaluation

Recommended amendment

71. The recommended amendment to include a non-regulatory policy assists landowners and the Council to work together to help manage the habitat of Long-Tailed Bats.

Other reasonably-practicable options

72. One option is to have no non-regulatory policy, and another option is to include a policy that enables collaboration between property owners and the Council.

Effectiveness and efficiency

73. The recommended additional policy will encourage property owners and the Council to work together to achieve good management of Long-Tailed Bat habitat. This will improve the effectiveness by implementing Objective 3.1 in the Natural Environment chapter.

Costs and benefits

74. There will be additional costs to Council but increased certainty for landowners as to whether or not a consent is required. There are benefits to the environment and to the local and regional community with the additional policy, as it will encourage collaboration on the management of indigenous biodiversity.

Risk of acting or not acting

75. There are no additional risks in not acting. There is sufficient information on the costs to the environment, and benefits to people and communities, to justify the additional policy.

Decision about most appropriate option

76. The amendment gives effect to Objective 3.1.1 Biodiversity and Habitats. It is considered to be more appropriate in achieving the relevant objectives than the notified version, where no non-regulatory policy was included.

7 Table 1: Comparison of earthworks rules of inside and outside an SNA

77. The purpose of this table is to compare the activities and the corresponding activity status between Inside an SNA and Outside an SNA. I have focused on the Rural Zone rules in the Proposed Waikato District Plan. I have shown my recommended amendments as they appear in my Section 42A rebuttal evidence (dated 1 November 2020) as underlined or struck through.

Type of Activity	Inside SNA	Outside SNA
Activity not specifically listed	Earthworks defaults to Restricted Discretionary Activity Indigenous Vegetation Clearance defaults to Discretionary Activity	Earthworks or Vegetation clearance-Any activity not listed as a permitted is a Restricted Discretionary Activity.
Earthworks	Permitted Activity Rule 22.2.3.1 Rule P5 – Earthworks for conservation activities, water reticulation or the maintenance of existing tracks, fences or drains within a Significant Natural Area	Permitted Activity Rule 22.2.3.1 P1 (a) Earthworks for: (i) Ancillary rural earthworks; (ii) Farm quarry where the volume of aggregate does not exceed 1000m^3 per single consecutive 12 month period; (iii) Construction and/or maintenance of tracks, fences or drains;

		(iv) A building platform for a residential activity, including accessory buildings. (v) Where they are not within a kauri root zone
		P2 (a) Earthworks within a site must meet all of the following conditions: (i) Do not exceed a volume of more than 1000m^3 and an area of more than 2000m^2 over any single consecutive 12 month period; (ii) The total depth of any excavation or filling does not exceed 3m above or below ground level with a maximum slope of 1:2 (1 vertical to 2 horizontal); (iii) Earthworks are setback 1.5m from all boundaries; (iv) Areas exposed by earthworks are re-vegetated to achieve 80% ground cover within 6 months of the commencement of the earthworks; (v) Sediment resulting from the earthworks is retained on the site through implementation and maintenance of erosion and sediment controls; (vi) Do not divert or change the nature of natural water flows, water bodies or established drainage paths. (vii) Where they are not within a kauri root zone
	Rule P6 (a) On Maaori Freehold Land or Maaori Customary land within a Significant Natural Area , earthworks for a Marae Complex or Papakaainga housing where: (i) there is no alternative development area on the site outside of the significant natural area; and (ii) The earthworks do not exceed a volume of 500m^3 in a single consecutive 12 month period; and (iii) The earthworks do not exceed an area of 1500m^2 in a single consecutive 12 month period; and (iv) Sediment resulting from the earthworks is retained on the site through implementation and maintenance of erosion and sediment controls;	P3 (a) Earthworks for the purpose of creating a building platform for residential purposes within a site, using imported fill material must meet the following condition: (i) Be carried out in accordance with NZS 4431:1989 Code of Practice for Earth Fill for Residential Development. (ii) Where they are not within a kauri root zone

	(iv) Do not divert or change the nature of natural water flows, water bodies or established drainage paths. (v) Where they are not within a kauri root zone	
		P4 (a) Earthworks for purposes other than creating a building platform for residential purposes within a site, using imported fill material or cleanfill must meet all of the following conditions: (i) not exceed a total volume of 200m^3; (ii) not exceed a depth of 1m; (i) the slope of the resulting filled area in stable ground must not exceed a maximum slope of 1:2 (1 vertical to 2 horizontal); (ii) fill material is setback 1.5m from all boundaries; (iii) areas exposed by filling are revegetated to achieve 80% ground cover within 6 months of the commencement of the earthworks; (iv) sediment resulting from the filling is retained on the site through implementation and maintenance of erosion and sediment controls; (v) does not divert or change the nature of natural water flows, water bodies or established drainage paths. (vi) Where they are not within a kauri root zone
Earthworks	Restricted Discretionary Activity if permitted baseline exceeded.	Restricted Discretionary Activity if permitted baseline exceeded.
Vegetation Clearance	Permitted (Rule 22.2.7) P1 (a) Indigenous vegetation clearance in a Significant Natural Area identified on the planning maps ~~or in Schedule 30.5 (Urban Allotment Significant Natural Areas)~~ for the following purposes: (i) Removing vegetation that endangers human life or existing buildings or structures; (ii) Conservation fencing to exclude stock or pests; (iii) Maintaining existing farm drains; (iv) Maintaining existing tracks and fences; or (v) Gathering plants in accordance with Maaori customs and values.	Permitted Activity Rule 22.2.8 P1 (a) Indigenous vegetation clearance outside a Significant Natural Area identified on the planning maps ~~or in Schedule 30.5 (Urban Allotment Significant Natural Areas)~~ must be for the following purposes: (i) Removing vegetation that endangers human life or existing buildings or structures; (ii) Maintaining productive pasture through the removal of up to ~~1000m^2~~ 3000m^2 per single consecutive 12 month period of manuka and/or kanuka that is more than 10m from a waterbody, and less than 4m in height;

	(vi) Conservation activities	(iii) Maintaining existing tracks and fences; (iv) Maintaining existing farm drains; (v) Conservation fencing to exclude stock or pests; (vi) Gathering of plants in accordance with Maaori custom and values; or (vii) A building platform and associated access, parking and manoeuvring up to a total of ~~500m²~~250m² clearance of indigenous vegetation and there is no practicable alternative development area on the site outside of the area of indigenous vegetation clearance. (viii) In the Aggregate Extraction Areas, a maximum of 2000m² in a single consecutive 12 month period per record of title (ix) Conservation activities
	P2 Removal of ~~up to 5m³~~ manuka and/or kanuka outside of the Coastal Environment or a wetland per single consecutive 12 month period per property for domestic firewood purposes and arts or crafts provided the removal will not directly result in the death, destruction or irreparable damage of any other tree, bush or plant.	
Now controlled activity	~~P3~~ ~~(a) Indigenous vegetation clearance outside of the Coastal Environment for building, access, parking and manoeuvring areas in a Significant Natural Area identified on the planning maps or in Schedule 30.5 (Urban Allotment Significant Natural Areas) must comply with all of the following conditions:~~ ~~(i) There is no practicable alternative development area on the site outside the Significant Natural Area; and~~ ~~(ii) The total indigenous vegetation clearance does not exceed 250m².~~ ~~(iii) The vegetation clearance is at least 10m from a natural waterbody~~	Equivalent rule is P1 (vii) A building platform and associated access, parking and manoeuvring up to a total of ~~500m²~~ 250m² clearance of indigenous vegetation and there is no practicable alternative development area on the site outside of the area of indigenous vegetation clearance.

