

# **SECTION 42A REPORT**

## **ADDENDUM**

Section 42A Report Amendments in response to expert  
evidence filed

### **Topics:**

**Ecosystems and Indigenous Biodiversity**

**Strategic Direction**

**Natural Features and Landscapes**

**Natural Character**

**Report prepared by: C. O'Callaghan**

**Dated: 18 November 2024**

# TABLE OF CONTENTS

<b>1</b>	<b>Introduction .....</b>	<b>3</b>
<b>2</b>	<b>Purpose of the report.....</b>	<b>3</b>
<b>3</b>	<b>Ecosystems and Indigenous Biodiversity .....</b>	<b>5</b>
3.1	Fire and Emergency New Zealand – removal of indigenous vegetation to manage fire risk.....	5
3.2	KiwiRail Holdings Ltd – maintenance adjacent to the railway corridor .	7
3.3	KiwiRail Holdings Ltd – mapping of SNAs within the railway corridor...	7
3.4	T Stokes – R160P040 mapping .....	10
3.5	Waitomo District Council – R16UP006 mapping.....	11
3.6	J Littin – R17001 mapping.....	12
3.7	Waikato Regional Council – miscellaneous SNA mapping .....	12
3.8	Effect of the Joint Witness Statement 12 November 2024 .....	14
<b>4</b>	<b>Strategic Direction .....</b>	<b>14</b>
4.1	Transpower New Zealand Limited – effects on nationally and regionally significant infrastructure .....	14
	Analysis and recommendations .....	15
<b>5</b>	<b>Natural Features and Landscapes.....</b>	<b>16</b>
5.1	Chorus et al – management of network utilities .....	16
5.2	Graymont (New Zealand) Ltd – application of an effects management hierarchy in the karst overlay .....	18
5.3	Graymont (New Zealand) Ltd – fencing around caves and sinkholes.	19
5.4	T Stokes – landscape of high amenity value mapping .....	20
<b>6</b>	<b>Natural Character .....</b>	<b>21</b>
6.1	Graymont (New Zealand) Ltd – amendments to provide for significant mineral resources .....	21
<b>7</b>	<b>Conclusion .....</b>	<b>23</b>
	<b>APPENDIX 1 AMENDED SUBMITTER TABLES .....</b>	<b>24</b>
	<b>APPENDIX 2 EXPERT ECOLOGIST’S REPORT.....</b>	<b>25</b>

<b>APPENDIX 3 JOINT WITNESS STATEMENT 12 NOVEMBER 2024.....</b>	<b>26</b>
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<b>APPENDIX 4 STATEMENT OF EVIDENCE OF HAMISH DEAN DATED 21 OCTOBER 2024, SEE PAGES 14-18 FOR MAPPING .....</b>	<b>27</b>
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## 1 Introduction

1. My name is Cathy O’Callaghan. I am the writer of the original section 42A reports for Hearing Tranche 2 for the following matters:
  - a. Ecosystems and indigenous biodiversity.
  - b. Strategic direction.
  - c. Natural features and landscapes.
  - d. Natural character.
2. My qualifications and experience are set out in section 1 of each section 42A report, along with my agreement to comply with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023.
3. The recommended text changes as a result of this rebuttal evidence are set out in this report. Changes that are a result of the original s42A report are shown in **purple**, with changes arising from this rebuttal evidence shown in **red**.

## 2 Purpose of the report

4. The purpose of this report is to consider primary expert evidence filed by submitters. Evidence was filed in respect of provisions relating to the ecosystems and indigenous biodiversity, strategic direction, natural features and landscapes and natural character chapters by the following submitters:

Submission number	Submitter	Ecosystems and indigenous biodiversity
16.21	Fire and Emergency New Zealand	ECO-R7
51.36	KiwiRail Holdings Ltd.	ECO-P3, ECO-R5
51.51	KiwiRail Holdings Ltd.	SNA Mapping
06.01, 06.02	Tim Stokes	SNA Mapping

<b>Submission number</b>	<b>Submitter</b>	<b>Ecosystems and indigenous biodiversity</b>
26.02	Waitomo District Council	SNA Mapping
15.01	Jeff Littin	SNA Mapping
10.156, 10.157, 10.160	Waikato Regional Council	SNA Mapping

5. Evidence was filed in respect of provisions relating to the strategic direction chapter by the following submitters:

<b>Submission number</b>	<b>Submitter</b>	<b>Strategic direction</b>
31.19	Transpower New Zealand Limited (Transpower).	SD-O30

6. Evidence was filed in respect of provisions relating to the natural features and landscapes chapter by the following submitters:

<b>Submission number</b>	<b>Submitter</b>	<b>Natural features and landscapes</b>
09.28	Chorus, Spark, One NZ (formerly Vodafone) Connexa and FortySouth	NFL-P1
43.26	Graymont (New Zealand) Ltd	NFL-P5
43.29	Graymont (New Zealand) Ltd	NFL-R17
06.03	Tim Stokes	LHAV mapping

7. Evidence was filed in respect of provisions relating to the natural character chapter, by the following submitters:

<b>Submission number</b>	<b>Submitter</b>	<b>Natural character</b>
43.56, 43.57, 43.58	Graymont (New Zealand) Ltd	NATC-P1, NATC-P2, NATC-R4

8. It should be noted that I have not provided rebuttal commentary on all evidence, particularly where either the submitter agrees with my recommendation in the s42A report, or where we simply have a difference in view and there is little more to add.
9. I have therefore focused primarily on evidence that has caused me to change my recommendation, or where there is value in further discussion on the matters raised in evidence.

