

**UNDER THE**

Resource Management Act 1991

**IN THE MATTER OF**

Proposed Plan Changes 85, 85A, 85D,  
86A, 87, and 114 to the Whangarei  
District Plan

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**STATEMENT OF EVIDENCE OF JOHN ANDREW RIDDELL ON BEHALF  
OF THE DIRECTOR-GENERAL OF CONSERVATION**

**23 June 2017**

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## PART 1. INTRODUCTION

1. My name is John Andrew Riddell. I have been practising as a resource management planner on a part-time basis since 1989 and a full-time basis since 1993. Until November 1998 I was self-employed, although I did work for Nugent Consultants Limited on a part time basis from 1993 until 1996. Between November 1998 and June 2013 I was employed by the Department of Conservation (“the Department”). I am currently self-employed, operating under the company name CEP Services Matauwhi Limited. I hold the qualification of Bachelor of Resource and Environmental Planning with First Class Honours. I am a member of the New Zealand Planning Institute.

### *Experience*

2. Much of my resource management work has involved proposals within the coastal environment, particularly in Northland. From this work, which includes plans, policy statements<sup>1</sup> and resource consent applications, I have developed a good understanding of natural character and of indigenous biodiversity issues. Most immediately I advised the Department in relation to appeals on natural character methodology and coastal environment and biodiversity policies in the Regional Policy Statement for Northland, and gave planning evidence for the Department on natural character and indigenous biodiversity provisions in the Auckland Unitary Plan.
3. My experience with the operative Whangarei District Plan started with submissions and further submissions on what was then a proposed Plan. I was the planning witness for the Director-General of Conservation in the appeal<sup>2</sup> that has lead in part to these proposed Plan Changes, and was

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<sup>1</sup>I have prepared reports on financial contributions that were part of the preparation of the Far North District Plan and the Waitakere City District Plan. I have provided evidence on, and/or provided planning advice for appeal negotiations and mediation on: the Auckland City District Plan - Isthmus section, Far North District Plan, Bay of Islands District Scheme (which included a coastal plan component), Whangarei District Plan, Kaipara District Plan, Kaikoura District Plan, Northland Regional Policy Statements (there have been two), Regional Water and Soil Plan for Northland, Regional Coastal Plan for Northland, the draft Gisborne Water and Soil Plan, the proposed Auckland Unitary Plan, the Bay of Plenty Coastal Environment Plan, the proposed Thames Coromandel District Plan, and the Regional Coastal Plan – Kermadec and Subantarctic Islands. I also was one of co-authors of the *Sustainable Development Plan for Kororipo-Kerikeri Basin*, October 2005. This was a management plan prepared under the Reserves Act for the combined reserve land at Kororipo-Kerikeri Basin administered by the Department of Conservation and the Far North District Council.

<sup>2</sup>*The Director-General of Conservation and Landco Limited and MJ Dunn v Whangarei District Council*. Decision A 024/2006

involved in negotiations on other aspects of appeals to the proposed District Plan, including the indigenous vegetation clearance and indigenous wetland disturbance rule. More recently I was involved in the appeals on the Ruakaka Equine Environment provisions<sup>3</sup>.

4. The Department of Conservation asked me to prepare further submissions on submissions to these Plan Changes and to provide evidence at the hearing on the Director-General's submissions and further submissions. I was not involved in the preparation of the Director-General's submissions or in any discussion between the District Council and the Department of Conservation during the preparation of these proposed Plan Changes.

#### *Code of Conduct*

5. I have read and agree to comply with the Code of Conduct for Expert Witnesses produced by the Environment Court (2014). My qualifications as an expert are set out above. Other than those matters identified within my evidence as being from other experts, I confirm that the issues addressed in this brief of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

#### *Approach Taken In Evidence*

6. This evidence is in four parts:
  - an introductory section
  - consideration of the proposed Plan Change provisions applying in the coastal areas of the District, including a consideration of the New Zealand Coastal Policy Statement 2010 ("Coastal Policy Statement") and the Regional Policy Statement for Northland ("Regional Policy Statement").
  - consideration of the proposed Plan Change provisions relating to indigenous biodiversity both within and outside the coastal area
  - consideration of some miscellaneous proposed Plan Change matters raised in submissions and further submissions.

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<sup>3</sup>Plan Change 113 – Ruakaka Racecourse.

7. My assessment is based on:
- the transitional provision set out in clause 13 of Schedule 12 to the Resource Management Act 1991 (“the Act”).
  - the matters to be considered in preparing any district plan set out in section 74 of the Act, supplemented by section 75 on the contents of a district plan and section 75 which sets out the limits of what rules can cover.
  - the requirements under section 32 of the Act to consider alternatives, benefits and costs.
  - the relief sought in the Director-General's submissions and further submissions.
8. The transitional provision under Schedule 12 of the Act provide that the changes to the Act introduced by the Resource Legislation Amendment Act 2017 do not apply to these proposed Plan Changes.
9. In the rest of this section I set out my understanding of the relevant provisions of sections 66, 67, 68 and 32 as far as these are relevant to my consideration of the submissions and further submissions of the Director-General.
10. I note that I do not undertake an assessment of all of the proposed Plan Changes. One implication of this limited assessment is that not all the matters in sections 74, 75 and 76 are relevant.

*Section 74 of the Act*

11. Section 74 of the Act sets out matters to be considered by territorial authorities when preparing or changing a district plan.
12. In my opinion the following clauses of this section are relevant to my consideration of the Director-Generals' submissions and further submissions:

- 74(1) A territorial authority must prepare and change its district plan in accordance with — ...
- (a) its functions under section 31; and
  - (b) the provisions of Part 2; ...
- 74(2) In addition to the requirements of section 75(3) and (4), when preparing or

changing a district plan, the territorial authority shall have regard to— ...

- (c) the extent to which to the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities.

*Section 75 of the Act*

13. Section 75 of the Act sets out the contents of district plans. Section 75(1) requires district plans to state the objectives for the district, the policies to implement the objectives, and the rules (if any) to implement the policies.

14. Section 75(3) is particularly relevant to my assessment. It states:

- (3) A district plan must give effect to—
  - (a) any national policy statement; and
  - (b) any New Zealand coastal policy statement; and
  - (c) any regional policy statement.

*Section 76 of the Act*

15. Section 76 of the Act is an empowering provision with respect to rules in a district plan, and in preparing such rules the territorial authority must have regard to the actual or potential effect on the environment.

*Section 32 of the Act*

16. Section 32 of the Act sets out a formal evaluation process for proposed objectives, policies and methods.

17. A formal written evaluation report is beyond the scope of this evidence. However in preparing this evidence I have borne in mind that the following considerations:

- the extent to which objectives are the most appropriate way to achieve the purpose of the Act,
- whether policies and rules are the most appropriate way to achieve the objectives,
- the need to consider the costs and benefits of the objectives, policies and rules.

*The 2006 Environment Court decision*

18. In early 2006 the Environment Court released a decision<sup>4</sup> on subdivision lot sizes and built development in rural and coastal area of Whangarei District which forms, in my opinion, a useful background document to these proposed Plan Changes.
19. It was this decision that, among other things, set up the Coastal Countryside or Countryside 20 ha minimum lot size that is in the operative Plan, finalised an environment benefit rule<sup>5</sup>, and confirmed restricted discretionary status for residential buildings in the coastal environment.
20. There are a number of policy themes carried through from this decision in the proposed Plan Changes. For example the objective to consolidate subdivision and development in appropriate locations and that “sprawling/sporadic/ribbon development is avoided<sup>6</sup> is a theme that is continued under proposed Plan Changes 85A and 87.
21. Finally I note in relation to this decision that it was made under the 1994 Coastal Policy Statement. In my opinion similar themes on consolidation of development and control of built form occur in the 2010 Coastal Policy Statement.

**PART 2. SUBDIVISION, USE AND DEVELOPMENT IN THE COASTAL AREA**

22. Proposed Plan Change 87 sets out objectives, policies and rules, and other supporting material in relation to subdivision, use and development in the coastal environment; called “Coastal Area” in the proposed Plan Change.
23. These proposed Plan Change provisions are essentially an overlay<sup>7</sup> applying over the underlying Environment.
24. This is in recognition of the Council's duties with respect to the coastal environment as a matter of national importance under section 6(a)

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<sup>4</sup>*The Director-General of Conservation and Landco Limited and MJ Dunn v Whangarei District Council. Decision A 024/2006*

<sup>5</sup> There are some further submissions seeking this Environment Benefit rule be reinserted in the proposed Plan Changes.

<sup>6</sup>See paragraph 52 of the Decision.

<sup>7</sup>Strictly there are three overlays in the proposed Plan Change: coastal area, high natural character area, outstanding natural character area.

of the Act, from national policy statements, in particular the Coastal Policy Statement, and from the Regional Policy Statement.