	P4 (a) On Maaori Freehold Land or Maaori Customary Land, indigenous vegetation clearance in a Significant Natural Area identified on the planning maps for the purposes of development ~~or in Schedule 30.5 (Urban Allotment Significant Natural Areas)~~ where: (i) There is no alternative development area on the site outside the Significant Natural Area; (ii) The following total areas are not exceeded: A. 1500m^2 for a Marae complex, including areas associated with access, parking and manoeuvring; B. 500m^2 per dwelling, including areas associated with access, parking and manoeuvring; and C. 500m^2 for a papakaainga building including areas associated with access, parking and manoeuvring.	P3 (a) On Maaori Freehold Land or Maaori Customary Land, the clearance of indigenous vegetation clearance outside a Significant Natural Area identified on the planning maps ~~or in Schedule 30.5 (Urban Allotment Significant Natural Areas)~~ must not exceed: (i) 1500m^2 for a Marae complex including associated access, parking and manoeuvring; (ii) 500m^2 per dwelling including associated access, parking and manoeuvring; and (iii) 500m^2 for a papakaainga building including associated access, parking and manoeuvring. (iv) And there is no practicable alternative development area on the site outside of the area of indigenous vegetation clearance.
	P7 Removal of manuka and/or kanuka to maintaining productive pasture complying with the following: (i) up to ~~2000m^2~~ 3000m^2 per single consecutive 12 month period; and (ii) plants are less than 4m in height; and ~~(iii) outside of the Coastal Environment; and~~ (iii) outside a wetland; and (iv) more than 10m from a waterbody.	
	P8 The trimming or pruning of indigenous vegetation in a Significant Natural Area which will not directly result in the death, destruction, or irreparable damage of the vegetation	P4 Indigenous vegetation clearance associated with gardening outside a Significant Natural Area
	P9 Vegetation clearance of non-indigenous species in a Significant Natural Area	P5 Vegetation clearance of non-indigenous species outside a Significant Natural Area
~~P3~~ C1	Indigenous vegetation clearance for building, access, parking and manoeuvring areas in a Significant Natural Area identified on the planning maps ~~or in Schedule 30.5 (Urban Allotment Significant Natural~~	

	~~Areas)~~ must comply with all of the following conditions: (iv) There is no practicable alternative development area on the site outside the Significant Natural Area; and (v) The total indigenous vegetation clearance does not exceed 250m^2. The vegetation clearance is at least 10m from a natural waterbody	
Vegetation Clearance	Discretionary Activity if permitted baseline exceeded.	Restricted Discretionary Activity if permitted baseline exceeded.

78. As a result of my recommended amendments, it is noticeable there is little difference between inside and outside an SNA. The main difference is the threshold for building development where this is set at 250m^2 within an SNA and 500m^2 outside an SNA.

79. The other main difference is that because the species manuka and kanuka are deemed SNA, there is no equivalent outside SNA rule.

8 Comparison of Earthworks and Vegetation Clearance Rules within an SNA

80. I have compared the rules for earthworks against the rules for vegetation clearance, as there is no point in allowing for earthworks if the clearance of vegetation requires consent.

Permitted Earthworks	**Permitted Vegetation Clearance Inside SNA**	**Permitted Earthworks outside SNA**	**Clearance outside SNA**
Inside SNA P5 Earthworks for conservation activities, water reticulation or the maintenance of existing tracks, fences or drains within a Significant Natural Area	(a) Indigenous vegetation clearance in a Significant Natural Area identified on the planning maps ~~or in Schedule 30.5 (Urban Allotment Significant Natural Areas)~~ for the following purposes: (i) Removing vegetation that endangers human life or existing buildings or structures; (ii) Conservation fencing to exclude stock or pests; (iii) Maintaining existing farm drains;	P1 (a) Earthworks for: (i) Ancillary rural earthworks; (ii) Farm quarry where the volume of aggregate does not exceed 1000m3 per single consecutive 12 month period; (iii) Construction and/or maintenance of tracks, fences or drains; (iv) A building platform for a residential activity, including accessory buildings.	P1 (a) Indigenous vegetation clearance outside a Significant Natural Area identified on the planning maps ~~or in Schedule 30.5 (Urban Allotment Significant Natural Areas)~~ must be for the following purposes: (i) Removing vegetation that endangers human life or existing buildings or structures; ~~(ii) Maintaining productive pasture through the removal of up to 1000m^2 per single consecutive 12 month period of manuka and/or kanuka that is more than 10m from a waterbody, and less than 4m in height;~~

	(iv) Maintaining existing tracks and fences; or (v) Gathering plants in accordance with Maaori customs and values. (vi) Conservation activities	(v) Where they are not within a kauri a root zone	(iii) Maintaining existing tracks and fences; (iv) Maintaining existing farm drains; (v) Conservation fencing to exclude stock or pests; (vi) Gathering of plants in accordance with Maaori custom and values; or (vii) A building platform and associated access, parking and manoeuvring up to a total of 500m² clearance of indigenous vegetation and there is no practicable alternative development area on the site outside of the area of indigenous vegetation clearance. (viii) In the Aggregate Extraction Areas, a maximum of 2000m² in a single consecutive 12 month period per record of title (ix) Conservation activities
Inside SNA No corresponding rule	P2- Removal of ~~up to 5m³~~ manuka and/or kanuka outside of the Coastal Environment or a wetland per single consecutive 12 month period per property for domestic firewood purposes and arts or crafts provided the removal will not directly result in the death, destruction or irreparable damage of any other tree, bush or plant.		
Inside SNA No corresponding rule Defaults to RD	C1 Indigenous vegetation clearance for building, access, parking and manoeuvring areas in a Significant Natural Area identified on the planning maps or ~~in Schedule 30.5 (Urban Allotment Significant Natural Areas)~~ must comply with all of the following conditions: (i) There is no practicable		