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

#### **Matters addressed in submitter evidence**

10. The main topics addressed in evidence from submitters for the general rural zone included:
  - a. Removal of indigenous vegetation to manage fire risk
  - b. Maintenance adjacent to the railway corridor
  - c. Mapping of SNAs within the railway corridor
  - d. R160P040 mapping
  - e. R16UP006 mapping
  - f. R17001 mapping
  - g. Miscellaneous SNA mapping
  - h. Effect of the Joint Witness Statement 12 November 2024

#### **3.1 Fire and Emergency New Zealand – removal of indigenous vegetation to manage fire risk**

##### **Matters raised in evidence**

11. ECO-R7 permits trimming, pruning or removal of indigenous vegetation in all zones to manage fire risk. A number of submitters including Fire and Emergency New Zealand (FENZ) support the rule as notified. Forest and Bird

request the rule is deleted and suggest that clearance for fire risk that is not an emergency should be considered through a controlled or restricted discretionary activity consent process to ensure the SNA is protected. They note that section 330 of the RMA provides for emergency situations. Fish and Game request that the rule permits clearance to manage fire risk where it complies with section 43 (powers of persons responding to an emergency in relation to vegetation) and section 64 (FENZ may require a landholder to make or remove a firebreak) of the Fire and Emergency Act 2017.

12. The section 42A report noted that section 65 of the Fire and Emergency Act 2017 empowers FENZ to require a landowner to remove or destroy any vegetation if it is reasonably considered that the vegetation is likely to endanger persons or property by increasing the risk of the outbreak or spread of fire. The report recommended retaining and amending the provision to permit trimming, pruning or removal of indigenous vegetation in all zones to manage fire risk where directed to do so by Fire and Emergency New Zealand.
13. Ms Alec Duncan for Fire and Emergency New Zealand provided further information relating to the provision. She clarified that Section 65 does enable Fire and Emergency to require (by notice) the occupier or the owner of land to remove or destroy any vegetation if Fire and Emergency reasonably considers that the vegetation is likely to endanger persons or property by increasing the risk of the outbreak or spread of fire. However, Ms Duncan does not consider that the ability to remove indigenous vegetation within identified SNA for the purpose of fire risk management should only be at the discretion of Fire and Emergency.

## Analysis and recommendations

14. I agree with Ms Duncan that the amended rule would put an unreasonable onus on Fire and Emergency to assess and direct the management of fire risk within SNAs. It was the intention of the provisions as notified to provide landowners with the ability to remove indigenous vegetation from SNAs within permitted thresholds in certain circumstances, including to manage fire risk.
15. I note that the parameters of the rule are recommended to be amended to make it clear that removal of indigenous vegetation in SNAs over a ten-year period must be no more than either a maximum of 500m<sup>2</sup> in total per holding or less than 1% of the SNA size per holding – whichever is the lesser. Where the permitted standard cannot be achieved a discretionary consent is required for local category SNAs and a non-complying consent for other category SNAs. Given this clarified threshold, I consider that providing the ability for landowners to remove indigenous vegetation to manage fire risk on their properties as a permitted activity is appropriate. I recommend that the rule is reinstated to its notified version as follows:

ECO-R7.	In all zones to manage fire risk <del>where directed to do so by Fire and Emergency New Zealand.</del>
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16. This change has the effect of amending DoC's submission point 53.45 from 'accept in part' to 'accept', Manulife 08.24, PF Olsen FS19.132 and FENZ 16.21 from 'reject' to 'accept', Forest and Bird 47.107 and Auckland Waikato Fish and Game 18.08 from 'accept in part' to 'reject', Federated Farmers FS05.83 and PF Olsen FS19.74 from 'accept in part' to 'accept'. Please see Appendix 1.

### **3.2 KiwiRail Holdings Ltd – maintenance adjacent to the railway corridor**

#### **Matters raised in evidence**

17. KiwiRail sought to include the term "railways" in Policy ECO-P3, but instead of listing permitted activities in the policy, the section 42A report recommended directly referencing ECO-R1 – ECO-R13.
18. Ms Pam Butler for KiwiRail Holdings Ltd proposes that as a result of the recommendation to reject KiwiRail's relief on ECO-P3, instead a consequential amendment is made to ECO-R5 to include reference to "railways". ECO-R5 permits trimming, pruning or removal of indigenous vegetation for maintenance purposes on or within 2m of existing roads, driveways, tracks, fences or water intake/discharge structures.

