

Porirua District Plan – Hearing Stream 2 presentation

9.15am 2 November 2021

1. Introduction

- 1.1 My name is Amelia Geary, I am a regional conversation manager for Forest & Bird.
- 1.2 Forest & Bird made a submission and further submission on the Proposed Porirua District Plan. The primary focus of these submissions was to improve the plan provisions for the protection and maintenance of indigenous biodiversity in Porirua.
- 1.3 According to the RPS, regionally, about 70% of the indigenous forest and more than 90% of the wetlands that existed in 1840, have been cleared for agriculture and urban development. The region’s remaining indigenous ecosystems continue to be degraded or lost. Porirua has lost much of its indigenous biodiversity and that degradation continues. The s32 evaluation of Ecosystems and Indigenous Biodiversity notes recent environmental reporting (Environment Aotearoa 2019) has confirmed a continuing trend of decline in Porirua, highlighting the need to halt any further loss and take actions to protect and restore our remaining biodiversity.
- 1.4 The importance of indigenous biodiversity is also recognised by:
 - a. The Aotearoa New Zealand Biodiversity Strategy 2020, that biodiversity in New Zealand is in crisis and is still declining today. The Strategy is intended to guide all those who work with or have an impact on biodiversity, including local government. The outcomes of the strategy include that the health, integrity and connectivity of ecosystems have been maintained and/or restored, including in human-dominated areas. The Strategy recognises that maintenance may also require the restoration or enhancement of ecosystems and habitats.¹
 - b. Central government is proposing a national policy statement for indigenous biodiversity as a way to reverse the decline of indigenous biodiversity in New

¹ Pages 12, 35, 39, 43 and 62 Te Mana o Te Taiao - Aotearoa New Zealand Biodiversity Strategy 2020, Department of Conservation, August 2020

Zealand. Information supporting the proposed NPSIB is that the proportion of threatened ecosystems are higher in lowland and coastal environments². Of which, Porirua has many.

- 1.5 Despite this recognition of the importance of indigenous biodiversity and that more needs to be done to halt the decline and to protect, maintain and restore, the proposed plan provisions remain inadequate. The Council has the leading role for protection and maintenance of indigenous biodiversity of Porirua City through its responsibilities and functions of the RMA, in particular under s6(c), s31 and in the coastal environment Policy 11 of the NZCPS.
- 1.6 Forest & Bird's submission sets out detail on these matters. Having considered the s42A reports and ecological evidence of the Council and Department of Conservation I will focus on the following matters with respect to our submission:
 - a. Consideration of submission points in the s42As;
 - b. Zoning of SNAs as Natural Open Space as opposed to Open Space;
 - c. Protection of SNAs, including those identified in SCHED7;
 - d. Maintenance of indigenous biodiversity.

2. Consideration of submission points in the s42As

- 2.1 We were surprised to find that Forest & Birds submissions with respect to the maintenance of indigenous biodiversity are largely addressed within the Natural Environment Strategic objectives s42A and not considered within ECO s42A. In fact, the consideration of maintenance in the ECO s42A appears to be more around activities and initiatives within SCHED7 SNAs rather than council's functions which extend beyond.
- 2.2 We are concerned that considering these submissions in the NE s42A fails to consider the amendments sought by Forest & Bird in the s42A ECO chapter where they could have been considered with other submitters amendments to that chapter.

² Page 11, Discussion document on a proposed National Policy Statement for Indigenous Biodiversity, Ministry for the Environment, November 2019

- 2.3 We also disagree with the NE s42A officer³ reasoning, that collectively the proposed plan provisions form an appropriate response to Council’s responsibility for the maintenance of indigenous biodiversity under s31(1)(iii) of the RMA, as I will discuss shortly.
- 2.4 We are also concerned as to whether council will continue to consider Forest & Bird’s submissions on this matter in other hearing stages. This is important because Forest & Bird’s submission sought a number of changes that extend to other chapters, including to enable consideration of effects on indigenous biodiversity in all controlled and restricted discretionary rules (225.42). This submission point has been accepted in part in the NE s42A report, however no amendments to address it are proposed. The submission point has not been considered in the NATC s42A, NFL s42A or ECO s42A reports.