25. Before commenting on specific submissions and further submissions I will summarise what I consider are important policy directions from these resource management documents<sup>8</sup>. In undertaking this summary I address biodiversity policy direction for the next part of this evidence.

*New Zealand Coastal Policy Statement 2010*

26. The Coastal Policy Statement is a national policy statement to state policies in order to achieve the [sustainable management] purpose of the Act in relation to the coastal environment.

27. There are 7 objectives and 29 policies in the Coastal Policy Statement.

28. Not all the policies are relevant to a district plan. However I consider that there are three policies that are key to the need for coastal area specific overlays, with their attendant objectives, policies and rules.

29. *Policy 13* – preservation of natural character. A direct policy link to matter of national importance 6(a). In my opinion, this policy requires proposed Plan Change 87 to include provisions for subdivision, use and development within areas assessed as being of High and Outstanding Natural Character. Policy 13 sets the requirement that adverse effects are avoided in Outstanding Natural Character area and that significant adverse effects are avoided elsewhere in the coastal environment, including in High Natural Character areas.

30. *Policy 6(1)*<sup>9</sup> – activities in the coastal environment. This sets out considerations particularly related to providing for use and development within the coastal environment. The themes in this policy are expressed in proposed Plan Change 87.

31. For example proposed Plan Change 87 policies 6, 7 and 8 repeat themes from clause (c) of policy 6(1) of the Coastal Policy Statement:

- (c) encourage the consolidation of existing coastal settlements and urban areas where this will contribute to the avoidance

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<sup>8</sup>That need to be given effect to; s75(3) of the Act.

<sup>9</sup>Policy 6(2) sets out considerations in relation to the coastal marine area, which is outside the area covered by a district plan (except with respect to dealing with cross-boundary issues).

or mitigation of sprawling or sporadic patterns of settlement and urban growth;

32. *Policy 7 – strategic planning.* Policy 13 sets out the avoid adverse effects/avoid significant adverse effects directives. Policy 6(1) provides further policy guidance in relation to specific subdivision, use and development in the coastal environment. The important addition from policy 7 is, in my opinion, that thresholds and limits should be set.
33. Although in my opinion these three policies set out the resource management justification for and the basic functions of coastal overlays in a district plan, the objectives and the other policies of the Coastal Policy Statement provide further detail on what must be addressed and how. I identify other policies as necessary when commenting on specific submissions and further submissions.

#### *Other National Policy Statements*

34. There are other national policy statement that these proposed Plan Changes also need to give effect to. The relationship between the Coastal Policy Statement and the National Policy Statement on Electricity Transmission is discussed in Part 4 of this evidence<sup>10</sup>.

#### *Regional Policy Statement for Northland*

35. The Regional Policy Statement gives effect to the Coastal Policy Statement. The most relevant provisions of the Regional Policy Statement in relation to proposed Plan Change 87 are policy 4.6.1 and method 4.6.3.
36. Policy 4.6.1 repeats the avoid adverse effects/avoid significant adverse effects directive from policy 13 of the Coastal Policy Statement. In part (3) of policy 4.6.1 the considerations that apply with respect to avoiding adverse effects are expanded on:

- (3) When considering whether there are any adverse effects on the characteristics and qualities of the natural character, natural features and landscape values in terms of (1)(a), whether there are any significant adverse effects and the scale of any adverse effects in terms of (1)(b) and (2), and in determining the character, intensity and scale of the adverse effects:

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<sup>10</sup>The recent National Policy Statement on Urban Development is not relevant to my consideration of the Director-General's submissions and further submissions because these are not concerned with urban parts of the Whangarei District.

- a) Recognise that a minor or transitory effect may not be an adverse effect;
- b) Recognise that many areas contain ongoing use and development that:
  - (i) Were present when the area was identified as high or outstanding or have subsequently been lawfully established
  - (ii) May be dynamic, diverse or seasonal;
- c) Recognise that there may be more than minor cumulative adverse effects from minor or transitory adverse effects; and
- d) Have regard to any restoration and enhancement on the characteristics and qualities of that area of natural character, natural features and/or natural landscape.

37. Method 4.6.3 includes some specific instructions with respect to the content of district plans:

Regional and district plans shall be amended to the extent necessary to include objectives, policies and methods (and rules where necessary) to give effect to Policy 4.6.1 and 4.6.2:

- (1) Methods in district plans shall include control of:
  - (i) The location, intensity and form of subdivision;
  - (ii) The location, scale and form of buildings and structures (outside freshwater bodies and the coastal marine area);
  - (iii) The location and scale of earthworks and indigenous vegetation removal (outside wetlands and the beds of lakes, rivers and the coastal marine area); and
  - (iv) The disturbance, demolition or alteration of physical elements and / or structures of historic heritage that meet Policy 4.5.3 (outside the coastal marine area and beds of lakes and rivers).
- (2) Methods in regional plans shall include control of [not relevant]
- (3) Methods (as relevant to council functions) may include:
  - (i) Assessment criteria, development standards and / or thresholds to control the scale, intensity, form and location of

- activities and (including for the purposes of controlling cumulative adverse effects);
- (ii) The control of the character, scale, form and appearance of new built development in areas of historic heritage identified in plans;
  - (iii) A requirement for qualified heritage or cultural impact assessments where activities have the potential to adversely affect historic heritage;
  - (iv) Use of alert layers to advise of sensitive historic heritage or cultural sites without disclosure in plans; and
  - (v) Conditions on consents to provide buffers and / or setbacks between historic heritage and other incompatible activity.
- (4) In implementing 4.6.1 district and regional plans shall:
- (i) Permit the maintenance of existing authorised structures, buildings, accessways, infrastructure and production land; and
  - (ii) Not unduly restrict existing authorised use of land or render land incapable of reasonable use.
  - (iii) Recognise that there are urban development and/or specific use\* zonings and/or designations in plans existing at the time that the Regional Policy Statement was made operative that seek to achieve consolidated development and efficient use of land and infrastructure. Where such a zoning or designation does not give effect to Policy 4.6.1, and there are viable alternatives for giving effect to Policy 4.6.1, then existing provisions relating to subdivision, use and development will not need to change.

\*Urban development and/or specific uses include:

- District plan zones (that were operative when the Regional Policy Statement commenced) where the primary purpose is to provide for urban residential, commercial or industrial use and development.

- Operative designations where the primary purpose is to provide for social or utility network infrastructure.
- Areas in operative regional plans where the primary purpose is to provide for specific use and development, such as mixing zones, aquaculture, moorings and marinas, wharves and ports (including ski-lanes, shipping/navigation channels, pipelines and cables associated with utility network infrastructure).

38. In my opinion, the sections reproduced above from Policy 4.6.1 and Method 6.6.3 of the Regional Policy Statement are important as these provide a framework and mandate for the approach in the proposed Plan Changes for the rules.

39. I do note however that the proposed Plan Change 114, Landscapes, includes policy LAN.1.3.3 which provides that in the coastal area adverse effects on Outstanding Natural Landscapes and Outstanding Natural Features will be avoided except where there are only minor or transitory adverse effects<sup>11</sup>. This, in my opinion, is inconsistent with policy 4.6.1(3)a) of the Regional Policy Statement statement that a minor or transitory effect *may* not be an adverse effect. Policy LAN.1.3.3 is also inconsistent with the statement later in the same sub-section of policy 4.6.1 that there may be more than minor adverse cumulative effects from minor or transitory effects<sup>12</sup>.

#### *Summary on national and regional policy statements*

40. In my opinion there are some important policy directives applying to the coastal environment that can be taken from the Coastal Policy Statement and the Regional Policy Statement:

- the circumstances where adverse effects on natural character are to be avoided, and where significant adverse effects on natural character are to be avoided are clearly stated in the Coastal Policy Statement and Regional Policy Statement.

<sup>11</sup>I also note that policy LAN.1.3.6 in proposed Plan Change 114 includes the statement "recognising that a minor or transitory effect may not be an adverse effect", which is the same wording as in the Regional Policy Statement.

<sup>12</sup>There is scope to correct policy LAN.1.3.3 using the Director-General's further submission in support of submission 467/1 by Royal Forest and Bird Protection Society.

- The Coastal Policy Statement includes other policies that are relevant with respect to specific objectives, policies and rules.
- the district plan needs to include objectives, policies and rules to control subdivision, use and development; including the location, intensity and form of subdivision, the location and scale of buildings, and the effects of earthworks and vegetation clearance.

## COASTAL AREA OBJECTIVES

41. In the rest of this evidence I comment on identified submissions and further submissions by the Director-General of Conservation. I do not comment on all of those submissions and further submissions however. In relation to submissions and further submissions that are not commented on in this evidence I agree with the staff assessment and recommendation on those submissions and further submissions.