#### **Analysis and recommendations**

19. This amendment is considered to be acceptable. There are a number of SNAs adjacent to the railway designation and amending ECO-R5 to include railways will allow limited trimming, pruning or removal of indigenous vegetation necessary for safety and maintenance purposes. For the same reasons, the rule currently makes this provision for roads. The recommended amendment would read as follows:

<b>ECO-R5.</b>	<b>For maintenance purposes on or within 2 m of existing roads, railways, driveways, tracks, fences or water intake/discharge structures</b>
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20. This amendment has the effect of causing those submissions which sought to retain the rules as notified – Manulife 08.22, PF Olsen FS19.130 and Graymont 43.42 to be amended from 'accept' to 'accept in part'. Please see Appendix 1.

### **3.3 KiwiRail Holdings Ltd – mapping of SNAs within the railway corridor**

#### **Matters raised in evidence**

21. In submission point 51.51, KiwiRail requests the planning maps are amended to remove the Schedule 6 significant natural area (SNA) overlay from its railway designation. This matter was referred to an expert ecologist Mr Gerry Kessels for assessment. Mr Kessels prepared the SNA assessments for the

Proposed Waitomo District Plan and provided technical assistance mapping, reporting, attending workshops, undertaking site visits and landowner consultation and assisting with advice to inform preparation of the plan.

### **Analysis and recommendations**

22. Mr Kessels' assessment is contained in Appendix 2 to this addendum. In summary he recommends that:

- S17UP023 - The boundary is changed to match designation boundary as below:



**Figure 1: S17UP023**

- S17UP152 - Minor changes are recommended to remove deciduous exotic trees at western end and one in the centre and delete the area with blackberry along the margins of the train tracks. Further ground-truthing is required to the eastern end which likely has wetlands in the areas of exotic trees.





**Figure 2: S17UP152**

- S16076 - In the northern-most area adjust the SNA boundary to the designation. No change to eastern side of bridge. Further ground-truthing is required to at the southern end by the rail bridge to check whether this can be adjusted to the designation.



**Figure 3: S16076**

- S16UP083 - Aerial imagery indicates that there are no kahikatea

within the designation so an adjustment to the SNA along the designation is recommended.



**Figure 4: S16UP083**

- S16UP059 - These are stands of kahikatea trees, some of which are very close to the train tracks. The southern stand crosses into the designation but the northern stand doesn't appear to. No change is recommended.
23. Two sites require ground truthing. This will be undertaken as soon as Mr Kessels has availability. In the interim it is recommended that submission point 51.51 is accepted in part. This has the effect of accepting in part DoC FS03.123, the Waikato Regional Council FS26.16 and Te Nehenehenui FS23.251.

### **3.4 T Stokes – R160P040 mapping**

#### **Matters raised in evidence**

24. Mr Tim Stokes at submission points 06.01 and 06.02, requests the removal of R160P040 from SCHED6 Significant Natural Areas. Mr Stokes notes there is a small SNA area (R16UP040 reference) that is made up of 2 separate areas of bush with grass between them which does not fit the definition of a locally significant area.

#### **Analysis and recommendations**

25. Mr Kessels' assessment is contained in Appendix 2 to this addendum. Mr Kessels agrees with the submitter that the smaller of these two areas can be removed as it is more characteristic of treeland rather than forest as such.

However, the SNA is over karst, so the larger are should remain as an SNA as criterion 5 of the Waikato Regional Policy Statement APP5 applies.



**Figure 5: R160P040**

26. It is recommended that submission points 06.01 and 06.02 accepted in part. This has the effect of accepting in part Federated Farmers FS05.23, FS05.24 and Te Nehenehenui FS23.15, FS23.16.

### **3.5 Waitomo District Council – R16UP006 mapping**

#### **Matters raised in evidence**

27. Waitomo District Council at submission point 26.02 requests the extent of the boundaries at SNA R16UP006 (incorrectly named SNA R16UP0066 in the submission), are further assessed and amended.

#### **Analysis and recommendations**

28. Mr Kessels' assessment is contained in Appendix 2 to this addendum. Mr Kessels agrees the boundaries could be amended to better reflect the existing extent of indigenous vegetation with this SNA.



**Figure 6: R16UP006**

### **3.6 J Littin – R17001 mapping**

#### **Matters raised in evidence**

29. Mr Jeff Littin at submission point 15.01 requests the extent of the boundaries at SNA R17001 are reviewed and redefined.