	alternative development area on the site outside the Significant Natural Area; and (ii) The total indigenous vegetation clearance does not exceed 250m^2. (iii)The vegetation clearance is at least 10m from a natural waterbody		
Inside SNA P6 (a) On Maaori Freehold Land or Maaori Customary land within a Significant Natural Area , earthworks for a Marae Complex or Papakaainga housing where: (i) there is no alternative development area on the site outside of the significant natural area; and (ii) The earthworks do not exceed a volume of 500m^3 in a single consecutive 12 month period; and (iii) The earthworks do not exceed an area of 1500m^2 in a single consecutive 12 month period; and (iv) Sediment resulting from the earthworks is retained on the site through implementation and maintenance of erosion and	P4 (a) On Maaori Freehold Land or Maaori Customary Land indigenous vegetation clearance in a Significant Natural Area identified on the planning maps for the purposes of development ~~or in Schedule 30.5 (Urban Allotment Significant Natural Areas)~~ where: (i) There is no alternative development area on the site outside the Significant Natural Area; (ii) The following total areas are not exceeded: A. 1500m^2 for a Marae complex, including areas associated with access, parking and manoeuvring; B. 500m^2 per dwelling, including areas associated with access, parking and manoeuvring; and C. 500m^2 for a papakaainga building including areas associated with access, parking	Outside SNA P1 (a) Earthworks for: (i) Ancillary rural earthworks; (ii) Farm quarry where the volume of aggregate does not exceed 1000m3 per single consecutive 12 month period; (iii) Construction and/or maintenance of tracks, fences or drains; (iv) A building platform for a residential activity, including accessory buildings. (v) Where they are not within a kauri a root zone	P3 (a) On Maaori Freehold Land or Maaori Customary Land, the clearance of indigenous vegetation clearance outside a Significant Natural Area identified on the planning maps ~~or in Schedule 30.5 (Urban Allotment Significant Natural Areas)~~ must not exceed: (i) 1500m^2 for a Marae complex including associated access, parking and manoeuvring; (ii) 500m^2 per dwelling including associated access, parking and manoeuvring; and (iii) 500m^2 for a papakaainga building including associated access, parking and manoeuvring. (iv) And there is no practicable alternative development area on the site outside of the area of indigenous vegetation clearance.

sediment controls; (vi) Do not divert or change the nature of natural water flows, water bodies or established drainage paths. (vii) Where they are not within a kauri a root zone	and manoeuvring.		
Inside SNA no corresponding earthworks rule	P7 Removal of manuka and/or kanuka to maintaining productive pasture complying with the following: (i) up to 2000m^2 per single consecutive 12 month period; and (ii) plants are less than 4m in height; and (iii) outside of the Coastal Environment; and (iii) outside a wetland; and (iv) more than 10m from a waterbody.		

9 Summary of the Hearing SNA

81. To assist the Hearings Panel and provide a record of the matters presented by submitters at the hearing, I have prepared the following summary of evidence on other SNA matters presented at the hearing.

Bathurst Resources Limited and BT Mining Limited

82. Bathurst and BT supported the removal of any SNA overlays that have not been ground truthed and generally supported the SNA framework proposed, which seeks to both protect SNAs and allow for subdivision, use and development where appropriate. However, the evidence sought minor amendments to ensure recognition of the functional need of some activities to locate within an SNA, and to ensure the 'no net loss' requirement for offsetting does not inadvertently result in a 'no adverse effects' application. I consider the recommended amendments to Policy 3.2.4 Biodiversity Offsetting where the policy has been reworded to read, "biodiversity offset will only be considered appropriate where adverse effects have been avoided, to the extent practicable," will sufficiently addresses Bathurst and BT Mining's concerns. [Emphasis added]

83. Bathurst and BT Mining also sought in their evidence to include reference to environmental compensation in Policy 3.2.4 Biodiversity offsetting. I have not been persuaded by the evidence, as environmental compensation has been included in Policy 3.2.3 Management Hierarchy as a last resort option if offsetting is not feasible. I do not see any benefit in including reference to this in the policy, as Policy 3.2.3 directs the plan user to Policy 3.2.4 in the event that offsetting is not feasible.

84. The evidence provided opposed the removal of "significant" from Policy 3.2.3, stating that this is not appropriate because offsetting is not a mitigation measure, and this has been confirmed by the courts. I accept the point that offsetting may not be mitigation, however the RPS statement in Policy 11.2.2, which seeks to protect areas of significant indigenous vegetation/habitats, does not use the term 'significant', but rather 'more than minor residual effects', hence the rewording of the policy.

85. The evidence also sought to acknowledge some activities having a functional need to be located in an SNA. My s42A rebuttal report included a recommendation to include such a policy. I recommended an amendment to the new policy to recognise a functional need rather than a functional requirement, as well as to adopt the planning standards definition for 'functional need'. This amendment is discussed below in response to another submission.

86. Bathurst and BT Mining also sought in their evidence to include a definition for "no net loss" that is based on the RPS definition. The evidence considered that offsetting measures results in 'no net loss', however provides no definition or explanation as to what constitutes 'no net loss'. In my view, the term 'no net loss' is self-explanatory and does not require a specific definition. Further to this, the recommended amendment to Policy 3.2.4 Biodiversity Offsetting has additional wording in clause (ii) which clarifies 'no net loss' by the addition of 'and preferably a net gain'. In my opinion is clear in the policy what is meant by 'no net loss' and that it does not infer that it means a 'no adverse effects regime'.

87. The evidence provided by Bathurst and BT Mining has not persuaded me to change my recommendation.

Department of Conservation

88. Andrew Riddell, Ilse Corkery, Tertia Thurley and Anthony Beauchamp on behalf of the Department of Conservation all provided evidence in respect of their topic of expertise. The evidence covered the following aspects: mapping of SNAs, Kauri dieback, and Long-tailed bats. I have discussed the kauri dieback and Long-Tailed bat issues above, and direct the reader to this section.

Dave Serjeant on behalf of KCH Trust

89. Mr Serjeant has generally agreed with the approach of ground-truthing prior to mapping and agreed with the amended definition of an SNA, which included the reference to meeting the criteria in Appendix 2. As discussed above, when considering other evidence regarding the wording of the definition, I have reconsidered this and recommend relying on the planning maps to determine whether vegetation is an SNA. Part 2 of the Closing Statement documents site visits that have been undertaken to further assess properties seeking amendment or deletion of SNA mapping. However, in the evidence provided it is clear that the property owner is supportive of current SNA mapping on the property, and I recommend that the SNA mapping for this property be retained on the proposed maps. A phone conversation was held between Mr Serjeant and myself, and he has confirmed that they are satisfied that the identified SNA is to remain mapped on this property.

Dharmesh Chhima and Dr Mark Bellingham of behalf of Hynds Pipe Systems Limited

90. Mr Chhima and Dr Bellingham provided evidence on the SNA mapping on the property at 62 Bluff Road Pokeno. Hynds Pipes engaged an ecologist and has provided an ecological assessment confirming that the SNA mapping on the northern area of the property does not meet any of the criteria in Appendix 2, however the southern areas meet three of the criteria. This has been reflected in my s42A rebuttal report, where I recommended amending the mapping. Mr Chhima also disagreed with the amended wording for the definition of an SNA, and this is discussed above.

Chris Scrafton on behalf of TaTa Valley

91. Evidence from Mr Scrafton did not agree with my recommended amendment to the definition of an SNA. Mr Scrafton has noted that I have agreed with the recommendation to amend Policy 3.2.3 to include values, and considers that the definition of SNA should also focus on values. I do not agree with this approach, as the SNA definition will relate to mapping, and an area is mapped if it meets one or more of the criteria of Appendix 2 of the PDP. In my view the values of an SNA will be assessed at the time of a consenting process, including evaluating the 'values' of an SNA by an ecologist, and will be managed through the consenting process. This is discussed above.