### *Objective CA.1.2.3*

Submission 78/16, support for objective CA.1.2.3, link to mapping

42. The Director-General's submission 78/16 seeks that the relationship between the objective and the Outstanding and High Natural Character areas mapped in the Regional Policy Statement is clarified.
43. I do not consider it necessary to add to or qualify the objective with any reference to the maps in the Regional Policy Statement. There are two reasons for this.
44. First, this would be more detail than is necessary in an objective.
45. Second, the Outstanding and High Natural Character areas mapped in the Regional Policy Statement were mapped using more restrictive criteria than the criteria listed in an appendix to the Regional Policy Statement. During the appeals phase of the development of the Regional Policy Statement the natural character criteria were extended to include perceptual elements. It is possible therefore that further areas of Outstanding or High Natural Character will be identified and included in the District Plan, which could make a reference in the objective to the Regional Policy Statement maps inaccurate.

*Objective CA.1.2.4*

Submission 78/17, support for objective CA.1.2.4

Further submission opposing submission 253/32 by Federated Farmers seeking that objective CA.1.2.4 be amended to an avoid significant adverse effects objective

46. This objective on Outstanding Natural Character Areas follows the “avoid adverse effects” directive given in policy 13(1)(a) of the Coastal Policy Statement and in policy 4.6.1(1)a) of the Regional Policy Statement.
47. Submission 253/32 seeks that the objective be amended so that the objective is that significant adverse effects on the characteristics and qualities of identified Outstanding Natural Character Areas be avoided.
48. In my opinion that submission is seeking a result that clearly would be inconsistent with, and not give effect to, the policy direction from the Coastal Policy Statement and the Regional Policy Statement, which requires adverse effects on outstanding natural character areas to be avoided. As such I recommend that the submission is rejected.

*Objective CA1.2.5*

Submission 78/18, amend objective CA1.2.5

Further submission opposing submission 431/7 by the Landowners Coalition seeking changes to objective CA.1.2.5

49. Submissions 76/18 and 431/7 seek changes to objective CA.1.2.5.
50. The changes sought by submission 76/18 would, in my opinion, make the objective more targeted to effects on natural character in a way that gives effect to policy 13(1)(b) of the Coastal Policy Statement and (1)b) of policy 4.6.1 of the Regional Policy Statement.
51. I therefore support the staff recommended addition of “natural character of the” to the objective.
52. However there is one subtlety sought in submission 78/18 that was not picked up in the staff recommended changes. The “avoid significant adverse effects” directive from 13(1)(b) of the Coastal Policy Statement applies to all of the coastal environment except areas of Outstanding Natural Character.
53. In my experience this “avoid significant adverse effects” directive in Policy 13(1)(b) of the Coastal Policy Statement is often mis-understood as

only applying to areas of High Natural Character, and not to all of the coastal environment.

54. Submission 76/18 seeks an amendment to the objective that in my opinion corrects the potential for misunderstanding that is present in the current wording of objective CA.1.2.5.

55. With this wording and the staff recommended change to the objective it would be as follows:

Avoid significant adverse effects, and avoid, remedy or mitigate other adverse effects on the natural character of the Coastal Area and including identified High Natural Character Areas.

56. Submission 431/7 seeks a change to objective CA.1.2.5 so that one only needed to remedy or mitigate, not avoid, other adverse effects that were not significant. This relief is inconsistent with the Coastal Policy Statement and the Regional Policy Statement

#### *Objective CA.1.2.6*

Further submission opposing submission 431/7 by the Landowners Coalition seeking deletion of objective CA.1.2.6

57. Submission 431/78 also seeks deletion of this objective.

58. In my opinion objective 1.2.6 is an appropriate objective to include in the district plan. It follows the consolidation of settlement intent from policy 6(1)(c) of the Coastal Policy Statement. It is consistent with the coastal development strategy endorsed in the 2006 Environment Court decision on subdivision and development in Whangarei District.

59. Objective CA.1.2.6 is also consistent with the following clause from section (1) of policy 4.6.1 of the Regional Policy Statement:

(iii) Encouraging any new subdivision and built development to consolidate within and around existing settlements or where natural character and landscape has already been compromised. Policy 4.6.1(1)(b)(iii)

60. Method 4.6.3 of the Regional Policy Statement also states that district plans shall recognise that there are provisions in the existing plans that seek to achieve consolidated development<sup>13</sup>.

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<sup>13</sup>Method 4.6.3(4)(iii) of the Regional Policy Statement,

*Objective CA.1.2.8*

Submission 78/19, support for objective CA.1.2.8

Further submission opposing submission 253/35 by Federated Farmers seeking that objective CA.1.2.8 be qualified by including the words “as far as practicable”

61. Objective CA.1.2.8 is an objective about avoiding increasing the risk of harm from coastal hazards.
62. Submission 253/35 seeks that this objective include the qualifier “as far as practicable” to it.
63. In my opinion this would be an inappropriate addition to the objective because objective CA.1.2.8 is a reproduction of part of policy 25 of the Coastal Policy Statement<sup>14</sup>. Policy 25 is not qualified to only apply as far as practicable<sup>15</sup>. Thus, the proposed additional wording for objective CA.1.2.8 is inconsistent with the policy direction in the Coastal Policy Statement.

COASTAL AREA POLICIES

*Policy CA.1.3.1*

Further submission in support of submission 410/14 by Far North District Council seeking that the policy apply to all buildings

64. Policy CA.1.3.1 emphasises consideration of visual effects of buildings and of the minimising of earthworks and indigenous vegetation as important design elements to avoid, remedy or mitigate adverse effects of residential buildings on natural character.
65. Submission 410/14 seeks that the policy refer to visual effects of all buildings, not just residential buildings; and that the policy should be revised to set out the layered approach to adverse effects on natural character set out in the Coastal Policy Statement and Regional Policy Statement.
66. The staff recommendation, which I agree with, is to refer to managing the visual effects of all buildings, not just residential buildings.
67. The second part of the relief sought in submission 410/14 is adequately addressed, in my opinion, in other policies.

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<sup>14</sup>Policy 25 of the Coastal Policy Statement addresses natural hazard policy more broadly. Objective CA.1.2.8 is a reproduction of part (a) of that policy.

<sup>15</sup>Although part (d) introduces a practicality consideration for the location of infrastructure.

68. For example, policy CA.1.3.3, revised as recommended by staff, provides policy direction with respect to buildings in High and Outstanding Natural Character Areas. Policy CA.1.3.14 does the same with respect to earthworks.
69. Other policies will indirectly contribute to the “avoid adverse effects” in Outstanding Natural Character Areas policy direction. Policies CA.1.3.2, .6, .7 and .8, for example, encourage development to be located away from Outstanding Natural Areas.
70. There is a policy omission in relation to indigenous biodiversity, including within High and Outstanding Natural Character Areas that I address that in Part 3 of this evidence.

*Policy CA.1.3.3*

Submission 78/20 seeking amendments to the policy

71. This submission by the Director-General seeks that policy CA.1.2.3 be amended to differentiate between the avoid adverse effects directive that applies in Outstanding Natural Character areas and the avoid significant adverse effects directive that applies in areas of High Natural Character.
72. The staff recommendation is to amend the policy as sought in the submission. I agree with that recommendation as necessary to give effect to the Coastal Policy Statement and the Regional Policy Statement.

*Policy CA.1.3.4*

Further submission in support of submission 410/15 by Far North District Council seeking that the policy apply to all buildings

73. This policy is a second policy on managing the visual impacts of residential buildings in the Coastal Area. The submission seeks that the policy be amended to apply to all buildings.
74. Method 4.6.3 of the Regional Policy Statement includes the statement that district plans shall include control of
- 4.6.3(1)(ii) The location, scale and form of buildings and structures (outside freshwater bodies and the coastal marine area)
75. The start of Method 4.6.3 of the Regional Policy Statement notes that district plans shall be amended to the extent necessary to include

objectives, policies and methods to give effect to Policies 4.6.1 and 4.6.2 of the Regional Policy Statement.

76. Policy 4.6.1 of the Regional Policy Statement repeats the directive from policy 13 of the Coastal Policy Statement that adverse effects are to be avoided in areas of outstanding natural character, and that significant adverse effects are to be avoided elsewhere in the coastal environment.
77. All buildings, whether residential or not, can have adverse effects on natural character in the coastal environment. The policy direction from the Coastal Policy Statement and the Regional Policy Statement is clear – it is all adverse effects on natural character that need to be addressed.
78. Therefore, I consider that the word “residential” should be deleted from policy CA.1.3.4:

Policy 1.3.4 To manage the visual impacts of residential buildings in the Coastal Area outside coastal villages be limiting building height and ensuring exterior colour schemes are of low reflectivity value.

79. I note that a consequence of this amendment will be that rule CA.2.2.1 will need revision by setting height and reflectivity permitted activity standards<sup>16</sup>.

