

**BEFORE THE PANEL OF INDEPENDENT HEARINGS COMMISSIONERS  
AT MANGAWHAI**

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

**IN THE MATTER** of the Proposed Kaipara District Plan (**Proposed Plan**)

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**LEGAL SUBMISSIONS ON BEHALF OF THE ENVIRONMENTAL DEFENCE SOCIETY  
INCORPORATED FOR HEARINGS 17, 18, AND 19**

5 JUNE 2026

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**Environmental Defence Society Inc**

PO Box 91736  
Victoria Street West  
Auckland 1142  
C/o:

Amelia Scharting ([amelia@eds.org.nz](mailto:amelia@eds.org.nz))

**Counsel Acting:**

Jen Vella/Amelia Scharting  
[jen@jenvella.nz](mailto:jen@jenvella.nz)/ [amelia@eds.org.nz](mailto:amelia@eds.org.nz)

## 1. INTRODUCTION

- 1.1 These are the Environmental Defence Society Incorporated's (**EDS**) legal submissions on the proposed Kaipara District Plan (**PKDP**).
- 1.2 EDS is a public interest environmental organisation founded in 1971. The focus of its work is on achieving positive environmental outcomes by improving the quality of Aotearoa New Zealand's legal and policy frameworks and statutory decision-making processes.
- 1.3 EDS filed submissions on the PKDP dated 30 June 2025, and further submissions dated 15 December 2025. EDS' submissions sought to ensure that the PKDP gives effect to relevant national direction and regional planning instruments, and achieves the purpose of the Resource Management Act 1991 (**RMA**). EDS seeks to ensure that the PKDP appropriately manages, protects, and restores areas of high environmental value in the Kaipara District.
- 1.4 These legal submissions have been prepared for Hearing 17, on the Ecosystems and Indigenous Biodiversity Chapter (**ECO Chapter**).
- 1.5 EDS' main focus for the ECO chapter is ensuring that it:
- (a) enables the Council to fulfil its functions under section 31(1)(b)(iii) of the Resource Management Act (**RMA**) to control the effects of the use and development of land for the purpose of maintaining indigenous biological diversity;
  - (b) recognises and provides for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna in accordance with section 6(c); and
  - (c) gives effect to relevant national direction, including the National Policy Statement for Indigenous Biodiversity (**NPS-IB**) and the New Zealand Coastal Policy Statement (**NZCPS**).
- 1.6 EDS is surprised that the Council has elected not to give effect to the NPS-IB, given the statutory obligation to give effect to national policy statements as soon as practicable,<sup>1</sup> and in light of the fact that the NPS-IB came into force 20 months before the PKDP was notified.<sup>2</sup>

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<sup>1</sup> Resource Management Act 1991 (**RMA**), section 55(2D).

<sup>2</sup> The NPS-IB came into force on 4 August 2023. The PKDP was notified on 28 April 2025.

- 1.7 While EDS accepts that the Council is precluded from mapping significant natural areas (**SNAs**) in the PKDP as a result of amendments to the NPS-IB made in October 2024,<sup>3</sup> its position is that it is appropriate that the remainder of the NPS-IB is given effect through the PKDP.
- 1.8 To achieve the requirements of the RMA, EDS submits the PKDP needs to (as a minimum):
- (a) recognise that there are areas of significant indigenous biodiversity in the Kaipara District, despite the current pause on mapping SNAs as defined in the NPS-IB, including through the application of the Northland Regional Policy Statement 2016 ecological significance criteria;
  - (b) include objectives, policies and rules that protect those areas – it is appropriate from a merits perspective to apply the policy approach set out in the NPS-IB for SNAs (Policy 7, clause 3.10) to areas identified as ecologically significant;
  - (c) give effect to those parts of the NPS-IB that do not relate to mapped SNAs, including but not necessarily limited to:
    - (i) the overarching objective to maintain indigenous biodiversity so there is at least no overall loss (Objective) – this requires objectives, policies and rules to be implemented by the PKDP;
    - (ii) the requirement to adopt a precautionary approach when considering adverse effects on indigenous biodiversity (Policy 3 and clause 3.7(1));
    - (iii) the requirement to maintain indigenous biodiversity outside SNAs (Policy 8, clause 3.16);
    - (iv) apply the effects management hierarchy to significant adverse effects on indigenous biodiversity outside SNAs (clause 3.16(1));

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<sup>3</sup> RMA, section 78.

- (v) manage all other adverse effects (i.e., that are not significant) of any activities that may adversely affect indigenous biodiversity outside an SNA to give effect to the objective (i.e., no net loss) and policies of the NPS-IB (clause 3.16(2)).

1.9 These submissions:

- (a) set out the relevant legal context for the Panel's decision making;
- (b) comment on key issues that arise with the Council's proposed approach, in light of that legal context; and
- (c) address amendments that EDS submits are required to the ECO Chapter in order to meet the requirements of the RMA.