92. In respect of the SNA mapping, Mr Scrafton has supported the inclusion of mapped SNAs within the PDP where there is sufficient evidence to support their inclusion, and I agree with this approach. Mr Scrafton in his evidence does not think it appropriate to:

> *(a) apply SNA mapping of indigenous biodiversity value as an absolute identification of areas of such value through a district plan process*
> *(b) develop district plan objectives, policies and rules in a manner that considers SNA mapping to be absolute identification of areas of such value*
> *(c) Rely solely on SNA mapping and associated plan provisions for the protection of areas of indigenous biodiversity*[2]

93. As such, Mr Scrafton considers that provisions should utilise mapping of areas that qualify as SNA where there is a high degree of confidence and as well, recognise that SNA mapping has limitations, and that mapping may occur through a resource consent process. Mr Scrafton clarifies this last point by saying that the consenting process would not change the SNA mapping in the district plan, but would ensure that a consent proposal would address the actual biodiversity values and the effects of a proposal on these values. The final part of the discussion considers that SNA provision should recognise that areas of indigenous vegetation do likely exist outside of areas mapped as SNA.

94. In my view, if an area of indigenous vegetation meets one or more of the criteria, then that area should be mapped as SNA. I acknowledge that there are areas of indigenous vegetation that have not been mapped, particularly given the inaccurate SNA mapping in the PDP. As I have outlined earlier in this report, I recommend that the mapping of SNAs be removed (except for those ground truthed, or in ownership of the Department of Conservation or Council and QEII) due to inaccuracies, because it was fundamentally a desktop analysis.

95. The process going forward is to ground truth vegetation. If areas come to Council's attention through an application for consent that involves indigenous vegetation, it is likely that these areas

[2] Summary Statement of Chris Scrafton on Behalf of TaTa Valley 19 November

would get assessed earlier than others, and if an area is identified as meeting one or more of the criteria of Appendix 2, then it would be appropriate for the area to be mapped. I acknowledge that an area of indigenous vegetation may meet criteria in some parts of it but maybe not all. However, this would be a judgment call made by the ecologist, but I would still expect the whole area to be mapped, and then rely on the provisions to manage lower value areas as appropriate. Hence the benefit in including the wording 'value' in the policy, as it will mean that the consenting process can be more tailored to the values of each area of indigenous vegetation when considering activities. The consenting process can determine how to either: avoid, mitigate, remedy, offset or compensate.

96. There are policies that relate to indigenous biodiversity that do not relate to SNA, but rather indigenous biodiversity in general. In this regard an application can be assessed on its merits when managing activities that may have an effect on indigenous biodiversity.

97. Mr Scrafton considers that Policy 3.2.3 Management Hierarchy should use 'as far as practicable' in all the clauses in the policy. He considers that the policy is an effects management hierarchy and users need to understand 'how far you go' before stepping down the hierarchy.

98. As discussed in my s42A rebuttal report, I considered that Policy 11.2.2 of the RPS was not helpful when determining the application of a hierarchy, as on the one hand in Policy 11.2.2 (a) it seeks to "protect" significant indigenous vegetation and significant habitats of indigenous fauna, but on the other hand Policy 11.2.2(c) requires that unavoidable adverse effects be remedied or mitigated. So, while the RPS policy seems highly directive, the subsequent methods appear to weaken it. In my view, my recommended amendment to Policy 3.2.3 to include in Clause (a) where the ideal is to 'avoid adverse effects in the first instance as far as practicable' is the main consideration in the policy and sets the scene for the other clauses. Nevertheless, I do take Mr Scrafton's point, in that how does one ascertain when to move to the next level. In this regard, however, the RPS is specific, in that it does state in Policy 11.2.2.(c) to "mitigate any unavoidable adverse effects" and in my opinion this is absolute. I consider that the notified version of the policy with the various amendments is a reflection of Policy 11.2.2, with acknowledgement that avoidance as far as practicable in the first instance is a reasonable compromise between the RPS and the PDP.

99. In respect of the new Policy 3.2.3 Functional Requirement, the evidence generally agreed with the wording and acknowledges that the policy largely mirrors Policy 11.2.2 (g) of the RPS. The purpose of the policy is to recognise there are some activities that have a functional requirement to be within an SNA. However, Mr Scrafton has the view that the term 'functional requirement' should be replaced by 'functional need'. Mr Scrafton points out that 'functional need' is defined in the PDP already, however only relates to Chapter 14 Infrastructure and Energy. The term 'functional need' is also defined in the Planning Standards and is broader in its approach. Mr Scrafton has suggested that the Planning Standards definition should be used and a consequential change made to the notified version in the PDP. I agree that the wording from the Planning Standards would be more appropriate, however my understanding is that as a result of Hearing 5 Definitions, the National Planning Standards definitions will be adopted, therefore an amendment to the PDP version will not be necessary, as the National Planning Standards version of 'functional need' will be used. The policy would then read as follows:

> **Policy 3.2.3 Functional ~~Requirement~~ Need**
>
> (a) Recognise that activities may have a functional ~~requirement~~ need to traverse or locate within a Significant Natural Area where no reasonably practicable alternative location exists.

100. Mr Scrafton was concerned that the new non-regulatory policy for an ecological assessment to assess whether an area of indigenous vegetation meets one or more of Appendix 2 criteria will be difficult to implement. I agree that the implementation of this policy will need to be factored into Council's Long Term Plan. This is the intention. The pending NPS-IB will mean that councils will need to assess and map SNAs. In my opinion, the Operative Waikato District Plan already does this, and in my view, a non-regulatory method has a place in a district plan, as it ensures facilitation between landowners and councils.

Mike Wood on behalf of Waka Kotahi (NZ Transport Agency)

101. Mr Wood provided evidence in support of the approach to SNA mapping, and further stated that Waka Kotahi has reconsidered its original submission and does not seek the total removal of SNAs from its designations. He stated his general support of SNAs a tool to protect ecological areas. I have recommended only mapping SNAs on the designations where these have been the subject of an ecological assessment - for example the Huntly Expressway.

Sara Nairn on behalf of The Surveying Company

102. Ms Nairn provided evidence that supported the removal of SNAs from properties until ground truthing has been undertaken. The evidence however does not support the amended wording to the SNA definition. I have discussed both issues above.

Hillary Walker and Mr Bruce Cameron on behalf of Federated Farmers of New Zealand

103. Ms Walker did not support my initial recommendation that any indigenous vegetation would be classified as an SNA based on it meeting the criteria in Appendix 2. She considered that this would cause uncertainty as to whether a consent is required. She expressed concern that my initial recommended amendment to the definition of an SNA elevates all indigenous vegetation and habitat to a significant status until proven otherwise. I agree that this is an onerous approach, and this has been discussed earlier in this report.

104. She expressed concerns regarding the implementation of the non-regulatory policy where it is recommended that Council cover the cost of an ecological assessment which determines whether an area of indigenous vegetation meets one or more of Appendix 2 criteria. This is the current approach in the Operative Plan. If a landowner seeks to undertake an activity that exceeds the permitted baseline within an SNA, then the responsibility of a full ecological assessment relative to the activity will be required and this assessment needs to be covered by the landowner.

