

IN THE MATTER of the Resource Management Act 1991(RMA)

AND

IN THE MATTER Proposed District Plan Review

JOINT WITNESS STATEMENT (JWS) IN RELATION TO:

Topic: Ecosystems and Indigenous Biodiversity and Planning (1)
(Chapter 26)

12 November 2024

Expert Conferencing Held on: 12 November 2024 (in person)

Venue: Trust Waikato Building, Hamilton

Independent Facilitator: Marlene Oliver

Admin Support: Kayla Hemara

1 Attendance:

- 1.1 The list of participants is included in the schedule at the end of this Statement.

2 Basis of Attendance and Environment Court Practice Note 2023

- 2.1 All participants agree to the following:

- (a) The Environment Court Practice Note 2023 provides relevant guidance and protocols for the expert conferencing session;
- (b) They will comply with the relevant provisions of the Environment Court Practice Note 2023;
- (c) They will make themselves available to appear before the Panel; and
- (d) This statement is to be filed with the Panel and posted on the Council's website.

3 Matters considered at Conferencing – Agenda and Outcomes

- 3.1 SNAs associated with Taharoa Ironsands mine.

Grant Eccles and Hamish Dean explained that the recent consenting for the mine included very detailed mapping and groundwork in relation to proposed SNAs. This work confirmed that the on the ground SNAs did not quite match up with the notified plan.

Mr Eccles and Mr Dean note that Mr Kessels (Ecologist for the Council) has, at section 7 of his letter dated 01 November 2024, set out his support for the SNA amendments proposed in the evidence of Mr Dean. Mr Eccles and Mr Dean agree with and endorse Mr Kessels view, and note the direct engagement that has occurred with Mr Kessels on the rationale for the amendments proposed by Mr Dean.

Planning and Ecology Experts for the Council, Taharoa Ironsands Ltd and DoC are in agreement with the position set out in the above paragraph and there are no unresolved matters in relation to these submission points.

Cathy O’Callaghan will include amended mapping as part of S42A addendum report.

3.2 Longtail Bats – proposed planned provisions

Mr Eccles agrees with and endorses the views of Ms O’Callaghan as set out at paragraphs 40-48 of the Ecosystems and Indigenous Biodiversity section 42A report. He further notes his view that the Bat Protection provisions proposed by the Department of Conservation would be neither efficient or effective in a regulatory sense, given the highly mobile nature of long-tailed bats and the practical difficulties inherent in identifying their presence.

Planning and Ecology Experts for the Council, Taharoa Ironsands Ltd and DoC are in agreement with the position set out in the above paragraph and there are no unresolved matters in relation to these submission points.

3.3 SNA definition

The DoC through its submission sought a definition to be included in the plan for a SNA. Following discussion between the experts it was decided that a preferred response to this submission point was to add additional wording into the chapter 26 Overview which clarifies that the SNAs are defined using the WRPS criteria.

Planning and Ecology Experts for the Council, DoC and Graymont agree to amend Ecosystems and Indigenous Biodiversity Overview, third paragraph as follows;

Approximately 35% of the district located in the Waikato Region has been identified as an SNA, meeting the WRPS criteria used to determine significance. SNAs are any area that meets one or more of the criteria in WRPS APP5 (Criteria for Determining Significance of Indigenous Biodiversity) SNAs are categorised into four significance levels. The table below breaks down the composition of SNAs, indicating the percentage that are permanently protected. SNAs in Waitomo district are particularly precious with 81% being nationally or internationally significant.

3.4 Effects Management Hierarchy

In response to DoC’s submission points on the Effects Management Hierarchy, the Planning and Ecology experts for the Council, DoC and Graymont agree that the S42A version of Policy ECO-P1 (set out below in sub-section 3.4.1 be replaced with a new version of the Policy as set out below in sub-para 3.4.2.)

3.4.1 S42A report version

Significant natural areas

ECO-P1. Recognise and protect the values, characteristics or extent of significant natural areas identified in [SCHED6](#) by applying the effects management hierarchy:

1. Avoiding loss or degradation in preference to remediation or mitigation; and
2. Remedying or mitigating any unavoidable adverse effects; and
3. Where any adverse effects cannot be avoided, remedied or mitigated in accordance with ECO-P1.1 and P1.2, significant residual adverse effects are offset to achieve no net loss; and
4. Where remediation, mitigation or offsetting are required, as a first priority it relates to the indigenous biodiversity that has been lost or degraded (whether by on-site or off-site methods); and
5. Where biodiversity offsetting or compensation is required it is in accordance with APP4.