#### *Policy CA.1.3.5*

Further submission in support of submission 410/16 by Far North District Council seeking deletion of the term “where practicable” from the policy

Further submission in opposition to submission 431/8 by the Landowners Coalition seeking deletion of this policy

80. Policy CA.1.3.5 derives from the following in policy 6 of the Coastal Policy Statement

(1)(g) consider how adverse visual impacts of development can be avoided in areas sensitive to such effects, such as headlands and prominent ridgelines, and as far as practicable and reasonable apply controls or conditions to avoid those effects;

81. In my opinion, given policy 6(1)(g) of the Coastal Policy Statement, there is no resource management grounds for deletion of the policy as sought by submission 431/8.

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<sup>16</sup>The standards set out in rule CA.2.3.1 could be applied.

*Policy CA1.3.6*

Further submission in opposition to submission 431/8 by the Landowners Coalition seeking deletion of the policy

82. Policy CA.1.3.6 is a policy setting out the intention to avoid sprawling, sporadic and ribbon development in the coastal environment.
83. This policy sets out a resource management approach that was endorsed in the 2006 Environment Court decision, and that is identified as an approach to be encouraged in policy 6(1)(c) of the Coastal Policy Statement.
84. Notwithstanding that there is no direct reference to sprawling or sporadic development in the Regional Policy Statement, policy 4.6.1(1)(iii) does refer to encouraging consolidation of new subdivision and development within and around existing settlements. Consolidation is a recognised technique to avoid sprawling or sporadic development.
85. In my opinion this policy also gives effect directly to objective CA.1.2.6 of proposed Plan Change 87 and helps give effect to objective CA.1.2.2.
86. It follows from these considerations that policy CA.1.3.6 should be retained.

*Policy CA.1.3.7*

Further submission opposing submission 431/8 by the Landowners Coalition seeking the amendment of the policy

87. Policy CA.1.3.7 is a policy on consolidating residential development where landscape values and natural character has already been significantly compromised.
88. Submission 431/8 seeks that this policy apply in areas which have been compromised, and not restricted to areas that have been significantly compromised.
89. The concern I have with submission 431/8 is that, strictly, in almost all coastal areas, including areas of high and outstanding natural character, there has been some compromise to the landscape and natural character values because of human activities.
90. For this policy to be operationally effective the level of compromise that is necessary for an area to be suitable for consolidation needs to be

identified. I therefore prefer the retention of the word “significant” in the policy.

*Policy CA.1.3.14*

Further submission in support of submission 410/8 by Far North District Council seeking the deletion of “as far as practicable” from the policy

91. Policy CA.1.3.14 sets out guidance on the management of the adverse visual effects of earthworks in the coastal environment.
92. The policy closely follows the direction to avoid adverse effects<sup>17</sup> set out in policy 13 of the Coastal Policy Statement and in policy 4.6.1 of the Regional Policy Statement. However, policy CA.1.3.14 adds a practicality test to the “avoid significant adverse effects” policy direction.
93. In my opinion the term “as far as practicable” should be deleted from this policy as it is not consistent with the policy direction from the Coastal Policy Statement and the Regional Policy Statement.

*Policy CA.1.3.21*

Further submission in support of submission 410/19 by Far North District Council seeking changes to the policy

Further submission in support of submission 467/4 by Royal Forest and Bird Protection Society seeking changes to the policy

94. Policy CA.1.3.21 allows the building of non-habitable rural production buildings. Rule CA.2.2.1 provides for such buildings in the Coastal Area as a permitted activity (outside outstanding and high natural character areas).
95. I am concerned that this policy could result in adverse effects to natural character and landscape values, particularly as result of larger rural production buildings and buildings using finishes of higher reflectivity.
96. It is inconsistent to address issues of height and building reflectivity for residential buildings in the coastal environment, as in policy 1.3.4, and not take the same approach in the coastal environment for buildings associated with rural production activities.
97. In my opinion, policy CA1.3.21, as worded, while it may be giving effect to objective CA.1.3.11, is doing so in a way that is inconsistent with other objectives such as objectives CA.1.2.2 and CA.1.2.5.

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<sup>17</sup>Avoid adverse effects in outstanding natural character areas, avoid significant adverse effects elsewhere in the coastal environment.

98. I consider that the policy needs to be amended to show how significant adverse effects, including cumulative effects, will be avoided, and other effects avoided, remedied or mitigated.
99. I agree with the staff recommended amendment to the policy to make it clear that it is buildings associated with rural production activities that are the subject of this policy.
100. I suggest the following (addition double underlined)<sup>18</sup>:

Policy CA.1.3.21 To enable the continuation of rural production activities in the Coastal Area be allowing the building of non habitable buildings associated with rural production activities ~~rural production buildings~~ subject to standards being applied on building scale and reflectivity.

*Additional policy*

Further submission in support of submission 467/3 by Royal Forest and Bird Protection Society seeking a further policy

101. Submission 467/3 is seeking an additional policy to address the issue of vehicles on beaches.
102. I am aware from my time working at the Department of Conservation that vehicles on beaches is an issue in the Whangarei District, including along Bream Bay, and around the bird roosts at Ruakaka and Waipu.
103. Policy 20 of the Coastal Policy Statement is a policy specifically on vehicles on beaches.
104. That policy requires that the use of vehicles, apart from emergency vehicles, to be controlled on beaches, foreshore and adjacent public land where there are a listed range of environmental harms occurring. It also requires the identification of locations where vehicle access is required for boat launching or to access properties, and where recreational vehicle use could occur without restriction.
105. Proposed plan change 87 does not include any policy or associated rule relating to vehicles on beaches. A policy on vehicles on beaches could follow on from objective 1.2.7, which states

Objective 1.2.7 Maintain and enhance public access to and along the coast where appropriate

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<sup>18</sup>Rule CA.2.2.1 will, as consequence of this amendment (and the recommended amendment to policy CA.1.3.4) need amending

106. A suitable policy is

To protect natural and recreation values by controlling the use of vehicles, except emergency vehicles, on beaches and adjacent public land and encourage control of vehicles on the foreshore and seabed.

107. The submission that is supported does not seek the insertion of a rule controlling vehicles on beaches. However, in my experience, bylaws are commonly used to control vehicles on beaches.

#### COASTAL AREA RULES

108. As will become apparent in what follows I consider that the coastal area rules, especially the permitted activity rules do not adequately give effect to the Coastal Policy Statement and the Regional Policy Statement.

109. I discuss these rules under four headings – buildings and structures, earthworks, and, in Part 3 of this evidence, indigenous biodiversity.

#### *Building and Structures Rules*

Generally applying submissions: Further submissions in support of submissions 410/4, 410/5 and 410/6 by Far North District Council about ensuring that rules, including the building rules, are appropriate given the need to give effect to the Coastal Policy Statement and Regional Policy Statement.

Rule CA. 2.1.1: Further submissions in support of submissions 410/3 by Far North District Council and 467/5 by Royal Forest and Bird Protection Society

Rule CA 2.3.1: Submission 78/22.

Further submissions in support of submission 467/1 by Royal Forest and Bird Protection Society

Further submissions in opposition to submissions 403/1 by K Cooney, 407/1 by P Dobson, and 431/9 by the Landowners Coalition

Rule 3.1.1: Further submission in support in part of submission 450/19 by NZ Defence Force

Further submission in opposition to submission 431/9 by the Landowners Coalition

Rule 4.1.1: Further submission in opposition to submission 431/9 by the Landowners Coalition

Rule 4.1.2: Further submission in opposition to submission 431/9 by the Landowners Coalition

110. The building and structures rules in the proposed Plan Changes are organised as summarised in the following table. I have included the building controls for Outstanding Natural Landscapes in the table for comparison.

Location	Residential Buildings	Other Buildings
Rural Production Environment	<p>Permitted – one house per 20ha, otherwise discretionary</p> <p>Height limit (10 m) and set back provisions also apply, breaching these is a discretionary activity</p>	<p>Building ancillary to farming or forestry or strategic rural industry with a gross floor area of less than 500 m<sup>2</sup> – permitted.</p> <p>Height limit (10 m) and setbacks apply, breaching these is a discretionary activity</p>
Coastal Area, not High or Outstanding Natural Character	<p>Construction or external alteration of residential unit within 8.5 m height and meeting light reflectivity standards – permitted activity. Otherwise discretionary activity.</p>	<p>Construction of non-habitable buildings ancillary to rural production activities of network utility activities – permitted activity</p>
High Natural Character Area	<p>Construction or external alteration of building less than 5.5 m height and meeting light reflectivity standards – permitted activity. Otherwise discretionary activity.</p>	<p>Construction of building less than 5.5 m height and meeting light reflectivity standards – permitted activity. Otherwise discretionary activity.</p>
Outstanding Natural Character	<p>External alterations or extensions up to 50 m<sup>2</sup> gross floor area of existing building a permitted activity; new building with gross floor area of up to 50 m<sup>2</sup> a permitted activity. Otherwise a discretionary activity.</p>	<p>External alterations or extensions up to 50 m<sup>2</sup> gross floor area of existing building a permitted activity; new building with gross floor area of up to 50 m<sup>2</sup> a permitted activity. Otherwise discretionary activity.</p>
Outstanding Natural Landscape	<p>External alteration or extension to existing building, including a residential unit, where gross floor area up to area is up to 50 m<sup>2</sup> – permitted. Otherwise discretionary.</p> <p>New residential unit – controlled if on defined building platform, discretionary otherwise</p>	<p>Non-habitable building ancillary to rural production or network utility permitted is gross floor area up to 100 m<sup>2</sup>, location and reflectivity requirements – permitted activity.</p> <p>Otherwise discretionary activity</p>