3. Zoning of SNAs as Natural Open Space as opposed to Open Space

- 3.1 Forest & Bird’s submission seeks the use of a ‘natural open space zone’ for SCHED7 SNAs rather than a general open space zoning, and where possible rather than future urban, rural, or residential zoning.
- 3.2 Forest & Bird considers that “natural open space” zoning is preferable for identified SNAs. Only the Natural Opens Space zone, as described in the National Planning Standards, puts the protection of the natural environment ahead of other purposes and use. No other zoning description includes protection of natural environmental values. Nor do the zone provisions in the plan include protection of natural environmental values as part of the purpose of the zone. This is particularly problematic where activities are considered as appropriate on the basis of meeting the purpose of that zone, this creates a conflict with ECO provisions for protection of SCHED7 SNAs and fails to provide any scope to consider indigenous biodiversity values beyond that. These concerns are set out in our submission.
- 3.3 We understand that it may not be easy to zone SNAs which exist on private land as natural opens space, particularly where this is within residential areas where multiple titles are involved. However, zoning is the main tool which indicates intended use of land. For this reason, Forest & Bird considers that at least those SCHED7 SNA areas on public land should be zoned as Natural Open Space and, whatever the zoning in other cases, that the plan recognise protection of SNAs and the maintenance of natural environmental values in the provisions setting out the purpose of the zone.

³ Paragraph 56 s42A Natural Environment Strategic Objectives

4. Protection of SNAs, including those identified in SCHED7.

- 4.1 Forest & Bird considers that the proposed ECO provisions for protection of significant indigenous biodiversity (s6(c) and Policy 11 of the NZCPS) are inadequate because the provisions:
- a. limit protection to identified SCHED7 SNAs; and
 - b. would permit activities which would have more than minor adverse effects, such as clearance of non-indigenous vegetation within SCHED7 SNAs.

Section 6(c) protection

- 4.2 Forest & Bird is disappointed that the amendments recommended in the s42A report do not resolve its concerns with the plan in terms of protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.
- 4.3 Despite the removal of the word “identified” in several ECO objectives and policies, the ECO chapter’s approach to protection is still limited solely to areas identified in SCHED7 rather than extending to any area meeting the significance criteria. The retention of the words “from inappropriate use and development” is inconsistent with s6(c) of the RMA and further reduces the outcomes for protection of significant indigenous biodiversity.
- 4.4 The evidence of Mr La Cock⁴ and demonstrated by Mr Goldwater⁵ is that the identification SCHED7 SNAs was not perfect, that further sites may be identified for various reasons. Waiting for a future plan review or Council survey and plan change does not provide for protection of such areas in the meantime. I cannot see how this can be considered adequate to meet the requirements of s6(c) of the RMA.
- 4.5 While amendments recommended in the s42A to Policies ECO-P2 and P12 improve policy direction for the protection of SCHED7 SNAs, they provide no direction for decision making of resource consents for activities outside of identified SNAs, for example where consent is required for vegetation removal within a High Natural Character area under CE-R2 or within and ONLF area under NFL-R2.

⁴ Paragraphs 10-13 of Statement of Evidence of Graeme La Cock on Behalf of The Director General of Conservation.

⁵ Paragraph 25 of Statement of Evidence of Nicholas Paul Goldwater for Porirua City Council. We are satisfied that PCC has been as thorough as possible but note the boundary changes, inclusion and exclusion of SNAs only after site visits and submitter testimony. Therefore, unless the whole District is put under such scrutiny, there is no doubt further unidentified SNAs exist in Porirua.

- 4.6 This limitation means that ECO-P2 does not give effect to the RPS or achieve the purpose of the Act.
- 4.7 Forest & Bird considers that policy 23 and 24 of the RPS have not been given effect to in the proposed plan because there is not provision for further identification or protection beyond SCHED7 SNAs.
- 4.8 In our view, to give effect to the NZCPS through ECO-P12, Council needs to be sure that the significance criteria are adequate to identify indigenous biodiversity to be protected under Policy 11 of the NZCPS, and to ensure that those criteria are employed beyond SCHED7 SNAs.

Non-indigenous vegetation

- 4.9 The evidence of Mr Goldwater⁶ for the Council is that non-indigenous vegetation can contribute to the values of an SNA, he provides a number of examples of this. Despite this he has suggested clearance of non-indigenous vegetation of up to 100m² within SNAs as a permitted activity. In our view, this approach is not appropriate and does not provide for protection of SNAs. If an area is significant, any removal of vegetation, including non-indigenous vegetation, should only be undertaken where it would improve the SNA and maintain significant values.
- 4.10 While the amendment recommended in the ECO s42A would limit this clearance of non-indigenous vegetation to “pest plants” it would still provide for up to 100m² of trees to be removed in any 12 months for any reason. Removing this much vegetation could have significant adverse effects on an SNA. In addition to the removal effects identified by Mr Goldwater, this may include disruption of habitat at critical breeding times, damaged to other vegetation through removal activities. For these reasons we do not support the amendment to ECO-R2 and seek amendments as set out in our submission.
- 4.11 As set out in our submission non-indigenous vegetation removal should be captured within ECO-R1 by amending that rule to address “vegetation removal” within SCHED7 SNAs.