105. She remained concerned that there is little distinction between inside and outside an SNA in terms of vegetation clearance and earthworks. In response to other issues raised, I have made recommendations to amend the rules in this regard. This has been discussed earlier in this report.

106. In my s42A rebuttal report, I recommended including conservation activities as a permitted activity when undertaking earthworks in an SNA. Ms. Walker acknowledged that the inclusion of water reticulation was reasonable, however pointed out that vegetation clearance for the installation of water reticulation for farming purposes is not provided for. Ms Walker has also pointed out that the inclusion of conservation activities as a permitted activity means that new public infrastructure can be installed due to the definition of "conservation activities". I note that new farming infrastructure has not been provided for, in particular fencing. I take Ms. Walker's point; however, the definition provides for stock exclusion, which in my view would mean fencing. In respect of new infrastructure for new tracks for any purpose other than for the

benefit of the SNA, I do not think that this is appropriate, and recommend amending the definition for conservation activities as follows:

> ***Conservation activity***
> Means activities associated with indigenous habitat, wetlands and wildlife management and restoration that fundamentally benefit indigenous biodiversity or raise public awareness of indigenous biodiversity values. This includes stock exclusion *(inclusive of fencing)*, research and monitoring, the ~~establishment,~~ maintenance or upgrading of public walking or cycle tracks, interpretive and directional signs, accessory buildings including those for tourism, interpretation or education purposes and the provision of access for plant or animal pest management.

107. I also recommend a minor amendment to Rule P5 to clarify that providing for water reticulation is for farming purposes only. The rule would then read as follows:

> *(a) Earthworks for conservation activities, water reticulation for farming purposes or the maintenance of existing tracks, fences or drains within a Significant Natural Area*

108. Ms Walker expressed concern about the earthworks rules which only allow for the construction of new tracks and for ancillary earthworks if outside an SNA. Given that the proposed definition for ancillary earthworks encompasses many farming practices, such as cultivation, tracks, road, silage pits, effluent ponds and airstrips, in my view it is appropriate that ancillary earthworks are not provided for within an SNA, as the the construction of these is likely to have adverse effects on an SNA.

109. Further to this, when considering the earthworks rules in combination with the vegetation clearance rules outside an SNA, one fundamental difference is that there is a permitted activity for ancillary earthworks if outside an SNA, and as discussed, ancillary earthworks contain many aspects. The clearance of vegetation for these activities would not be permitted if outside an SNA. In my opinion, this is an appropriate approach, as when considering that if the definition for SNA is to only be areas that are mapped, this would potentially leave areas that could be significantly at risk of being cleared without due consideration.

110. Given that there is a direction from higher legislation that there needs to be more consideration given to the protection and management of biodiversity, it seems appropriate that the change from the regime within the operative plan to the proposed plan is fitting.

Miffy Foley on behalf of Waikato Regional Council

111. Ms Foley did not support my initial recommendation to remove the majority of the SNA mapping and rely on the criteria in Appendix 2. However, she supported the inclusion of Department of Conservation land and QEII covenants (to clarify, these would simply show as SNAs and not be identified as Qell, as this data belongs to the QEII organisation but WDC have access to it).

112. Ms Foley considers that removing the mapping is maintaining the status quo of the Operative District Plan, and does not believe that this gives effect to Section 11 of the RPS, which seeks to address declining biodiversity. While I appreciate her concerns, as discussed in the s42A report the inaccurate mapping creates a risk to Council, and in my opinion the status quo of the Operative District Plan has not resulted in a decline in biodiversity within the Waikato District. I consider that ground truthing will create a robust analysis of indigenous vegetation in the district. I appreciate that this approach will take much longer to establish an accurate data set, but I believe it will be more reasonable for landowners in the long run. It is envisaged that as areas become confirmed as SNA, these will be added to the planning maps through a plan change process.

113. In respect of Dr Deng's evidence, I do not consider that there are significant risks with not showing SNA sites on the planning maps, as to date I am not aware of any wholesale clearance that has occurred in the district. Further to this, as discussed in the s42A, mapping does not protect; it is the rules which provide this function. I note that Dr Deng's evidence is based on the SNA mapping that has been undertaken at a regional scale, and that Dr Deng suggests that each SNA 'pod' should have been assessed by Mr Turner. As discussed in my rebuttal s42A report, only property owners who submitted had an assessment undertaken, and there is no scope to assess the whole SNA 'pod'. Further to this, a district plan rule framework is at a property level and not a regional level.

114. Ms Foley considers that the removal of the SNA mapping would not be efficient or effective in meeting Objectives 3.1.1 and 3.2.1 of the proposed plan, and that the implications of having SNAs inaccurately identified on a property are minor, or could be mitigated to an extent by permitted activity standards. I do not agree that the effects of inaccurate mapping are minor. Inaccurate mapping makes it difficult for both the property owner and Council if enforcement action is required or for a consenting process. In my opinion, this scenario is not effective or efficient in terms of s32AA or the most appropriate way to achieve the objectives.

115. Nevertheless, I do agree that a more stringent approach to vegetation clearance within the rule framework could be a reasonable approach in lieu of mapping being removed. Ms Foley in her evidence has provided an example where the rules for inside and outside an SNA are combined. As discussed above, the main difference between within an SNA and outside an SNA are the thresholds for building development - currently recommended to be set at 250m^2 inside an SNA and 500m^2 outside an SNA. The suggested rule framework proposed by Ms Foley does have merit. The only differing approach is the threshold for SNAs, where the clearance amount within an SNA is half what is permitted outside an SNA. In this report the recommended rule for clearance of indigenous vegetation outside an SNA has dropped to 250m^2. This is a significant change for clearance outside an SNA, but would help address the mapping issue. This has also been addressed earlier in this report.

116. Ms Foley requested in her evidence to relocate Policy 3.2.6 Providing for Vegetation Clearance and that it be amended to recognise that only clearance with minor adverse effects will be enabled as a permitted activity. In my rebuttal s42A report I did not agree with this approach, as the way the policy is written allows for only certain activities to occur. Such an approach would mean that only those activities and no others, such as gardening, would be enabled,. However, I acknowledge that there is no policy in relation to vegetation clearance outside of an SNA ,and that the Policy could be relocated and the issue of gardening could be solved by additional wording in the policy to ensure that gardened areas around a house are acknowledged within the provisions.

117. Ms Foley requested that the policy include wording to ensure that clearance relates only to activities that create minor effects, but I do not agree. As discussed in the opening statement, there is already a hierarchy provided for within other policies, and I do not consider it is necessary to duplicate with this policy.