Location	Residential Buildings	Other Buildings
Outstanding Natural Landscape and Coastal Area	External alteration or extension to existing building, including a residential unit, where gross floor area up to area is up to 50 m <sup>2</sup> - permitted. Otherwise discretionary New residential unit – controlled if on defined building platform, non-complying otherwise otherwise	Non-habitable building ancillary to rural production or network utility permitted is gross floor area up to 50 m <sup>2</sup> , location and reflectivity requirements – permitted activity.  Otherwise discretionary activity

111. There is a progression of tighter controls on buildings as the natural character values increase. This follows standard resource management practice, and reflects the policy direction to avoid significant adverse effects in the coastal area, and to avoid adverse effects when the natural character is outstanding.
112. This progression of tighter controls is, however, applied inconsistently and does not, in my opinion, give effect to the Coastal Policy Statement and the Regional Policy Statement.
113. In particular there is no maximum permitted activity gross floor area for buildings in coastal areas and high natural character areas, the gross floor area limit applying in Outstanding Natural Character areas is, in my opinion, too large, and there is no control on the cumulative effects of several permitted activity buildings on a site.
114. I agree with the approach of stricter rules for residential buildings compared to other buildings. I consider that this is a reflection of the tension between the need to avoid adverse effects and to provide for economic and social wellbeing from infrastructure and roading and from land production. It is also a reflection of the risk of adverse effect on natural character from different types of buildings.
115. In my experience, a major factor in a degree of adverse effect (if any) with any building or structure is its location. Buildings and structures for the purposes of infrastructure or ancillary to non-intensive forms of rural land production are generally not located in highly visible or obtrusive locations. Rather the practical requirements of the land production or the

particular infrastructure needs dictate the location<sup>19</sup>. As a result the risk of adverse effects arising from permitted activity buildings and structures in inappropriate locations is much reduced, especially when that building size is restricted and when a height limit and building reflectivity standards are also applied.

116. On the other hand highly visible and obtrusive locations can be very desirable for residential buildings, something that is likely to result in adverse effects not being avoided. It is therefore necessary to include stricter controls on dwellings.

117. I recommend the following permitted activity standards:

<b>Location</b>	<b>Residential Buildings</b>	<b>Other Buildings</b>
Coastal Area	Permitted activity: <ul style="list-style-type: none"> <li>• maximum gross floor area 50 m<sup>2</sup></li> <li>• maximum height 8.5 m</li> <li>• reflectivity controls as in rule 2.3.1 b and c</li> </ul> Otherwise discretionary activity	Permitted activity: <ul style="list-style-type: none"> <li>• maximum gross floor area 200 m<sup>2</sup></li> <li>• maximum height 10 m</li> <li>• reflectivity controls as in rule 2.3.1 b and c</li> </ul> Otherwise discretionary activity
High Natural Character	Permitted activity: <ul style="list-style-type: none"> <li>• maximum gross floor area 50 m<sup>2</sup></li> <li>• maximum height 5.5 m</li> <li>• reflectivity controls as in rule 2.3.1 b and c</li> <li>• no more than 1 building per site</li> </ul> Otherwise discretionary activity	Permitted activity <ul style="list-style-type: none"> <li>• maximum gross floor area 100 m<sup>2</sup></li> <li>• maximum height 8.5 m</li> <li>• reflectivity controls as in rule 2.3.1 b and c</li> <li>• no more than 2 buildings per site</li> </ul> Otherwise discretionary activity

<sup>19</sup>This opinion is based on my observations over more than 20 years of resource management. For example, as part of my preparation for the Environment Court hearing on coastal rural subdivision and building rules in the Whangarei District Plan, a landscape architect (Paul Quinlan) and I flew along all of the Whangarei District coastline. We saw many houses in prominent and obtrusive positions, but not farm production buildings, save large buildings on three farm airstrips.

Location	Residential Buildings	Other Buildings
Outstanding Natural Character	Discretionary activity: <ul style="list-style-type: none"> <li>• maximum gross floor area 25 m<sup>2</sup></li> <li>• maximum height 5.5 m</li> <li>• reflectivity controls as in rule 2.3.1 b and c</li> <li>• no more than 1 building per site</li> </ul> Otherwise non-complying activity	Permitted activity <ul style="list-style-type: none"> <li>• maximum gross floor area 25 m<sup>2</sup></li> <li>• maximum height 5.5 m</li> <li>• reflectivity controls as in rule 2.3.1 b and c</li> <li>• no more than 1 building per site</li> </ul> Otherwise discretionary activity

118. It is useful to consider the parallel provisions in the operative district plans of the adjoining district and in the Auckland Unitary Plan. The Far North and Kaipara District Plans do not yet include High and Outstanding Natural Character overlays or specific controls so it is necessary, for those two district plans, to review the provisions for buildings in Outstanding Natural Landscapes.

119. Far North District Plan. This plan has a 50 square metre gross floor area permitted activity cut off for non-habitable buildings in the coastal rural and coastal lifestyle zones, and a 25 square metre gross floor area permitted activity cut off for buildings within outstanding natural landscapes and for dwellings in the coastal rural and coastal lifestyle zones<sup>20</sup>. These rules have now been operative for over ten years. I am not aware of any significant problems arising from these rules.

120. The Kaipara District Plan provides for a building of up to 50 square metres gross floor area as a permitted activity within an Outstanding Natural Landscape. There is one limited exception for a farm building of up to 100 square metres gross floor area per title within an Outstanding Natural Landscape.

121. The Auckland Unitary Plan provides for buildings and structures accessory to rural production as a permitted activity for buildings up to 50 m<sup>2</sup> in High Natural Character and Outstanding Natural Landscapes, and up to 25 m<sup>2</sup> in Outstanding Natural Character, along with a 5 metre height limit and reflectivity standards. New dwellings are provided for as a

<sup>20</sup>The permitted activity building rules also included a building colour and reflectance standard, and some have a minimum distance of visibility from a public place provision.

discretionary activity in High Natural Character and Outstanding Natural Landscapes, and a non-complying activity in Outstanding Natural Character<sup>21</sup>.

122. Overall I conclude the approach I propose is consistent with (but not identical to) the approach used in the district plans of adjacent territorial authorities and in the Auckland Unitary Plan.
123. In my opinion it helps give effect to policy 13 of the Coastal Policy Statement and policy 4.6.1 and method 4.6.3 from the Regional Policy Statement.
124. With any building extensions or alterations the rules should set the same gross floor areas limits for the extended or altered building as would apply for a new building.

### *Earthworks Rules*

Generally applying submissions: Further submissions in support of submissions 410/4, 410/5 and 410/6 by Far North District Council about ensuring that rules, including the building rules, are appropriate given the need to give effect to the Coastal Policy Statement and Regional Policy Statement.

Rule CA.2.3.2 Further submission in opposition to submission 440/2 by Lynaird and Hirst seeking an increase in the permitted activity earthworks volume.

Rule CA.2.3.3 Further submission in supporting in part submission 450/18 by the NZ Defence Force seeking temporary military exercises be provided for in sand dunes.

Rule CA. 4.2.1 Further submission in support of submission 410/9 and 410/10 by Far North District Council seeking a revision of this rule.

Further submission in opposition to submission 431/9 by the Landowners Coalition seeking deletion of this rule.

125. There are two types of earthworks rules applying in the Coastal Area. The first sets maximum permitted volumes and cut/batter face heights, with these volumes and heights reducing as one moves from Coastal Area to High Natural Character Area to Outstanding Natural Character Area. Exceptions to the rules for specified activities are added in the High and Outstanding Natural Character Area earthworks rules.
126. The second is an earthworks rule specific to earthworks within sand dunes in Coastal Areas. Under this rule earthworks within sand dunes are a discretionary activity, with certain identified permitted activity exceptions. This rule applies in addition to rule CA.2.3.2.

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<sup>21</sup>These provisions are in section D11 of the Unitary Plan. The provisions described are subject to appeals by Man O' War Farm Limited.

127. The exceptions to the volume/cut height earthworks rules applying in the High and Outstanding Natural Character Areas include some of the exceptions given in the Coastal Area earthworks within sand dunes rule.