3.4.2 New version

Significant natural areas

ECO-P1. Recognise and protect the values, characteristics or extent of significant natural **areas** identified in [SCHED6](#) by applying the effects management hierarchy:

1. Adverse effects are avoided where practicable; then
2. Where adverse effects cannot be avoided, they are minimised where practicable; then
3. Where adverse effects cannot be minimised, they are remedied where practicable; then
4. Where more than minor residual adverse effects cannot be avoided, minimised, or remedied, biodiversity offsetting, in accordance with APP 4 (Biodiversity Offsetting Framework), is provided where possible; then
5. Where biodiversity offsetting of more than minor residual adverse effects is not possible, biodiversity compensation, in accordance with APP4 (Biodiversity Offsetting Framework), is provided; then
6. If biodiversity compensation is not appropriate, the activity itself is avoided.

3.5 NPSIB Definitions of Biodiversity Offset and Biodiversity Compensation

The Planning and Ecology experts for the Council, DoC and Graymont agree to include the NPSIB Definitions of Biodiversity Offset and Biodiversity Compensation in the provisions, as recommended in the S42A report page 28, paras 72-75.

3.6 ECO-P2 and recognising regionally significant activities and consistency with ECO-P1.

The Planning and Ecology experts for the Council, DoC and Graymont agree to amend ECO-P2 by adding an additional sub-clause 6 as set out below. This provides consistency with the Rural Production Zone Policies.

The Planning and Ecology experts for the Council, DoC and Graymont agree to amend ECO-P2 sub-clauses 1 and 2, to be consistent with changes to ECO-P1 and amendments to rules e.g. ECO-R13

ECO-P2. Recognise, protect, and enhance the ecological sustainability, indigenous biodiversity values and characteristics of significant natural areas by:

1. Only ~~providing for allowing~~ the removal of indigenous vegetation in limited circumstances ~~sustainable quantities within locally significant natural areas; ;and~~
2. ~~Only allowing the removal of indigenous vegetation in sustainable quantities and in limited circumstances within internationally, nationally or regionally significant natural areas; and~~
3. Avoiding indigenous vegetation clearance in locations that are of significance to mana whenua to the maximum extent practicable; and
4. Protecting the health and functioning of significant natural areas that are wetland or include part of a wetland, by avoiding inappropriate land use practices, subdivision and development; and
5. Protect and enhance connectivity along and between significant natural areas and other areas of indigenous vegetation and habitat of indigenous fauna; and
6. Recognising the continued operation of lawfully established regionally significant activities

3.7 Amendments to ECO-P5 for consistency with changes to ECO-P1

The Planning and Ecology experts for the Council, DoC and Graymont agree to amend ECO-P5 to be consistent with the changes recommended above to ECO-P1. The agreed changes are shown below to the S42A report version of ECO-P5 and include sub-clause 1, delete the words “nationally significant examples of”; delete sub-clause 9; and in sub-clause 10 add the words “avoid or”.

ECO-P5. ~~Where the limited circumstances of unavoidable~~ removal of indigenous vegetation, or habitats of indigenous fauna, or disturbance of wetland areas are being considered ~~(including situations provided for in ECO-P4)~~, regard must be given to the following matters:

1. Whether the area contains ~~nationally significant examples of~~ indigenous community types and indigenous ecosystems and/or vegetation types that are threatened ~~in the coastal environment~~, or are naturally rare; and
2. Effects on the required range of habitats, including roosting, nesting, foraging and migratory pathways of fauna; and
3. Effects on the habitats of threatened and at risk species including migratory pathways; and
4. Effects on the maintenance of ecological corridors, processes and sequences; and

5. Whether sensitive sites remain buffered from intensive land use, development and subdivision; and
6. The outcome of consultation where indigenous vegetation clearance is proposed in locations that are of significance to mana whenua; and
7. Effects on natural waterway and wetland habitats and hydrology; and
8. The legal and physical protection of existing habitat; and
- ~~9. Whether consideration has been given to opportunities that contribute to no net loss of indigenous biodiversity at a regional scale; and~~
10. Whether any practicable alternative locations that would avoid or reduce the need for removal of indigenous vegetation or habitats of indigenous fauna or disturbance of wetland areas, are used in the first instance.

3.8 ECO-P11 use of consistent terminology for “Threatened” or “At Risk”

The Planning and Ecology experts for the Council, DoC and Graymont agree that there is a policy gap in the face of the NZCPS and WRPS and additional sub-clause 1 should be added to ECO-P11 to read:

ECO-P11. Protect indigenous biodiversity, including significant natural areas, located in the coastal environment overlay by:

1. Avoiding adverse effects on:

(i) indigenous taxa listed as ‘Threatened’ or ‘At Risk’ in the New Zealand Threat Classification System lists or taxa listed as threatened by the international Union of Nature and Natural Resources; and

...