#### **Analysis and recommendations**

30. Mr Kessels' assessment is contained in Appendix 2 to this addendum. Mr Kessels notes he visited this property in November 2022. On the basis of the visit, several amendment recommendations were made which were incorporated in the final SNA mapping layer for the plan. However, in terms of the further areas that Mr Littin is seeking removal from the SNA in his submission (which Mr Kessels also viewed in 2022), Mr Kessels cannot support the adjustment of the SNA boundary as requested. He acknowledges that the area in question, is young , relatively immature regenerating scrub and forest, and on its own likely has low ecological value. However, Mr Kessels observes that these areas of regenerating indigenous scrub and forest are contiguous with a larger and valuable SNA (Whareorino Forest). Thus, removing the SNA delineation on arbitrary lines as requested does not fit within the criteria he is required to consider when delineating an SNA. No change is recommended.

### **3.7 Waikato Regional Council – miscellaneous SNA mapping**

#### **Matters raised in evidence**

31. At submission point 10.156, the Waikato Regional Council (WRC) requests three sites are added to SCHED6 Significant Natural Areas. At submission point 10.157, WRC requests Criterion 5 from the Waikato Regional Policy Statement Table 28 (Criteria for determining significance of indigenous biodiversity) is added to the 'criteria' column for R16092, R16094.02,

16P17037, 16UP055.04, 1870439.03, 16UP074.01 and 17UP143.01. WRC considers that these listed sites are karst ecosystems and therefore, criterion 5 applies. At submission point 10.160, WRC requests the inclusion of the property at 5443 State Highway 3, Mokau, into SCHED6.

32. In tabled evidence, WRC continues to advocate for the inclusion of the property at 5443 State Highway 3, Mokau. They note this site is identified as containing the New Zealand hazel plant species (*Pomaderris tainui* Hector; *Pomaderris apetala*), which is a very rare, nationally critically endangered indigenous plant, that triggers criteria 3 within the WRPS APP5 – Criteria for determining significance of Indigenous Biodiversity.

### **Analysis and recommendations**

33. Mr Kessels' assessment is contained in Appendix 2 to this addendum. In respect of submission point 10.156, WRC request that Marokopa River natural tunnel and Te Ana Kapiti Cave, Mangaorongo limestone gorge and natural bridges, and Ruakuri Cave be demarcated as SNAs.
34. Mr Kessels understands that Marokopa River natural tunnel and Te Ana Kapiti Cave are delineated as ONFs (ONF39 (category B)), already contained in SNA R16037, and in the Karst Overlay and subject to the cultural alert layer. These are scenic reserves (Reserves Act 1977) administered by DoC. He does not consider any further SNA demarcation is required in this context of several layers of protection already afforded by the plan and current administration by DoC.
35. Mr Kessels understands that the Mangaorongo limestone gorge and natural bridges are already ONFs (ONF28 (category B)), and already contained in in an SNA R17074. The Ten Acre Tomo System is also an ONF (ONF60 (category A)). He does not consider any further SNA demarcation is required as several layers of protection are afforded by the plan.
36. Mr Kessels notes Ruakuri Cave is already ONF (ONF54 (category F)), already in an SNA S16031, in the Karst Overlay and identified as waahi tapu. In addition, it is a scenic reserve administered by DoC. Lake Rotokawau is ONF21 (category B). He does do not consider any further SNA demarcation is required given several layers of protection are afforded by the plan and current administration is by DoC. Accordingly, it is recommended that submission point 10.156 is rejected.
37. In respect of submission point 10.157, Mr Kessels agrees the listed sites are karst ecosystems and therefore, criterion 5 from Table 28 in the WRPS applies and should be recognised in SCHED6. The change would read:

Add Criterion 5 to the 'criteria' column for R16092, R16094.02, 16P17037, 16UP055.04, 1870439.03, 16UP074.01 and 17UP143.01 in SCHED6 Significant Natural Areas.

38. This change has the effect of accepting WRC submission point 10.157 and DoC FS03.56.

39. In respect of submission point 10.160, WRC contend that this site should be listed in SCHED6 as an SNA, given its significant ecological value. The subject site contains specimens of the nationally critically endangered indigenous plant species Tainui, New Zealand Hazel plant species (*Pomaderris tainui* Hector; *Pomaderris apetala*), which is a very rare species, that has only been identified at two sites in Waitomo (this site and the Tainui Scenic Reserve, SNA number R18001). Mr Kessels states that he does not have enough information to support inclusion of this site. At this point in time the site doesn't appear to be sufficiently large enough or structurally intact to provide functional habitat for this species. He also notes it is on private land, and the landowners would require consultation before an SNA is to be considered. Ground-truthing would also be required. No change is recommended meaning WRC submission point 10.160 and DoC FS03.57 are recommended to be rejected.

### **3.8 Effect of the Joint Witness Statement 12 November 2024**

40. As an effect of the Joint Witness Statement dated 12 November 2024, should the panel agree with the recommendations, the submitter tables in Appendix 1 will require updating. The amended mapping for Taharoa Ironsands Limited is contained Appendix 4 as part of the Statement of Evidence of Hamish Dean dated 21 October 2024, on pages 14-18. A consequential amendment is also required to the coastal environment chapter to CE-P3 to be consistent with ECO-P11.