128. In what follows I consider the earthworks volumes that apply in the rules, the exceptions to the earthworks rules in High and Outstanding Natural Character Areas, and the exceptions that apply in the Coastal Area earthworks within sand dunes rule.

129. The important policy consideration is whether the rules will ensure that significant adverse effects on natural character are avoided in the Coastal Area and in High Natural Character Areas, and whether any adverse effects on natural character are avoided in Outstanding Natural Character Areas.

130. *Earthworks volumes.* The permitted activity volumes of earthworks set in the rules are:

- Coastal Area – up to 500 m<sup>3</sup>
- High Natural Character – up to 250 m<sup>3</sup>
- Outstanding Natural Character – up to 150 m<sup>3</sup>.

131. There is a 2 metre cut/batter permitted activity height limit applying in the Coastal Area and High Natural Character Areas, but no cut/batter height control in the Outstanding Natural Character Area rule.

132. These nominated volumes can be compared with the equivalents in the Far North and Kaipara District Plans and in the Auckland Unitary Plan<sup>22</sup>.

	Far North	Kaipara	Auckland
coastal area	300 m <sup>3</sup> /12 months	300m <sup>3</sup> -1,000m <sup>3</sup> /12 months <sup>23</sup>	250 m <sup>3</sup> per project
high natural character			50 m <sup>3</sup> per project <sup>24</sup>
outstanding natural	300 m <sup>3</sup> /12 months	300m <sup>3</sup> /12 months	5 m <sup>3</sup> per project

<sup>22</sup>As the Kaipara and Far North District Plans do not have high and outstanding natural character earthworks controls yet I identify the volume applied in outstanding natural landscapes instead. I use the district earthworks rules from the Auckland Unitary Plan.

<sup>23</sup>Within 300 m of the Kaipara District coast line it is 300 m<sup>3</sup> except within the Kaipara Harbour where it is 1,000 m<sup>3</sup>.

<sup>24</sup>There is an outstanding appeal by Man O' War Farm Ltd on the volume in high and outstanding natural areas.

character or natural landscape			
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133. The volumes in the proposed Coastal Area earthworks rules are more nuanced than the equivalent provisions in the Far North and Kaipara District Plans, but are more generous in the Auckland Unitary Plan. The Auckland Unitary Plan does provide for earthworks volumes between 5 and 250 m<sup>3</sup> as a restricted discretionary activity.
134. In my opinion the submissions seeking an increase in the permitted activity earthworks volume for these rules cannot be justified, having regard to the limits applied in these other district plans.
135. I am concerned however that there is no cut/batter height limit applied in rule CA.4.2.1. Earthworks cut faces can have an at times significant adverse effect and it is, in my opinion, inappropriate that there is no permitted activity limit on cut/batter slope height with earthworks in an Outstanding Natural Character Area.
136. I recommend the insertion of a maximum face height standard in rule CA.4.2.1.
137. *Earthworks in sand dunes* Discretionary activity rule CA.2.3.3 includes five exceptions, if the staff recommendation is accepted. In my opinion the listed exceptions are reasonable except with regard to one matter – where the earthworks in the dune are temporary as with military training or the burial of marine mammals or earthworks associated with a weed or pest management programme there is no requirement to reinstate as far as practicable the original dune form.
138. I accept that a dune restoration project or providing and maintaining public access ways may result in a permanent alteration to the dune form.
139. However I consider that there should be a requirement with earthworks in dunes that the original dune form is reinstated as far as practicable.
140. This would be consistent with policies 14 and 26 of the Coastal Policy Statement.
141. In my opinion Rule CA.2.3.3 should be amended by adding the following at the end of the rule:

and where the original dune form is reinstated to the extent practicable after the earthworks are completed.

142. *Exceptions to Earthworks Rules* The earthworks rules CA.3.1.2 and CA.4.2.1 include permitted activity exceptions.

143. These rules apply in the High and Outstanding Natural Character areas of the district. The expectation is that the rules are set to ensure significant adverse effects are avoided in the High Natural Character areas and adverse effects are avoided in Outstanding Natural Character areas.

144. These rules already provide, respectively, for 250 and 150 m<sup>3</sup> of earthworks as a permitted activity.

145. In my opinion this is sufficient provision for earthworks without the need for further exceptions which allow the 250 and 150 m<sup>3</sup> volume limits to be exceeded, except for the burial of marine mammals.

146. This is an activity which is undertaken for public health and safety but where the volume of the earthworks depends on the size of the marine mammal(s) being buried. In terms of public health and safety the need to bury marine mammals is immediate, and delays because of the need to obtain a resource consent can compromise the health and safety considerations.

147. I note that there are other exceptions identified that also relate to the health and safety concerns, for example repair and maintenance of effluent disposal systems. However I consider it likely that such earthworks could be carried out within the maximum earthworks volumes set in the rule CA.3.1.2 and CA.4.2.1.

148. I consider that the exceptions to rules 3.1.2 and 4.2.1 should be deleted except for the exception of the burial of marine mammals.

### **PART 3 – INDIGENOUS BIODIVERSITY**

149. In this section I discuss the indigenous vegetation clearance rules and policies, wetlands, and no cats and dogs provisions.

150. I understand that the District Council is preparing a plan change on indigenous biodiversity, although I could not find reference to it on the plan change rolling review timetable on the Council's website.

151. Even if a more fundamental review of the indigenous biodiversity provisions in the District Plan is being undertaken, any objectives, policies and rules that apply in the interim must still recognise and provide for matter of national importance 6(c), give effect to policy 11 of the Coastal Policy Statement and give effect to policy 4.4.1, method 4.4.3 and use the definition of “significant” in Appendix 5 of the Regional Policy Statement.
152. As I explain in more detail later I am of the view that the proposed Plan Change provisions on indigenous biodiversity, including the indigenous vegetation clearance rules, do not recognise and provide for matter of national importance 6(c), or give effect to the relevant provisions of the Coastal Policy Statement or the Regional Policy Statement.
153. Before proceeding further therefore I set out policy 11 of the Coastal Policy Statement:

Policy 11 Indigenous biological diversity  
(biodiversity)

To protect indigenous biological diversity in the coastal environment:

- (a) avoid adverse effects of activities on:
- (i) indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists;
  - (ii) taxa that are listed by the International Union for Conservation of Nature and Natural Resources as threatened;
  - (iii) indigenous ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare;
  - (iv) habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare;
  - (v) areas containing nationally significant examples of indigenous community types; and
  - (vi) areas set aside for full or partial protection of indigenous biological diversity under other legislation; and
- (b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on:

- (i) areas of predominantly indigenous vegetation in the coastal environment;
- (ii) habitats in the coastal environment that are important during the vulnerable life stages of indigenous species;
- (iii) indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh;
- (iv) habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes;
- (v) habitats, including areas and routes, important to migratory species; and
- (vi) ecological corridors, and areas important for linking or maintaining biological values identified under this policy.

154. Policy 4.4.1 of the Regional Policy Statement provides a summary of these provisions for indigenous biodiversity in the coastal environment, and sets out further policy requirements for indigenous biodiversity outside the coastal environment<sup>25</sup>.

155. For these inland areas policy 4.4.1 sets a “no more than minor adverse effects” requirement for the species and habitat types described in policy 11(a) of the Coastal Policy Statement; and a “no significant adverse effects” policy direction for the species and habitat types covered in policy 11(b).

156. Policy 4.4.1, in sub-section (4) expands on considerations that apply when deciding whether adverse effects have been avoided or not. This is similar to the guidance given in policy 4.6.1 of the Regional Policy Statement, discussed above.

157. Method 4.4.3 of the Regional Policy Statement states the following about what district plans must cover with respect to indigenous biodiversity:

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<sup>25</sup>To see how all of the clauses of policy 11 of the Coastal Policy Statement are covered by policy 4.4.1 of the Regional Policy Statement it is necessary to also refer to the definition of “significant” given in Appendix 5 to the Regional Policy Statement.

Method 4.4.3(2) Subject to Method 4.4.3(3), within two years after the Regional Policy Statement becomes operative the district councils shall amend district plans to the extent needed to ensure the plans implement Policy 4.4.1 on land outside of the beds of rivers and lakes, wetlands, and the coastal marine area. Methods of implementation include:

- (a) Controls on the disturbance of land and the clearance of vegetation; and
- (b) Controls on the introduction or keeping of species with recognised pest potential.
- (3) In implementing Policy 4.4.1 regional and district plans shall:
  - (a) Allow activities undertaken for the purposes of pest control or habitat maintenance or enhancement;
  - (b) Consider biodiversity offsets in appropriate circumstances;
  - (c) Allow the maintenance and use of existing structures including infrastructure; and
  - (d) Not unreasonably restrict the existing use of production land, including forestry.

#### *Habitat Policies*

Submissions 78/2 and 78/3

158. These two submissions by the Director-General of Conservation concern policies RA.1.3.5 and RA.1.3.6 from proposed Plan Change 85.