118. Ms Foley suggested that Policy 3.2.6 be relocated so that it applies to all indigenous vegetation and not just within an SNA, but with amended wording to provide for routine maintenance of vegetation, for example gardening. Policy 3.2.6 would then read as follows:

3.2.6 Policy-Providing for vegetation clearance

(c) Provide for the clearance of indigenous vegetation ~~in Significant Natural Areas~~ when:

(i) maintaining tracks, fences and farm drains

(ii) avoiding loss of life injury or damage to property
(iii) collecting material to maintain traditional Maaori cultural practices
(iv) collecting firewood for domestic use
(v) operating, maintaining or upgrading existing infrastructure
(vi) Managing routine maintenance needs of lawfully-established activities

(d) Provide for the clearance of indigenous vegetation ~~in Significant Natural Areas~~ for the construction of building platforms, services, access, vehicle parking and on-site manoeuvring and for the development of Maaori Freehold Land by:
(i) using any existing cleared areas on a site that are suitable to accommodate new development in the first instance;
(ii) using any practicable alternative locations that would reduce the need for vegetation removal;
(iii) retaining indigenous vegetation which contributes to the ecological significance of a site, taking into account any loss that may be unavoidable to create a building platform, services, access, vehicle parking and manoeuvring on a site;
~~(iv) [3]Firewood.~~

~~(iv) operating, maintaining or upgrading existing infrastructure~~

119. In the evidence Ms Foley objected to Waikato Regional Council being referenced in a non-regulatory policy that encourages both councils to work together. My logic was to assist landowners to assess whether indigenous vegetation on their property meets one or more of the criteria in Appendix 2. The rationale of including WRC in the policy is because it is stated in the RPS in 11B Significant indigenous biodiversity roles and responsibilities table, that it is a joint responsibility of both Councils to undertake data refinement inclusive of ground truthing. To date this has only occurred in a very minor capacity. The non-regulatory policy is there to undertake an ecological assessment only at a level that will identify whether the area of indigenous vegetation meets one or more of the criteria in Appendix 2 of the PDP, not a full ecological assessment. It was envisioned that as sites are ground truthed, the refinement of the spatial data for the region would be undertaken as per the RPS.

120. At the time of writing the report it seemed appropriate that they would assist in this regard as per the roles and responsibility stated in the table. Without this input from Regional Council it places the onus on the District Council to fulfil the ground truthing of what has been identified as spatial data in need of refinement.

121. Ms Foley has stated in her evidence that the commitment to funding an unknown amount needs to be considered through WRC's funding and decision-making process. I do understand that if WRC have not considered the effects that the SNA mapping has had on Territorial Authorities, and that ground truthing has not been factored in through their funding mechanisms, then I can see that they would not be in a position to contribute to this process.

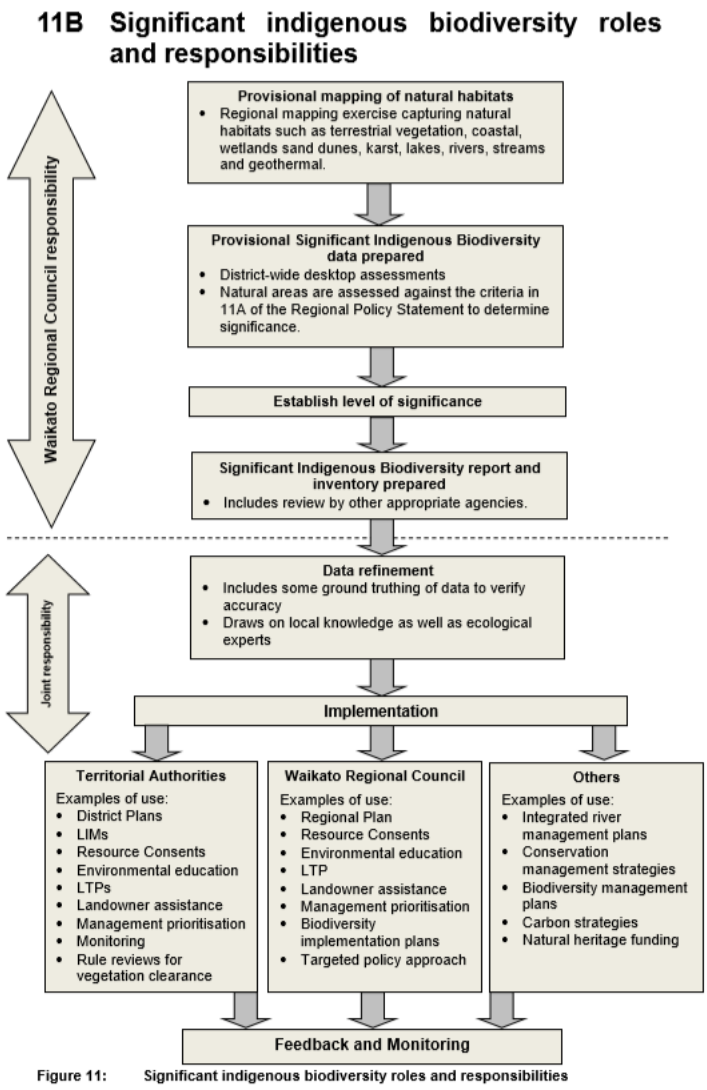

Figure 11: Significant indigenous biodiversity roles and responsibilities

122. I therefore recommend removing reference to Waikato Regional Council from the non-regulatory policy as follows:

3.1.2D Significant Natural Area Assessment Funding Policy

Significant Natural Area Assessment Funding Policy (1) Council ~~in joint responsibility with Waikato Regional Council~~ will meet the costs of an ecological assessment that shows the area meets one or more of the criteria in Appendix 2: Criteria for Determining the Significance of Indigenous Biodiversity

Mark Arbuthnot on behalf of Dilworth Trust

123. Mr Arbuthnot put forward evidence provided by Dilworth Trust, and sought to amend Rule 22.2.8 P1 to permit indigenous vegetation clearance outside of SNAs for the purpose of remediation and stabilisation of the banks of a stream, river or other waterbody. His evidence suggested that the activity would be consistent with Policy 11.1.4 of the RPS, which recognises that district plans should include permitted activities in relation to the maintenance or protection of indigenous biodiversity, where the effects of the activity will have minor adverse effects on the vegetation.

124. Clause (e) of Policy 11.1.4 relates to actions necessary to avoid loss of life, injury or serious damage to property, and Mr Arbuthnot considered that there should be a permitted activity rule in the plan to facilitate this, and has acknowledged that the proposed rules allow for the removal of vegetation that endangers human life or existing buildings or structures. Mr Arbuthnot considered that the rationale for this rule should equally apply to the removal of vegetation to the banks of waterbodies for undertaking remediation and stabilisation works to protect property from serious damage. In the s42A report I recommended rejecting this submission.

125. I have not been persuaded by the evidence to change the rule framework. In my view, a permitted activity regime that allows for erosion control and natural hazard mitigation works to the banks of a river, stream or other water body has the potential for an activity to occur that could create adverse effects on not only the area being 'remediated', but also on areas downstream of the property. The suggested permitted rule framework has potential to be misused where vegetation could be removed in these areas where there is no need to.

126. Further to the above is the Vision and Strategy, which contains objectives and policies that require councils to manage activities that may affect the Waikato River and its catchments, where the overarching strategy is to achieve the restoration and protection of the health and wellbeing of the river. I maintain the view that removal of vegetation along the banks of any water body for the purposes outlined by Dilworth Trust needs to be managed through a consenting process that would include input from the Regional Council, to ensure that the activity is appropriate and undertaken in such a way that the effects are minor. The evidence provided has not altered my recommendation to reject this submission.