## **4 Strategic Direction**

### **Matters addressed in submitter evidence**

41. The topic addressed in evidence from submitters for the strategic direction chapter is:
- a. Effects on nationally and regionally significant infrastructure

### **4.1 Transpower New Zealand Limited – effects on nationally and regionally significant infrastructure**

#### **Matters raised in evidence**

42. Ms Pauline Whitney has provided evidence on behalf of Transpower New Zealand Limited (Transpower). In submission point 31.19 Transpower requests that SD-O30 is retained as notified but also supports Chorus et al in FS30.01, to relocate the objective to the District Wide Matters subheading. Related to this, KiwiRail requested a new objective which manages land use activities to avoid, remedy or mitigate adverse effects, including reverse sensitivity effects, of subdivision, land use and development, on regionally significant infrastructure including transport. The section 42A report recommended that SD-O30 is amended to address these matters and the objective is relocated. The proposed changes read:

**SD-030.** Recognise and provide for nationally and regionally significant infrastructure and industry, and for those activities associated with significant mineral resources, by recognising their functional, locational and operational needs and managing reverse sensitivity effects which may impact their operation.

43. Ms Whitney opposes these changes in part, observing that the text does not recognise that there may be other effects that may compromise significant infrastructure, and instead confines the consideration to reverse sensitivity. She considers that the confinement to reverse sensitivity effects does not give effect to the second element of National Policy Statement on Electricity Transmission (NPSET) policy 10 "to ensure that operation, maintenance, upgrading, and development of the electricity transmission network is not compromised.". She also has concerns with the reference being confined to 'operation' and thereby ignoring maintenance and upgrading activities which can be a key feature of the activities requiring protection (noting the KiwiRail submission point does not refer to 'operation, maintenance or upgrading').

### **Analysis and recommendations**

44. I agree with Ms Whitney's point that the objective does not recognise that there may be effects other than reverse sensitivity impacts which may compromise the operation of nationally and regionally significant activities. However, this objective applies beyond effects on significant infrastructure. It also considers nationally and regionally significant industry and significant mineral resources. There are quite different parameters applied to the consideration of effects on these activities. For example, the National Policy Statement for Indigenous Biodiversity does not refer to or make any provision for regionally significant industry and the NPSET has no bearing on these activities at all.

45. As such I don't think there is a need to give effect to the second element of NPSET policy 10 "to ensure that operation, maintenance, upgrading, and development of the electricity transmission network is not compromised" in this objective. Instead, it is better to provide high level guidance in the strategic direction chapter and rely on the more specific policy framework in those chapters that manage the electricity transmission network (eg NU-O2, NU-P1, . On balance I think changes could be made to extend the objective to effects beyond reverse sensitivity effects - but this requires the qualifier "as appropriate". This enables the appropriate consideration to be given to the operation, maintenance, upgrading, and development of the nationally significant electricity transmission network when considering the clearance of an SNA (for example). This approach provides for the quite different parameters that would be applied to that same SNA clearance if the activity was being considered as part of an upgrade to a regionally significant industrial activity. My recommended changes read:

**SD-030.** Recognise and provide for nationally and regionally significant infrastructure and industry, and for those activities associated with significant mineral resources, by recognising their functional, locational and operational needs and managing ~~reverse sensitivity~~ effects as

appropriate (including reverse sensitivity effects), which may impact their operation.

46. The changes do not affect the status of any of the submission points. Transpower 31.19 remains 'rejected' as the submission point requested the objective was retained as notified. This is noting that Transpower have scope to make the amendments requested above as the objective was changed in response to other submission points.

## **5 Natural Features and Landscapes**

### **Matters addressed in submitter evidence**

47. The main topics addressed in evidence from submitters for the natural features and landscape chapter included:
- a. Management of network utilities
  - b. Application of an effects management hierarchy in the karst overlay
  - c. Fencing around caves and sinkholes
  - d. Landscape of high amenity value mapping

### **5.1 Chorus et al<sup>1</sup> – management of network utilities**

#### **Matters raised in evidence**

48. Mr Chris Horne provide evidence on behalf of Chorus et al. In submission point 09.28, Chorus et al request an addition to NFL-P1 (which manages the protection of outstanding natural landscapes and features) to state that network utilities are managed in accordance with policies NU -P11 and NU - P12. The section 42A report did not consider that the amendment was necessary as the network utilities chapter is clearly referenced as containing matters relating to the operation of this infrastructure. However, it offered the Commissioner the option to add a cross reference as an advice note (rather than a policy point) to the bottom of the policy itself.
49. Mr Horne considers that relying on the weighing of general network utilities provisions against a directive natural features and landscapes chapter provisions would result in a risk the policies will be interpreted overall to require infrastructure to avoid adverse effects on the values and attributes of outstanding natural features and landscapes.