The Planning and Ecology experts for the Council, DoC and Graymont agree that consequently amendments to other parts of the plan (for example the Coastal Environment Chapter) will be required and this will be addressed in the S42A addendum.

3.9 ECO-R4 avoiding Fencing in natural wetlands

The Planning and Ecology experts for the Council, DoC and Graymont agree that policy ECO- R4 be amended to make it clear that new fences should not be constructed through natural wetlands

ECO-R4.

In the general rural, natural open space, open space and rural lifestyle zones to maintain, relocate or construct (outside of natural wetland SNAs) perimeter fences ~~for stock exclusion~~ where any trimming, pruning or removal is within 2 m of the fence

3.10 ECO-R13 removal of manuka or kanuka in an SNA

The Planning and Ecology experts for the Council, DoC and Graymont agree that the removal of manuka and kanuka in SNA should be more limited. They agree that this be achieved by the following amendments:

Amend ECO-R13 from permitted activity status to restricted discretionary activity status, defaulting to the provisions of ECO-R16 where compliance cannot be achieved. The matters of discretion provided for in ECO-R13 would be retained.

Amend sub-clause 1 to change the provision from “per calendar year” to “per 5 year period”

Therefore, the amended rule ECO-R13 would read as follows:

ECO-R13: Removal of manuka or kanuka on a sustainable basis

Activity Status: RDIS Where:

1. The removal of manuka or kanuka is no more than 250 m², ~~whichever is the lesser~~ per holding per ~~calendar~~ five year period; and
2. The area from which manuka or kanuka is removed shall be replanted within 6 months or allowed to regenerate; and
3. No removal of manuka or kanuka occurs within 5 m of a water body.

Matters over which discretion is restricted:

- (a) The location, extent and area of manuka/kanuka proposed to be removed on an annual basis or in a single event; and
- (b) Effects on indigenous biodiversity, connectivity, values and characteristics of the significant natural area, including impacts on the coastal environment where applicable; and
- (c) The extent to which existing vegetation is retained in order to mitigate the effects of streambank, coastal and slope erosion, sedimentation, water quality degradation and loss of indigenous species habitat; and
- (d) Methods proposed to avoid or minimise potential adverse effects on indigenous biodiversity during harvesting, including consideration of the no net loss principle and rehabilitation measures; and
- (e) Alternatives to removing manuka/kanuka from a significant natural area.

Activity status where compliance is not achieved: The activity is subject to the provisions of ECO-R16.

Note: For setbacks from natural wetlands see the Resource Management (National Environmental Standards for Freshwater) Regulations 2020.

3.11 S42A version of chapter 26 Ecosystems and Indigenous Biodiversity

As of the date of this Expert Conference, except for amendments recommended above in this JWS, the Planning and Ecology experts for the Council, DoC and Graymont otherwise agree with the S42A report version of chapter 26 Ecosystems and Indigenous Biodiversity

Note from the Facilitator: the Planning and Ecology Expert for Taharoa Ironsands Ltd, were not present for this item, hence their position has not been recorded.

4 PARTICIPANTS TO JOINT WITNESS STATEMENT

4.1 The participants to this Joint Witness Statement, as listed below, confirm that:

- (a) They agree that the basis of their participation and the outcome(s) of the expert conferencing are as recorded in this Joint Witness Statement; and
- (b) They have read the Environment Court's Practice Note 2023 and agree to comply with it; and
- (c) The matters addressed in this statement are within their area of expertise; and
- (d) This session was held in person and it was agreed that each expert would verbally confirm their position in relation to this para 4.1 to the Independent Facilitator and the other experts and this is recorded in the schedule below.

Confirmed in person: 12 November 2024

EXPERT'S NAME & EXPERTISE	PARTY	EXPERT'S CONFIRMATION REFER PARA 4.1
Alex Bell (Planning)	Waitomo District Council	Yes
Cathy O'Callaghan (Planning)	For Waitomo District Council	Yes
Terry Calmeyer (Planning)	For Graymont (NZ) Limited	Yes
Vaughan Kessing (Ecologist)	For Graymont (NZ) Limited	Yes
Jesse Gooding (Planning)	DoC	Yes
Andrew Townsend (Ecologist)	DoC	Yes
Grant Eccles (Planning)	For Taharoa Ironsands Ltd	Yes, attended for items 3.1 and 3.2
Hamish Dean (Ecologist)	For Taharoa Ironsands Ltd	Yes, attended for items 3.1 and 3.2