159. Policy RA.1.3.5 includes the following clause

- d. Do not compromise high Land Use capability Class soils, Outstanding Natural Landscapes or Features, High or Outstanding Natural Character or significant indigenous vegetation.

160. Policy RA.1.3.6 includes the following clause:

- e. Do not compromise Outstanding Natural Landscapes or Features or significant indigenous vegetation.

161. The concern in both cases is that the reference to significant indigenous vegetation is incomplete.

162. Matter of national importance 6(c), the Coastal Policy Statement and the Regional Policy Statement are clear that habitats are as much of a concern as indigenous vegetation.

163. I agree with the relief sought in the submission that the words “or habitats” be added to these two policy clauses.

*Indigenous Vegetation Clearance Rules*

General: Further submission in support of submissions 467/1 by Royal Forest and Bird Protection Society

Rule CA.2.3.4 Further submission in support of submission 467/7 by Royal Forest and Bird Protection Society

Further submission in opposition to submission 431/9 by the Landowners Coalition seeking to increase the allowed clearing distance around existing buildings to 20 m

Rule CA.3.1.3 Further submission in support of submission 467/9 by Royal Forest and Bird Protection Society (wrongly identified in the further submission as 467/8)

Further submission in opposition to submission 440/3 by Lynaird and Hirst seeking to increase the permitted activity clearance limit

Rule CA.4.2.2 Further submission in support of submission 467/10 by Royal Forest and Bird Protection Society

Further submission in opposition to submission 410/8 by Far North District Council seeking to set the clearance limit as an annual limit

Rule LAN.3.1.4 Further submission opposing submission 411/34 by Federated Farmers seeking the deletion of the rule

Further submission opposing submission 117/3 by the Northland Regional Council seeking more liberal vegetation clearance provisions.

164. The proposed Plan Changes have adopted a very basic type of indigenous biodiversity protection rule that only concerns itself with indigenous vegetation clearance.

165. There are essentially three ways the indigenous vegetation rules are written. Examples of each type are:

Rule RPE.2.3.2 The destruction or clearance of an area exceeding 500m<sup>2</sup> of predominantly indigenous vegetation that forms a contiguous area of 1 ha or more<sup>26</sup>.

Rule CA.2.3.4 The destruction or clearance of an area of predominantly indigenous vegetation exceeding 500 m<sup>2</sup> in the Coastal Area; with the exception of vegetation clearance associated with ...<sup>27</sup>

Rule LAN.3.1.4.1 Indigenous vegetation clearance within an Outstanding Natural Landscape if it is:

<sup>26</sup>The same wording is recommended in rule RLE.2.3.10. Slightly different wording is used in rule RUEE.2.3.6

<sup>27</sup>High Natural Character Area rule CA.3.1.3 is similar except the limit is 250 m<sup>2</sup>. Outstanding Natural Character Area rule is also similar except that the limit is 150 m<sup>2</sup> and there are no exceptions listed.

- a. Of less than or equal to 150 m<sup>2</sup> of contiguous indigenous vegetation in any 12 month period within a site; or
- b. Directly associated with [list of exceptions]

166. There is a potential interpretation difficulty with rules crafted in either of the first two formats. It is unclear whether the intention is that the destruction or clearance area is a cumulative total for the lifetime of the plan or whether it is a clearance limit per clearance event.

167. It appears from the staff report that the intention is that the limit is intended as a limit applying over the lifetime of the plan. The comment in the staff report is interesting because it also identifies a fundamental problem with the third type of rule identified above, which sets a per annum clearance limit:

253. FNDC have raised a concern about cumulative effects of vegetation clearance, requesting an amendment to introduce a frequency of 12 months to rule CA.4.2.2. In my opinion rule CA.4.2.2 appropriately allows for a one-off opportunity to undertake vegetation clearance (up to 150m<sup>2</sup> in area). The amendment sought by FNDC would allow the opportunity to undertake vegetation clearance up to 150m<sup>2</sup> annually for the life of the District Plan, potentially equating to 1,500m<sup>2</sup> of clearance assuming a 10 year District Plan lifetime. In my opinion this area of vegetation clearance would have the potential to cause significant effects to the ONC<sup>28</sup>

168. I agree with the analysis and conclusion here with regard to providing for an annual clearance amount and the potential for cumulative adverse effects on biodiversity values with such a regime.

169. I consider that this consideration of the cumulative effect of a rule providing for a level of clearance each 12 months applies equally to the indigenous vegetation clearance rule in Outstanding Natural Landscapes, LAN.3.1.4.

170. Policy 11 of the Coastal Policy Statement and policy 4.4.1 of the Regional Policy Statement identify species and habitat types that are to be protected.

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<sup>28</sup>Section 42A report, part 4, PC87, Coastal Area, paragraph 253, page 40.

171. If these policy statement policies are to be given effect to in the interim, while an indigenous biodiversity plan change is being prepared, considerable reliance must be placed on indigenous vegetation proposals being assessed in a resource consent process.

172. This necessitates having strict limits on indigenous vegetation clearance as a permitted activity. Clarifying that the limit stated in each of the indigenous vegetation clearance rules (except the Outstanding Natural Landscape rule) is a limit that is applied over the lifetime of the District Plan provides an appropriately strict interim standard, so long any exceptions to this limit are restricted to those consistent with the protection of biodiversity values.

173. There are exceptions in indigenous vegetation clearance rules for the Coastal Area, and High Natural Character Area. In my opinion any exceptions should be consistent with the protection of biodiversity values, or at least result in less than minor adverse effects on biodiversity values.

174. Commenting on each of these exceptions:

- Routine maintenance within 3m of existing buildings – I consider that this exception has little potential to adversely impact on biodiversity values.
- Operation, maintenance and repair of existing tracks, lawns, gardens, fences, drains and other lawfully established activities. This is a very wide ranging and imprecise exception. I am particularly concerned that “other lawfully established activities” is very uncertain. In my opinion the maintenance and repair of existing tracks, fences and drains should be the limit of this exception.
- Pest plant removal and biosecurity works. This exception allows activities that would have a positive effect on biodiversity values.
- Vegetation removal for customary rights. This exception recognises matters of national importance 6(e) and 6(g), in addition to 6(c).

- Conservation planting, including planting for ecological restoration purposes. In my opinion this exception would result in positive biodiversity effects so long as it is clear that the conservation planting being referred to is the planting of indigenous species.

175. The Outstanding Natural Landscape Area rule LAN.3.1.4 as notified sets a 150 m<sup>2</sup> in any 12 month period permitted activity clearance limit. This rule also requires any clearing to be directly associated with certain specified activities.

176. The staff recommendation is to change the rule to one where there is a choice: either clearance of 150 m<sup>2</sup> in any 12 month period or clearing with no stipulated area limit where the clearing is directly associated with stated activities.

177. In my opinion, such a change makes LAN.3.1.4 inconsistent with policy 11 of the Coastal Policy Statement and policy 4.4.1 of the Regional Policy Statement because it would then allow a level of indigenous vegetation clearance where adverse effects on indigenous biodiversity cannot be avoided.

178. *Recommended changes to rules* In the discussion above I have recommended amendments to the rules in several places. I now set out the changes I recommend rule by rule.

179. *RPE.2.3.5, RLE.2.3.10 (staff recommended additional rule):*

The destruction or clearance of an cumulative area exceeding 500m<sup>2</sup> of predominantly indigenous vegetation that forms a contiguous area of 1ha or more.

180. Rule RUEE.2.3.6 is drafted in a very confusing manner. It should be replaced with the rule given above.

181. *CA.2.3.4:*

The destruction or clearance of an cumulative area of predominantly indigenous vegetation exceeding 500 m<sup>2</sup> in the Coastal Area, with the exception of vegetation clearance associated with:

- a. Routine maintenance within 3m of existing buildings, or

- b. ~~Operation, maintenance and repair of existing tracks, lawns, gardens, fences, and drains and other lawfully established activities, or~~
- c. Pest plant removal and biosecurity works, or
- d. Vegetation removal for customary rights
- e. Conservation planting of indigenous species, including planting for ecological restoration purposes.

182. CA.3.1.3 The same amendments should be made to rule CA.3.1.3. as are recommended for rule CA.2.3.4, except the cumulative area of clearance in rule CA.3.1.3. should be 250 m<sup>2</sup>, and the rule CA.3.1.3 should refer to “High Natural Character Area”.

183. CA.4.2.2:

The clearance of a cumulative area of more than 150m<sup>2</sup> of contiguous indigenous vegetation within an Outstanding Natural Character Area.

184. The outstanding natural landscape indigenous vegetation clearance rule LAN.3.1.4 should be as recommended in the staff report except that the connecting word between parts a and b of the rule should be “and”, not “or” as in the staff recommendation.

#### *Wetland rules*

Submission 78/4 supporting clause RA.3.3.1(p)

Submission 78/6 and 78/12 supporting wetland rules RPE.2.3.4 and RUEE.2.3.7 and seeking that the rules be extended include controls on vegetation clearance and earthworks within wetlands.