#### **Analysis and recommendations**

50. I agree that there is a risk that the 'avoidance' policy framework in the natural features and landscapes chapter may have the effect of overriding or

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<sup>1</sup> Chorus New Zealand Limited, Connexa Limited, Spark New Zealand Trading Limited and Vodafone New Zealand Limited



capturing the intended approach for network utilities in the plan. I note the changes recommended in the network utilities section 42A report to delete the provision NU-P11 in favour of NU-P12. This has the effect of relying on NU-P12 to provide a policy approach for regionally significant infrastructure within overlays, scheduled sites and features. I agree that the network utilities chapter provides the appropriate policy and rule policy framework for considering network utilities in overlays, scheduled sites and features and potential policy duplication in the natural features and landscapes chapter is unhelpful. I also consider that any clarification in how policies are applied is useful. The recommended amendment would read:

**NFL-P1.** Ensure the values and character of the outstanding natural features and outstanding natural landscapes are protected from inappropriate subdivision, use and development by:

1. Avoiding adverse effects which compromise the values and character of outstanding natural features and landscapes; and
2. Ensuring the location, scale, materials, design, colour and grouping of buildings and structures ~~and infrastructure~~ avoid adverse effects on the values and character of outstanding natural features and landscapes; and
3. Ensuring earthworks integrate with the existing landform to preserve the values and character of outstanding natural features and landscapes; and
4. Avoiding any activity, particularly earthworks, harvesting of plantation forestry and structures, where this will adversely affect caves and fragile outstanding natural features identified in [SCHED8](#); and
5. Ensuring developments in locations that are of significance to mana whenua appropriately assess those effects and any resulting development is managed in a way that protects the values of the site; and
6. Avoiding in the first instance or minimising the removal of indigenous vegetation; and
7. Ensuring any earthworks or vegetation removal activities focus on protecting existing indigenous vegetation in the first instance, minimising clearance in the second instance and undertaking any measures necessary to rehabilitate the land including restoration and re-planting as a final resort; and
8. Avoiding the adverse effects of mineral extraction activities in outstanding natural landscapes; and
9. Providing for plantation forestry only where there is a clear and on-going land stability benefit and the ensuing operations avoid detracting from the values and character of outstanding natural features and landscapes; and
10. Providing for the continued operation of lawfully established farming activities; and
11. Network utilities are managed in accordance with NU-P12.

51. This change has the effect of changing Chorus et al 09.28 and Transpower

FS30.03 from 'reject' to 'accept' and changing DoC FS03.10 and Te Nehenehenui FS23.50 from 'accept' to 'reject'.

## **5.2 Graymont (New Zealand) Ltd – application of an effects management hierarchy in the karst overlay**

### **Matters raised in evidence**

52. Ms Terry Calmeyer provided evidence on behalf of Graymont (New Zealand) Ltd. In submission point 43.26, Graymont requests that the effects management hierarchy is applied to NFL-P5.3. NFL-P5 seeks to recognise, protect, and where practicable, enhance the values of the karst overlay. The section 42A report considered that the policy did not require amendment. Although it employs the absolute "avoid" the report noted that this must be interpreted in respect of the header sentence and reads as follows: Recognise, protect, and where practicable, enhance the values of the karst overlay by avoiding any activity, particularly vegetation clearance and large-scale earthworks including quarrying activities, where these will adversely affect the values of the karst systems or features. So, the avoid is very specific – these activities can occur providing they do not damage the karst features. Ms Calmeyer observes that Graymont's Oparure quarrying activities may result in some damage to karst features. Therefore, including an effects management hierarchy in the policy as opposed to an absolute "avoid" in NFL-P5.3 is consistent with RPROZ-P3 and appropriate.

### **Analysis and recommendations**

53. While I take on board Ms Calmeyer's concerns, I'm still of the view that the policy point does not need to be amended. The rural production zone (RPROZ) was created with the purpose of balancing the direction of the Waikato Regional Policy Statement (and some national direction) to provide for regionally significant activities. Accordingly, the rules in the karst overlay do not apply in the RPROZ for the following activities:
- Buildings – NFL-R1-R4 – the RPROZ provisions prevail.
  - Tanks and silos – NFL-R6-R7 – the RPROZ provisions prevail.
  - Earthworks – NFL-R8 – the RPROZ provisions prevail.
  - Quarrying activities – NFL-R9-R10 – the RPROZ provisions prevail.
54. This means that quarrying activities in the RPROZ are not subject to the karst overlay rules in the natural features and landscapes chapter. The provisions of RPROZ prevail. So Graymont's Oparure quarrying activities are managed by the RPROZ rules in the karst overlay. Accordingly, the NFL-P5 does not apply and therefore it does not conflict with RPROZ-P3.
55. RPROZ-P3 reads: Where the location of an existing quarrying activity of significant mineral resources coincides with the karst overlay in whole or part, adverse effects on the geomorphological or hydrological characteristics of the karst system should be remedied or mitigated in that order in the first instance, or if this is not possible, offset adverse effects.