## 2. LEGAL CONTEXT

2.1 The Commissioners will be aware of the broader legal context from the documents already before you, including the s32 Report, the s42A Report, and the evidence of other submitters such as the Director-General of Conservation.<sup>4</sup>

2.2 EDS generally accepts the legal context set out in those documents and does not propose to duplicate that analysis. However, it is proposed to address the following specific legal issues relevant to the ECO Chapter:

- (a) obligations arising under RMA with respect to indigenous biodiversity; and
- (b) the extent to which the Council is required to give effect to the NPS-IB.

### *Obligations arising under the RMA in relation to indigenous biodiversity*

2.3 Section 6 of the RMA sets out matters of national importance which persons exercising functions under the RMA are required to recognise and provide for

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<sup>4</sup> Section 32 Report, Part 2, Ecosystems and Indigenous Biodiversity, Prepared for the Proposed Kaipara District Plan, dated 28 April 2025 (**Section 32 Report**); Section 42A Report, Ecosystems and Indigenous Biodiversity, Prepared for the Proposed Kaipara District Plan, dated 1 May 2026 (**Section 42A Report**). Statement of Evidence of RM Whitelock, for the Director General of Conservation, dated 22 May 2026 (**DOC Planning Evidence**).

when managing natural and physical resources. This includes a requirement to *recognise and provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna* as a matter of national importance.<sup>5</sup>

- 2.4 The functions of territorial authorities are set out in section 31 which include the control of actual and potential effects from the use, development, or protection of land, *including for the purpose of the maintenance of indigenous biological diversity*.<sup>6</sup>
- 2.5 These obligations under section 6(c) and section 31(1)(b)(iii) still apply - even though the RMA has recently been amended to temporarily pause the requirement to map of SNAs in district plans.
- 2.6 The Council is also required to prepare district plans in accordance with national policy statements,<sup>7</sup> and to ensure a district plan gives effect to:
- (a) national policy statements<sup>8</sup> - in this case, the NPS-IB is relevant;
  - (b) coastal policy statements<sup>9</sup> - in this case, Policy 11 of the New Zealand Coastal Policy Statement (**NZCPS**) is relevant; and
  - (c) regional policy statements<sup>10</sup> - in this case, the Northland Regional Policy Statement 2016 (**NRPS**) is relevant.

*Extent to which Council required to give effect to NPS-IB*

- 2.7 EDS accepts that the Council is not required to give effect to the NPS-IB in its entirety via this plan review. That is because section 78 of the RMA imposes a temporary stop on the requirement for councils to give effect to certain provisions of the NPS-IB.<sup>11</sup> This stop applies for three years from the

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<sup>5</sup> RMA, section 6(c).

<sup>6</sup> RMA, section 31(1)(b)(iii)

<sup>7</sup> RMA, section 74(1)(ea)

<sup>8</sup> RMA, section 75(3)(a)

<sup>9</sup> RMA, section 75(3)(b)

<sup>10</sup> RMA, section 75(3)(c)

<sup>11</sup> RMA, section 78(2).

commencement date of that section (25 October 2024) to 25 October 2027.<sup>12</sup>  
Section 78 is automatically repealed at that time.<sup>13</sup>

2.8 In particular, section 78 disapplies the following provisions of the NPS-IB:

- (a) Clause 2.2, Policy 6, which requires a consistent approach in identifying significant indigenous vegetation and significant habitats of indigenous fauna as NPS-IB SNAs (i.e. which is defined in section 78(1) as a significant natural area as defined in clause 1.6 of the NPS-IB);<sup>14</sup>
- (b) Clause 3.8(1), (6), and (8), which require a territorial authority to conduct assessments to identify areas of significant indigenous vegetation and significant habitats of indigenous fauna that qualify as SNAs (i.e. SNA mapping);<sup>15</sup>
- (c) Clause 3.9(1), which requires a territorial authority to notify a plan or plan change to include areas identified as qualifying as NPS-IB SNAs;<sup>16</sup>
- (d) Clause 3.9(3), which requires that a local authority must, when doing its 10-yearly plan review, assess its district in accordance with clause 3.8(1) and (2) to determine whether changes are needed.<sup>17</sup>
- (e) Clause 4.1(1), which requires that a local authority gives effect to the NPS-IB as soon as reasonably practicable. However, this clause is disapplied only regarding the above provisions, and regarding clause 3.8(5), which enables a territorial authority to forego NPS-IB mapping of SNAs if they engage suitably qualified ecologist to confirm that methodology for identifying SNAs prior to the NPS-IB is consistent with the assessment approach under the NPS-IB framework.<sup>18</sup>

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<sup>12</sup> RMA, section 78(1) and (7).

<sup>13</sup> RMA, section 78(7).

<sup>14</sup> RMA, section 78(2)(a).

<sup>15</sup> RMA, section 78(2)(b).

<sup>16</sup> RMA, section 78(2)(c).

<sup>17</sup> RMA, section 78(2)(d).

<sup>18</sup> RMA, section 78(3)(a).