Richard Mathews on behalf of Genesis Energy

127. Mr Mathews agreed with my recommended approach to the mapping of SNAs. The Genesis Energy submission sought the removal of SNAs from their properties as they are not "natural". The term 'natural' created discussion on what the term 'natural' means in respect of an SNA. In the hearing I explained that there is variation among councils as to what to call these areas. For example, the Auckland Unitary Plan refers to these areas as 'significant ecological areas', while Matamata Piako refer to them as 'significant natural features'. Regarding the Proposed Waikato District Plan, the term 'significant natural area' is used. This is also the term used in the draft National Policy Statement, therefore it is appropriate that this term be adopted. I do not consider that the reference to 'natural' infers that the areas apply to indigenous ecological areas that have been in situ for a long time, but more simply means an area that is natural in terms of nature/environment.

128. The evidence considers that landscaped areas that have been planted by Genesis should not be regarded as SNAs. I have not been persuaded by Mr Mathews to change my approach. In my opinion, if the landscaped areas have been established long enough to develop aspects that meet Appendix 2, then it is appropriate that they be mapped as SNAs. Given that the consent conditions that established the planting presumably allow for the maintenance of any planting and that the conditions of consent prevail over the district plan rules, I do not believe that Genesis will be compromised by these areas being identified as SNAs. Further to this, there are permitted activity rules that allow for the removal of vegetation that endangers existing buildings and structures.

Pauline Whitney on behalf of Transpower

129. Ms Whitney does not support the additional wording to Policy 3.2.1 where I recommended that indigenous biodiversity be protected or enhanced, and she considers that the word "enhance"

should be deleted as per their original submission. I have not been persuaded by Ms Whitney to delete the term 'enhance', as this is the wording of the RPS, where the overarching objective for Indigenous biodiversity in Policy 11.1 is to "maintain or enhance". I therefore consider that it is appropriate to apply this approach in the PDP to both general indigenous biodiversity and significant biodiversity.

130. Ms Whitney's evidence also suggests amending the wording in Policy 3.2.3 clauses (i) and (ii) to only "avoid the more than minor adverse effects" and to only consider offsetting more than minor residual effects. I do not agree to this approach, as the wording in the RPS is clear in Policy 11.2.2 c) that any unavoidable adverse effects are to be mitigated or remedied. Further, in clause d), if adverse effects are unable to be avoided, remedied, or mitigated, then more than minor residual adverse effects shall be offset. The amended version of Policy 3.2.3 reflects the intent of the RPS. In respect of clause (v) of the Policy, I agree that in the recommendation in clause (v), 'significant' should be struck, out as I consider that this was a formatting error. The rule would read as follows:

> 3.2.3 Policy - Management hierarchy
>
> (a) Recognise and protect the values of indigenous biodiversity within Significant Natural Areas by:
>
> (i) avoiding ~~the~~ [4]~~significant~~ adverse effects of vegetation clearance and the disturbance of habitats in the first instance as far as practicable ~~unless specific activities need to be enabled~~
>
> (ii) remedying and/or mitigating any effects that cannot be avoided; then
>
> ~~(iii) mitigating any effects that cannot be remedied; and~~
>
> (iv) after remediation or mitigation has been undertaken, offset any ~~significant~~ more than minor residual adverse effects in accordance with Policy 3.2.4.
>
> (v) [5]If offsetting of any ~~significant~~ residual adverse effects in accordance with Policy 3.2.4. is not feasible then ~~economic~~ environmental compensation may be considered.

Ms Kaur on Behalf of Lochiel Farms

131. Ms Kaur presented evidence on behalf of Lochiel Farms Ltd. The first area of concern was in relation to Rule 22.2.7 Vegetation clearance. The original submission sought to include the terms 'repair and reinstating' in the rule. In the s42a report I rejected the inclusion of these words, as I did not consider it necessary in relation to 'repair', as in my view this is covered by 'maintenance'. In respect of 'reinstating', I recommended rejecting this submission point, as this could lead to a track that has been unused for a period of time, and potentially has had indigenous vegetation re-establish that meets the criteria of Appendix 2. In the hearing Ms Kaur explained that to Lochiel Farms, reinstating means that in an event where a slip has occurred and damaged the existing track and it is not appropriate to re-establish where the existing track is, a farmer should be able to clear vegetation to go around a slip area.

132. To help me form a response to this issue, I contacted a QEII representative to ask how they would approach this issue within a QEII Covenant. The view was that if the existing track could not be re-established and the covenant holder sought to go around a slip area and then reconnect back to the existing track, then they would see this as creating a new route and would expect to be consulted to discuss whether this was appropriate for the covenant.

133. I agree with how QEII would respond to such a scenario. A new route has potential to have an adverse effect on the SNA, and if a track must be created somewhere else to re-connect with the original track, then this constitutes a new track. Any activity that involves removing vegetation from an SNA needs to be undertaken with some consideration, and unless this can be done while maintaining an existing track, then I believe it is best done in conjunction with a consenting process.

Bruce and Kirstie Hill - Hill Country Group (HCG)

134. The presentation from HCG considered that the rules affect their day-to-day operation of farming activities. They believe that the current mapping of SNA is likely to be inaccurate and the mapping needs to be deferred until more accurate data can be obtained. HCG believe that farmers need to know what an SNA is so they know what they can do.

135. HCG raised concern regarding the earthworks rule P5 (within an SNA) and the vegetation clearance rules, as the rules do not provide for new infrastructure, and this makes project management on the farm difficult. They have suggested a rolling rule approach where the volumes/areas are assessed on the size of the SNA. HCG have concerns that there are no clear pathways to protect productive pastures. In this regard, I have discussed above a recommendation to the rules in relation to the management of kanuka and manuka.

Derek and Joanne Tate

136. Mr Tate's evidence did not support the mapping of SNA on the property at 72 James Road, Huntly. In the evidence provided he did not agree with the assessment undertaken by Mr Turner (technical ecological expert).

137. Mr Tate also provided evidence disagreeing with the SNA mapping and assessment at 185B Hakarimata Road. Mr Turner's report has recommended an amendment to the SNA boundary and has indicated that although these areas contain some manuka, they are interspersed with gorse. Mr Turner has recommended making the boundary of the SNA a more practical alignment, which will be more manageable for the property owner. I consider that this is a practical compromise, and recommend accepting the new SNA mapping boundary as recommended by Mr Turner.

Collette Hanrahan

138. Ms Hanrahan provided evidence that addressed the issue of SNA mapping on the property at 126B Woodcock Road, Tamahere. The evidence provided a historical account of the process that resulted in Ms Hanrahan's property having an SNA identified on it. Ms Hanrahan has opposed all overlays on the property. A site visit was undertaken to Ms Hanrahan's property by Mr John Turner (ecologist) and myself, which resulted in the mapping being amended on this property. The recommended amended mapping can be viewed in Mr Turner's Technical report (Part 3). Ms Hanrahan in her evidence has made no comment in this regard.