Offsetting and Compensation

- 4.12 We agree with the ECO s42A officer that offsetting and compensation are a specific consideration to be had by decision makers as provided for in the RMA. However, that consideration is to be informed by the relevant provisions of the plan and therefore the

⁶ paragraphs 40 –42 of Mr Goldwater’s evidence

wording of these policies matter. In this respect we support the amendments recommended to ECO-P2 by the ECO s42A officer subject to clarification that the consideration of offsetting and compensation is only available for residual effects of other adverse effects; i.e. that it is not an alternative to avoiding the adverse effects set out in new clause 1. We suggest the following amendment to clause 4 (to be renumbered as clause 5) as follows:

“5. Only consider biodiversity offsetting for any residual adverse effects under 2, 3 and 4 above, that cannot otherwise be avoided, minimised or remedied and where the principles of APP8 – Biodiversity Offsetting are met; and”

5. Maintenance of indigenous biodiversity

- 5.1 Forest & Bird has sought provisions for maintenance of indigenous biodiversity, including
- a. provisions to provide direction for decision making (including in the ECO chapter and in the Zone chapters);
 - b. matters of control and discretion within all controlled and restricted discretionary rules throughout the plan; and
 - c. a permitted activity clearance limit for indigenous vegetation outside of scheduled SNAs.
- 5.2 As explained in Forest & Bird’s submission⁷, these provisions are sought for two key reasons: The opportunity to identify and protect further sites of significant indigenous biodiversity and for the maintenance of indigenous biodiversity beyond SCHED7 SNAs within Porirua.
- 5.3 The Natural Environment s42A officer has agreed with Forest & Bird and QEII that the NE strategic objectives do not adequately address the Council’s function under s31(1)(b)(iii) to maintain indigenous biodiversity. A new objective is recommended to be included in the NE Strategic Objectives to address this. Forest & Bird supports the inclusion of this new objective, but we do not don’t consider that this objective alone is adequate to address Forest & Bird’s submission or Council’s functions and responsibilities under s31 of the RMA.

⁷ paragraphs 45 to 55 and reasons for changes to specific provisions set out in the table of Forest & Bird’s original submission.

- 5.4 The NE s42A officer's⁸ reasoning for not including further provisions in other chapters of the plan appears is that such provisions are not necessary because maintenance of indigenous biodiversity is not a requirement under section 6 of the RMA or the RPS; and on the basis of provisions in other chapters and reading the plan as a whole⁹.
- 5.5 Section 31(1)(b)(iii)¹⁰ requires that every territorial authority shall have functions for giving effect to the purpose of the Act. It follows that the function to control the actual or potential effects of the use of land, including where necessary for the maintenance of indigenous biological biodiversity, must also be applied to achieve the purpose of the RMA. Section 5 of the RMA clearly extends beyond s6(c) matters, with respect to sustainable management of natural and physical resources, including while that use and development and protection is undertaken while sustaining the potential of natural and physical resources and safeguarding the life supporting capacity of air, water, soil, and ecosystems. Council's own s32 report¹¹. on Ecosystems and Indigenous Biodiversity clearly states: "Both regional councils and territorial authorities are required to maintain indigenous biological diversity as part of their functions."
- 5.6 The way I read it, although I am not a planner, is that the Council's s31 functions extend beyond s6 matters to achieve the purpose of the RMA itself which includes safeguarding the life supporting capacity of ecosystems¹². These functions must also be employed to achieve Council's responsibilities under s6, s7 and s8 as well for setting restrictions on the use of land under s9 and other matters under the RMA.
- 5.7 Section 7 of the RMA sets out matters which Council must have particular regard to which require a very broad application of Council's functions, including for the intrinsic values of ecosystems, the maintenance and enhancement of the quality of the environment and of amenity values.
- 5.8 The proposed plan, when "read as a whole" does not give a decision maker on resource consent applications the scope to apply council's functions for maintenance of indigenous biodiversity. For example, CE-R2 Vegetation removal within a Coastal High Natural Character Area, which the NE s42 officer¹³ considers to be a provision that seeks to maintain or enhance indigenous biodiversity, limits the matters of discretion when

⁸ paragraph 50 of the NE s42A officer report

⁹ paragraphs 52-55 of the NE s42A officer report

¹⁰ Section 31(b)(iii) of the RMA 1991

¹¹ Section 31(b)(iii) of the RMA 1991

¹² Section 5 of the RMA

¹³ paragraph 55 of the NE s42A officer report

consent is required to matters in CE-P3 and CE-P4. Both policies direct the consideration of adverse effects to the identified values in SCHED11. While CE-P3 requires activities to demonstrate appropriateness by avoiding or minimising the removal of vegetation, the policy does not provide any direction in terms of the adverse effects on indigenous biodiversity. Even if these CE provisions are amended to provide such scope as sought by Forest & Bird, and I note a similar example of NFL-R2 which is part of this hearing topic, without any policy direction in the ECO chapter for maintenance of indigenous biodiversity it is difficult to see how the new NE objective would be implemented by provisions in other chapters of the plan when read as a whole.