56. The issue that may arise for Graymont is an extension to the quarry beyond the RPROZ that occurs in the karst overlay. Outside of RPROZ the karst overlay provisions including NFL-P5 apply. That means that either Graymont must apply for a resource consent to extend - which is tested on the activity's merits against NFL-P5 – or a plan change to extend the RPROZ zoning. I consider that is reasonable. As a regionally significant mineral resource Graymont has the ability to balance this status against the effects of the activities they propose to undertake. The plan cannot provide further for a potential extension other than offering the ability to rezone or apply for a consent. It is also worth noting that the option of a 'rural production indicative area' was open to all regionally significant mineral resources in order to manage potential reverse sensitivity effects where an extension was proposed within the lifetime of the plan. Through these mechanisms the plan's provisions have done everything possible to ensure that regional and national direction is fully given effect to.

### 5.3 Graymont (New Zealand) Ltd – fencing around caves and sinkholes

#### Matters raised in evidence

57. In submission point 43.29, Graymont requested a new rule which allows fencing and associated earthworks and weed removal or indigenous planting at a 20 m radius (or greater) of an entry or opening to a cave or sinkhole to protect an entry or opening into any cave or sinkhole. Within the 20m radius it is proposed that a controlled activity status is applied. The section 42A report noted that fencing is permitted under HW-R7 and weed removal is permitted by NFL-R17. As such there is not really a need for this rule as the matters are already provided for in the plan. Ms Calmeyer notes that sometimes works may be needed to fence off sinkholes or cave entrances within the 20m radius so as to protect them.

#### Analysis and recommendations

58. I do not think a rule is needed but agree that it is appropriate to be clear that fencing is enabled to protect karst features. As such, I recommend an advice note is added to NFL-R17 to clarify that any fencing and associated digging holes for fence posts within the 20m radius is permitted. The recommended amendment would read:

The rules apply to all zones				
Rule	Outstanding natural features	Outstanding natural landscapes	Landscapes of high amenity value	Karst overlay
NFL-R17.	Any <a href="#">earthworks</a> or clearance of vegetation (other than plant pest species, wilding pines, or when required in emergency situations such as the recovery of stock) within a 20 m radius of an entry or opening into any cave or sinkhole			
	NC	<del>NE DIS</del>	DIS	<del>NE DIS</del>

The rules apply to all zones				
Rule	Outstanding natural features	Outstanding natural landscapes	Landscapes of high amenity value	Karst overlay
<p><i>Note: This rule prevails over the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 in the outstanding natural features and outstanding natural landscapes and in the karst overlay.</i></p> <p><u><i>Note: Where vegetation clearance is proposed in a significant natural area the provisions in the ecosystems and indigenous biodiversity chapter apply.</i></u></p> <p><u><i>Note: for the avoidance of doubt fencing to protect a karst feature and associated digging holes for fence posts within the 20m radius is permitted.</i></u></p>				

59. Both Graymont's submission point 43.29 and Te Nehenehenui's further submission FS23.187 were accepted in part, and no change to this is required.

## 5.4 T Stokes – landscape of high amenity value mapping

### Matters raised in evidence

60. Mr Tim Stokes at submission point 06.03 requests amendment to the northern boundary of the limestone country landscape boundary at northern edge of R16UP046. Limestone Country is a landscape of high amenity value - LHAV3. This matter was referred to the landscape architect who undertook the landscape mapping for the Proposed Waitomo District Plan, Ms Bridget Gilbert. Ms Gilbert undertook all the landscape assessments for the plan and provided technical assistance mapping, reporting, undertaking site visits and assisting with advice to inform preparation of the plan on the outstanding natural landscapes, areas of high/very high and outstanding natural character, landscapes of high amenity value and the coastal environment line.

### Analysis and recommendations

61. In terms of a response on Mr Stokes' submission, Ms Gilbert considers that the linework as currently mapped is appropriate. She notes that the 'location' description of LHAV3 Limestone Country explains that the area corresponds "to much of LCU13 Elevated Central Hills and Valleys throughout the central portion of the district that sit between the Herangi Ranges and rugged hills to the west, and the rolling lowland hills to the east (roughly following the course of SH3). It also captures the western portion of LCU 10 Central Rolling Lowlands where there is a proliferation of scenic features". Ms Gilbert observes that the area is so named due to the proliferation of limestone features, although not all of the area comprises limestone features and other scenic features, such as bush areas underpin the mapping of LHAV3.

62. Ms Gilbert comments that in the vicinity of the Stokes property, it is the extensive bush features (significant natural areas) throughout the catchment to the south, that have resulted in the LHAV3 overlay roughly following a ridge landform that runs through the southern part of the Stokes property. From a landscape perspective, Ms Gilbert states that amending the LHAV3 boundary to follow a cadastral boundary (as sought by Mr Stokes) is considered to be methodologically flawed. As such no change is recommended.
63. This has the effect of rejecting Mr Stoke's submission point 06.03 and Federated Farmers FS05.25, and accepting Te Nehenehenui FS23.17.