Mr Denton

139. The evidence supplied by Mr Denton was verbal and addressed the SNA mapping, expressing concern that the mapping had incorporated the garden area around the house. Mr Denton provided photographic evidence to support his evidence. Unfortunately, Mr Denton had not read the rebuttal report which supported his original submission, where the SNA mapping has been recommended to only incorporate the conservation covenant area on the property, thereby removing SNA mapping from the garden areas.

Mark de Beek

140. A presentation from Mr de Beek showed the area that he considered should not be SNA on the property at 49 Swallow Lane, Tamahere. This property was subject to a site visit by Mr John Turner (ecologist), and amendments have been recommended to the SNA mapping to reflect indigenous vegetation that meets the criteria of Appendix 2.

Mark Mathers

141. Mark Mathers spoke in relation to his property at 536 Wainui Road, Raglan. Mr Mather's family has lived on the property for many years and they have looked after it accordingly. There is a woodlot that has been captured by the SNA mapping that was planted by the Mathers, and he expressed a desire to amend the mapping. This property was subject to a site visit by Mr Turner and me, and amendments have been recommended to be made to the SNA mapping. These amendments can be seen in the Closing Statement for remaining site visits in paragraph 12.

Tim Newton

142. Mr Newton spoke on behalf of his brother-in-law Malcom Jackson. Mr Newton had concerns about the mapping on the property on Whaanga Road, and considered that the SNA mapping should be refined to recognise farming operations and to allow for manuka and kanuka to be managed. Mr Newton considered the mapping very inaccurate. He explained that the property has been well looked after for the past 150 years and many areas are either already protected or going through the process of having covenants placed on them. Mr Newton believed that the mapping needs to have sensible boundaries that recognise fencelines and topography. This property was subject to a site visit by Mr Turner and me. The site has been discussed in more detail in the s42A report Part 3 Mapping in paragraph 811.

Norris Peart

143. Mr Peart provided evidence in relation to his family's property located at 274 Okete Road. The property sits within the Whaingaroa Harbour and has an area that is referred to as 'The Finger'. The top of the finger has a Maaori Site of Significance located on it and this has been protected by the Norris family for many years (and also identified on the proposed maps). While the top of the finger is already protected, there is more area below this that has also been mapped as SNA. Mr Norris requested that the SNA mapping be reduced in the area that is outside the MSOS as this area is often used for family and community activities, and Mr Peart would like flexibility to continue doing this. A site visit has been undertaken and the SNA recommended to be amended, however Mr Norris would like a further reduction of SNA area. At the time of writing this report, I have not been contacted by Mr Peart. An assessment of the property has been undertaken, and in Mr Turner's view the area to remain in SNA meets the criteria of Appendix 2. This assessment can be viewed in Part Three Mapping of the section 42A report in paragraph 796.

Jean Tregidga

144. Ms Tregidga explained that her land has been entirely mapped as SNA and is surrounded by Department of Conservation land (also mapped as SNA). Ms Tregidga believes that her property could be used for tourism and education, and requests that the SNA mapping be removed (see Part 2 Site visits).

Dermot Murphy

145. Mr Murphy spoke on behalf of his father. The property is located at 243 Frost Road and is immediately adjacent the Waikato River. The property has approximately 80 ha of SNA mapped on it. I note that the submission from Mr Dermot was a further submission in response to Tom

Hockley [202] and Bruce and Kirstie Hill [481], however the submission discusses the SNA on the property , the area of which Mr Murphy would like reduced. I have not undertaken a site visit to this property and consider that if the Panel accepts the recommendation to remove the SNA mapping, a site visit is likely to be undertaken at a later date.

Kiana Lace (Brian Butt and Sheryl Kruger)

146. Mr Butt spoke on behalf of the family trust. The property is located at 399 Bedford Road, which boarders the Te Otamanui Stream. Mr Butt believed that the SNA mapping was a blunt process, and his original submission sought to remove the SNA mapping from the property until ground truthing had been undertaken. A site visit was undertaken by Mr Turner and myself, and the recommendation is to amend the mapping to only cover areas that meet the criteria in Appendix 2. Mr Butt has indicated in his presentation that he is happy with the amended SNA mapping.

Grace Wilcock

147. Ms Wilcock has concerns with the SNA mapping in general. Ms Wilcock has a property on 117 Windmill Road, Tamahere which is part of the Tamahere Gully system. A site visit was undertaken by Mr Turner and myself, and the assessment confirmed that the area meets the criteria of Appendix 2, and the recommendation is to maintain the SNA mapping on this property.

Warwick Cheyne

148. Mr Cheyne considered that all SNAs should be removed from private property, but understood that the purpose is to protect indigenous biodiversity. He considered that landowners should be better consulted with. Mr Cheyne considered that there are other mechanisms that could be utilised, such as the Emissions Trading Scheme, however this is not something that a district plan can manage. The evidence provided by Mr Cheyne has not caused me to change my recommendation.

Phill Swan

149. Mr Swan provided photos of his farm both historical and current. Mr Swan explained what would happen to the amount of productive pasture if he did not manage the manuka and kanuka that is constantly regenerating. This property was subject to a site visit by Mr Turner and myself, and amendments have been recommended to be made to the SNA mapping that make it more practical for farming.

Steven and Theresa Stark

150. In the presentation from the Starks, they discussed their hill country farm which is steep, and they consider that the SNA mapping provisions are far too restrictive for general farming practices. They believe that just because a species is indigenous does not make it sacred. The Starks want the right to protect the farming operation on their land. They consider that manuka and kanuka are evasive species, and would like to see the totara species included as well. The Starks believe that the species manuka and kanuka are more plentiful now that what they have ever been.

151. The Starks considered that the Waikato Operative Plan rules worked well. In response to this I have made a recommendation regarding the clearance rules in respect of manuka and kanuka for consideration, and this is discussed earlier in this report.

Angeline Greensill

152. Ms Greensill discussed the Whaanga Coast area and Tainui o Tainui affiliation to it. Ms Greensill acknowledged the issues that manuka and kanuka create in terms of managing areas in which the species are abundant.

153. Ms Greensill wants to ensure that the gains made in 2010 in relation to Maaori Freehold Land are not lost in the PDP, and acknowledges that this would be dealt with in the Tangata whenua chapter. Ms Greensill wanted it noted that in relation to bats, it should not only be a certified ecologist that is recognised, but also that iwi has extensive knowledge on the management of indigenous species.

Andy Loader - First Rock Consultancy

154. Mr Loader agreed in principle to the protection of SNA, however considers that all SNA areas should be contestable by property owners, and should not be designated SNA until proven that they are of significant value. Mr Loader is happy with the rules, but only if the SNA area has been confirmed.

155. I believe that the issues raised by Mr Loader have been addressed in response to the approach taken to only map SNAs that have been ground truthed.

Infrastructure

156. I note that the Memorandum from Watercare has suggested that the Panel accept the permitted activity thresholds proposed in the evidence provided by Ms Foley on behalf of Waikato Regional Council. The proposed thresholds have standards such as indigenous vegetation alteration or removal in an SNA must not include any trees over 6m in height or 600mm in girth at a height of 1.4m and not exceed 50m^2 per site in a consecutive 12-month period. This threshold has not been imposed within SNAs in other zones, and I consider this would create inconsistency across the plan.