Further submission opposing submission 190/2 seeking that all wetland rules be deleted

185. Proposed Plan Changes 85 (Rural Areas), 85A (Rural Production Environment) and 86A (Rural Urban Expansion Environment) include rules relating to wetlands.

186. Rule RA.3.3.1(p) relating to wetlands in proposed Plan Change 85 is a performance standard relating to earthworks which is used to establish whether a subdivision application in the Rural Area a discretionary activity or not.

187. Rules RPE.2.3.4 and RUUE.2.3.7 in proposed Plan Changes 85A and 86A, respectively, are rules making the destruction of any indigenous wetland a discretionary activity<sup>29</sup>.

188. Method 4.4.3 of the Regional Policy Statement sets out how district plans are to implement policy 4.4.1 of the Regional Policy Statement. This is a policy on maintaining and protecting significant ecological areas and habitats.

189. Part (2) of method 4.4.3 commences (emphasis added)

4.4.3(2) Subject to Method 4.4.3(3), within two years after the Regional Policy Statement becomes operative the district councils shall amend district plans to the extent needed to ensure the plans implement Policy 4.4.1 on land **outside of** the beds of rivers and lakes, **wetlands**, and the coastal marine area

190. Part (1) of method 4.4.3 identifies “controls on use and development of beds of lakes, rivers, and wetlands” as a matter for regional plans.

191. The Regional Water and Soil Plan for Northland (“Regional Water and Soil Plan”) includes rules and standards relating to indigenous wetlands and significant indigenous wetlands. These include rules relating to water takes from surface water bodies and aquifers, drainage and river control activities, damming and diversion of water, structures in water bodies, planting in wetlands, and land disturbance activities (including earthworks and vegetation clearance).

192. One environmental standard<sup>30</sup> applying to all land disturbance activities is:

The activity shall not take place within any indigenous wetland and, where the activity involves the taking, use, drainage or diversion of water, the activity shall not cause any change to the seasonal or annual range in water level of any indigenous wetland to an extent that may adversely affect the wetland’s natural ecosystem.

193. The definition of “indigenous wetland” in the Regional Water and Soil Plan means an indigenous wetland needs to be naturally occurring, at least 50 square metres in area, and be permanently or seasonally wet.

<sup>29</sup>Rules RPE.2.3.4 and RUUE.2.3.7. RUEE.2.3.7 applies to wetland modification as well as destruction.

<sup>30</sup>Environmental standard 32.1.11, Regional Water and Soil Plan for Northland.

194. It is clear from the Regional Policy Statement that district plans are (within a two year period after the Regional Policy Statement was made operative) to remove rules they may have relating to the control of activities within indigenous wetlands.

195. It is also clear that the Regional Water and Soil Plan currently contains a wide range of provisions to control activities within indigenous wetlands.

196. The deletion of wetland destruction rules RPE.2.3.4 and RUUE.2.3.7 would ensure that proposed Plan Changes 85A and 86A give effect to the Regional Policy Statement with respect to wetlands, without the danger that deletion of these rules would result in no controls on wetlands.

197. Therefore I recommend that the Director-General's submissions and further submissions on these rules be rejected and the two rules deleted.

198. No such issue arises, however, with clause RA.3.3.1(p). This clause is:

RA.3.3.1(p) Earthworks

- ii. Cause changes to the natural range of water levels or the natural eco-system of flora and fauna in any indigenous wetland

199. The clause is not part of a rule controlling activities in indigenous wetlands. Rather it is one of tests used to ascertain whether a subdivision application in the Rural Area is a discretionary activity or not.

200. Retaining this clause is not contrary to the Regional Policy Statement.

201. I therefore support the Director-General's submission 78/4 supporting the retention of clause RA.3.3.1(p).

*Prohibiting cats and dogs*

Further submission in support of submissions 200/1 and 201/1 by Tutukaka Landcare seeking that no cats and dogs consent conditions can be imposed on subdivisions

202. These submissions seek to ensure that the Council has the ability to impose no cats and dogs consent conditions with subdivisions, where that will result in protection for indigenous species.

203. In my experience of subdivision proposals in Northland over the last 15 plus years, consent conditions prohibiting cats and dogs are commonly

associated with subdivision and more intense land uses which occur within areas of high kiwi density. Dogs are the most significant killer of kiwi, while cats are a threat to kiwi chicks.

204. This practice is followed by the Whangarei District Council as is mentioned in the staff report<sup>31</sup>.

205. However it has been my experience that imposing a no cats and dogs condition on some subdivisions in the Bream Head high density kiwi area has not been possible because the matters on which the Council had reserved its control with respect to controlled activity subdivision did not cover this.

206. RA.4.1 set out the matters of control for controlled activity subdivision in the Rural Area. One of the matters of control concerns indigenous biodiversity:

j. The extent to which the subdivision avoids adverse effects on significant flora and fauna habitats, including methods of weed and pest management.

207. In my opinion, this matter of control may not be sufficiently details to allow the imposition of no dogs and cats conditions where this would be an appropriate consent condition. This could result in avoidable adverse effects on a threatened indigenous species – North Island brown kiwi.

208. I consider that the further submissions and submissions should be granted by adding “and measures to control dogs and cats” to the end of matter of control RA.4.1.j, quoted above.

#### **PART 4. MISCELLANEOUS MATTERS**

##### *New infrastructure policy*

Further submission opposing in part submission 476/3 by  
Transpower seeking a further policy

209. Submission 476/3 seeks the insertion of two further policies in CA.1.3.1, the following one of which is subject to the further submission opposing it in part:

To ensure that new transmission lines are only located within areas of HNC or ONC where there is a functional, technical or operational need to be located in or traverse these areas,

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<sup>31</sup>See paragraph 164, page 33, s42A report – part 1 – general.

and any significant adverse effects are outweighed by the overall benefits of the proposal.

210. This is an issue where there are two relevant national policy statements, and the need to give effect to both has to be reconciled.

211. The Coastal Policy Statement, policy 13, states that adverse effects are to be avoided in areas of outstanding natural character, and that significant adverse effects are to be avoided in areas of high natural character<sup>32</sup>.

212. The National Policy Statement on Electricity Transmission (“Transmission Policy Statement”) sets out objectives and policies, including with respect to recognising the national benefits of transmission and to managing the environmental effects of transmission.

213. In terms of transmission lines within areas of outstanding and high natural character the following policy is particularly relevant:

Policy 8. In rural environments, planning and development of the transmission system should seek to avoid adverse effects on outstanding natural landscapes, areas of high natural character and areas of high recreation value and amenity and existing sensitive activities.

214. The second half of the further policy being sought in submission 476/3 goes beyond this “seek to avoid adverse effects” directive to a policy that potentially endorses significant adverse effects.

215. In my opinion the “avoid adverse effects/avoid significant adverse effects” directive from policy 13 (and 15) of the Coastal Policy Statement and the “seek to avoid adverse effects” directive from the Transmission Policy Statement needs to be reconciled on a case by case basis in a resource consent process.

216. In my opinion the further policy sought by submission 476/3 should have the reference to any significant adverse effects deleted from it:

To ensure that new transmission lines are only located within areas of HNC or ONC where there is a functional, technical or operational need to be located in or traverse these areas,

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<sup>32</sup> Policy 13 of the Coastal Policy Statement provides that significant adverse effects are avoided in all of the coastal environment outside areas of outstanding natural character. As this policy sought by submission 476/3 only applies to high and outstanding natural character areas I only refer to the policy 13 tests that apply to those areas in paragraph 212.

~~and any significant adverse effects are outweighed by the overall benefits of the proposal~~ any adverse effects are avoided.

*Environment benefit and management plan subdivision and transferable development rights*

217. The Director-General of Conservation lodged further submissions supporting in part submissions seeking the introduction of an environmental benefit rule, the introduction of a management plan subdivision rule and the introduction of transferable development rights.

218. These are all techniques that can result in restoration and rehabilitation of natural character, landscapes, historic heritage, cultural values, and indigenous biodiversity.

219. However, in my experience, which includes the introduction of the current environmental benefit rule in the operative Whangarei District Plan and the introduction of the first management plan subdivision rule in the Far North District Plan, these are provisions where the devil is very much in the detail.

220. For example the current environment benefit rule was developed around a definition of “significant” that is different to the one in Appendix 5 of the Regional policy Statement that must now be given effect to. It follows that the existing environment benefit rule cannot just be transferred over without amendment.

221. In my opinion the best resource management practice response to these submissions would be to suggest to the District Council that these tools be considered as part of the biodiversity plan change currently under preparation. That would ensure that there is the opportunity for more considered expert advice and design than would be possible if these provisions were introduced by submission to the proposed Plan Changes under consideration at this hearing.

Andrew Riddell

23 June 2017