## **6 Natural Character**

### **Matters addressed in submitter evidence**

64. The topic addressed in evidence from submitters for the natural character chapter is:
- a. Amendments to provide for significant mineral resources

### **6.1 Graymont (New Zealand) Ltd – amendments to provide for significant mineral resources**

#### **Matters raised in evidence**

65. NATC-P1 and P2 respond to NATC-O1. NATC-P1 sets out the policy goals necessary to achieve the 'protection and enhancement' direction and NATC-P2 sets out the policy considerations which must be examined when assessing whether an activity is appropriate or inappropriate. Graymont requests:
- The NATC-P1 header sentence is amended to refer to protection from the 'adverse effects of inappropriate subdivision, use and development'.
  - An effects management hierarchy approach – avoid first then remedy or mitigate, is applied to NATC-P1.2 and P1.4.
  - An amendment to NATC-P1.5 which would read: 'Ensuring developments in locations that are of significance to mana whenua appropriately assess those effects and any resulting development is managed in a way that protects the values of the site'.
  - NATC-P2 is amended to provide for nationally and regionally significant infrastructure and industry, and for those activities associated with significant mineral resources.
  - NATC-R4 is amended to enable the minor upgrading of perimeter fences, for minor upgrading on or within 2m of existing roads, tracks or water intake/discharge structures and as part of minor upgrading of existing drains.

#### **Analysis and recommendations**

66. The Resource Management (National Environmental Standards for

Freshwater) Regulations 2020 require a discretionary consent from the regional council for vegetation clearance, earthworks outside a 10m, but within a 100m setback from a natural inland wetland where that wetland is adversely affected. While district and regional rules and resource consents may be more stringent than these regulations, the plan defaults to the regulations for management of these matters.

67. Section 6(a) of the Resource Management Act 1991 (RMA) requires the preservation of the natural character of wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development. To clarify the link to NATC-P2 the header sentence could be amended to reflect the wording in RMA section 6(c) as follows:

**NATC-P1.** Protect the natural character of ~~and enhance the qualities and values~~ of wetlands, and lakes and rivers and their margins from inappropriate subdivision, use, and development by:

1. Requiring that activities are setback from wetlands, lakes and rivers; and
2. Avoiding activities which could generate effects that compromise the values of wetlands, and lakes and rivers and their margins; and
3. Ensuring the location, scale, intensity and form of subdivision, use and development are appropriate; and
4. Avoiding any activity, particularly earthworks and vegetation clearance, where this will adversely affect the qualities and values of wetlands, and lakes and rivers and their margins; and
5. Avoiding developments in locations that are of significance to mana whenua; and
6. Providing for plantation forestry and mineral extraction activities only where the ensuing operations do not adversely affect the qualities and values of wetlands, and lakes and rivers and their margins; and
7. Providing for the continued operation of lawfully established farming activities and recreational hunting; and
8. Promoting restoration and rehabilitation, giving special regard to areas where natural values have been compromised; and
9. Safeguarding the life-supporting capacity of freshwater ecosystems and maintaining or enhancing indigenous biodiversity.

68. This change has the effect of amending Graymont 43.56 from 'reject' to 'accept' and DoC FS03.93, the Waikato Regional Council FS26.13 and the New Zealand Speleological Society FS17.09 from 'accept' to 'accept in part'.

69. I do not consider it is appropriate to make provision for significant mineral resources in NATC-P2 or P5 beyond what is already provided for in the RPROZ. This includes minimum setback from water bodies for quarrying activities, mineral prospecting and exploration at RPROZ-R27. It also includes RPROZ-P4 which is recommended to be amended to read: Avoiding remedying or mitigating adverse effects on water bodies. As such I consider that significant mineral resources are appropriately provided for.

70. NATC-R4 permits earthworks up to 15m<sup>3</sup> within 5m from the edge of a water body, Graymont request the rule is amended to minor upgrading and has provided a definition of 'minor upgrading'. As regionally significant infrastructure is adequately provided for by other provisions in the plan, I do not agree with including 'minor upgrading' in NATC-R4.

## **7 Conclusion**

71. I would like to thank the submitters and experts for taking the time to provide their evidence and I look forward to further discussion through the course of the hearing. Appendix 1 contains the amended submitter tables, Appendix 2 contains the expert ecologist's report and Appendix 3 contains the Joint Witness Statement 12 November 2024. Appendix 4 has the Statement of Evidence of Hamish Dean dated 21 October 2024 (see pages 14-18 for mapping).

## **APPENDIX 1 AMENDED SUBMITTER TABLES**



## **APPENDIX 2 EXPERT ECOLOGIST'S REPORT**

**APPENDIX 3 JOINT WITNESS STATEMENT 12**  
**NOVEMBER 2024**

**APPENDIX 4 STATEMENT OF EVIDENCE OF  
HAMISH DEAN DATED 21 OCTOBER 2024, SEE  
PAGES 14-18 FOR MAPPING**