- 5.9 Further examples of this lack of integration and provisions for maintenance of indigenous biodiversity beyond SCHED7 SNAs are set out in Forest & Bird's submission.
- 5.10 We all know that loss of indigenous biodiversity continues to occur. Without policy direction on what is necessary or appropriate to maintain biodiversity, there will be no basis for decision making to decline applications or to set conditions necessary to prevent further loss and decline of indigenous biodiversity.
- 5.11 Forest & Bird wants to see informed decision making with clear policy considerations in the proposed plan which implement council's functions and responsibilities. We want the Council to be able to show that their plans, decisions and actions maintain indigenous biodiversity and protect SNAs in Porirua for us to enjoy now and for our future generations.
- 5.12 Forest & Bird is not confident that assessments relating to rules under other chapters, such as for natural features, landscapes and character will have adequate scope to appropriately consider effects on indigenous biodiversity, even where some such effects may be considered relevant to those overlay provisions. We consider that to achieve the purpose of the RMA and to implement the NE strategic objectives, clear policy direction for protection and maintenance beyond SCHED7 SNAs is needed in the ECO chapter. Such amendments are proposed in our submission.
- 5.13 Without maintaining indigenous biodiversity beyond scheduled SNAs, the SNAs will become islands and the connectivity which support them will be lost.
- 5.14 Given the extent of indigenous biodiversity loss and the potentially small but important remnant areas of indigenous vegetation which remain outside of SCHED7 SNAs, Forest & Bird has sought a new rule.

- 5.15 This rule would limit permitted indigenous vegetation removal to 100m² in the coastal environment and 200m² in other areas in any 10year period. A more stringent limit within the coastal environment is appropriate in our view given the higher historical biodiversity loss and higher development pressures in this area and the need to give effect to the NZCPS. The new rule ECO-RX set out in Attachment 1 to these speaking notes is more lenient than that sought in Forest & Bird's original submission as to better align with the similar rule proposed by Mr Silva; we have removed the conjunctive requirement where permitted clearance up to the limits was previously only available to the specified purposes.
- 5.16 Please refer to Forest & Bird's submission for further reasons and detail on the amendments sought to the ECO policies including a new policy setting out direction for decision making with respect to the maintenance of indigenous biodiversity, and amendments sought to other chapters to ensure integration of council's function for the maintenance of indigenous biodiversity.
- 5.17 Thank you.

Attachment 1

Forest & Bird's submission seeks a rule for vegetation clearance beyond mapped SNAs, this approach was supported by the Minister of Conservation in her further submission. Forest & Bird and the Department of Conservation have discussed the new rule wording and agreed that some changes would improve the clarity and usability of the new rule. The parties remain of different views as to the clearance limits to be specified in rule with Forest & Bird seeking the limits set out in its original submission and the Department of Conservation seeking the limit set out in its planning evidence. This difference is shown with highlight in the rule below over the limits sought by Forest & Bird.

New rule ECO-RX **Indigenous vegetation removal outside of the Significant Natural Area Overlay - All Zones**

1. Activity status: Permitted

Where:

a. the indigenous vegetation removal is for the following purposes:

i. to address an imminent threat to people or property represented by deadwood, diseased or dying vegetation and ECO-S1 is complied with;

ii. for the operation or maintenance of lawfully established buildings, infrastructure, walking, cycling or private vehicle access or fences or existing farming activities;

iii. emergency response by Fire and Emergency New Zealand;

iv. cultural activities;

or

b. for activities not identified in a., the extent of indigenous vegetation removal per site does not exceed 100m² in the coastal environment or 200m² outside the coastal environment, per site in any 10 year period.

2. Activity status: Restricted discretionary

Where

a. Compliance is not achieved with ECO-RX-1.a or ECO-RX-1.b.

Matters of discretion are restricted to:

1. The location and purpose of the proposed disturbance;

2. potential adverse effects on indigenous biodiversity, including fragmentation and loss of biodiversity;

3. The extent to which adverse effects are avoided, remedies or mitigated on indigenous biodiversity values which meet the criteria for significance by applying Policy 23 of the RPS;

4. Adverse effects on receiving environments, including wetlands and the coastal environment; and

Section 88 information requirements for applications:

1. Applications must provide, in addition to the standard information requirements, an Ecological Assessment provided by a suitably qualified and experienced ecologist:

a. Identifying the biodiversity values and potential impacts from the proposal.