2.9 “SNA” is not a term used in or defined by the RMA itself (other than in relation to NPS-IB SNAs in the context of section 78), although it is sometimes used colloquially to mean *areas of significant indigenous vegetation and significant habitats of indigenous fauna that require protection* in terms of section 6(c).

2.10 The NPS-IB defines an SNA as:

“a. any area that, after the commencement date, is notified or included in a district plan as an SNA following an assessment of the area in accordance with Appendix 1; and

b. any area that, on the commencement date, is already identified in a policy statement or plan as an area of significant indigenous vegetation or significant habitat of indigenous fauna (regardless of how it is described); in which case it remains as an SNA unless or until a suitably qualified ecologist engaged by the relevant local authority determines that it is not an area of significant indigenous vegetation or significant habitat of indigenous fauna.”<sup>19</sup>

2.11 As is clear from the above provisions, the section 78 pause only applies to mapping NPS-IB SNAs.

2.12 Section 78 expressly does not affect any function or requirement relating to indigenous biodiversity, significant areas of indigenous vegetation or areas of significant habitats of indigenous fauna under other provisions of the RMA or obligations under the RMA to give effect to provisions in policy statements and plan relating to indigenous biodiversity.<sup>20</sup> In other words, section 78 does not diminish the Council’s obligations under section 6(c) to protect significant indigenous biodiversity, section 31(1)(b)(iii) maintain indigenous biodiversity or section 78(3) to give effect to the NPS-IB as soon as practicable.

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<sup>19</sup> National Policy Statement for Indigenous Biodiversity, clause 1.6.

<sup>20</sup> RMA, section 78(4).

2.13 Relevant provisions of the NPS-IB which remain in effect include (but are not limited to):

- (a) The objective to maintain indigenous biodiversity so that there is at least no net overall loss in indigenous biodiversity after 4 August 2023;<sup>21</sup>
- (b) The decision making principles;<sup>22</sup>
- (c) Requirements relating to tangata whenua;<sup>23</sup>
- (d) The integrated approach to managing indigenous biodiversity;<sup>24</sup>
- (e) Requirements relating to resilience to climate change;<sup>25</sup>
- (f) The management of indigenous biodiversity outside of SNAs, including to apply the effects management hierarchy where there are significant adverse effects on indigenous biodiversity;<sup>26</sup>
- (g) Requirement to include objectives, policies or methods for managing adverse effects on highly mobile fauna areas;<sup>27</sup>
- (h) Requirements to promote the restoration of indigenous biodiversity and the increase of indigenous vegetation cover;<sup>28</sup>
- (i) principles for biodiversity offsetting;<sup>29</sup> and
- (j) principles for biodiversity compensation.<sup>30</sup>

2.14 Additionally, clause 4.1(1) of the NPS-IB continues to apply in relation to the other provisions of the NPS-IB not disappplied by section 78(2).<sup>31</sup> In other words, despite section 78, the Council is required to give effect to the NPS-IB

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<sup>21</sup> NPS-IB, clause 2.1.

<sup>22</sup> NPS-IB, clause 1.5.

<sup>23</sup> NPS-IB, clauses 1.5(3), 2.2 Policy 2, 3.3,

<sup>24</sup> NPS-IB, clause 3.4

<sup>25</sup> NPS-IB, clauses 2.2 Policy 4, 3.6

<sup>26</sup> NPS-IB, clause 3.16.

<sup>27</sup> NPS-IB, clause 3.20

<sup>28</sup> NPS-IB, clause 3.22

<sup>29</sup> NPS-IB, Appendix 3.

<sup>30</sup> NPS-IB, Appendix 4.

<sup>31</sup> RMA, section 78(3)(b).

*as soon as reasonably practicable*. The NPS-IB specifies the following deadlines for giving effect to it:

- (a) In relation to clause 3.16 (indigenous biodiversity outside SNAs), by 4 August 2028;<sup>32</sup>
- (b) in respect of SNA mapping, no later than 31 December 2030 (notwithstanding the current pause expires in 2027);<sup>33</sup>
- (c) all other changes by 4 August 2031.<sup>34</sup>

### **3. KEY ISSUES WITH PKDP APPROACH**

3.1 EDS submits that there are several issues with the proposed approach to the ECO Chapter as set out in the PKDP. These include a failure to give effect to the NPS-IB as a whole, inadequate recognition and provision for protection of significant indigenous biodiversity, and the exclusion of the no-net-loss approach and the effects management hierarchy.

#### ***Failure to give effect to the NPS-IB as a whole***

3.2 It is clear from the legal context set out above that the Council is required to give effect to the provisions of the NPS-IB that are not affected by section 78 as ‘soon as reasonably practicable’.

3.3 The meaning of “reasonably practicable” has been considered by the Courts to be “an objective test which must be considered in relation to the purpose of the requirement and the problems involved in complying with it”.<sup>35</sup> In the contexts of the Clause 4.1 requirement, “as soon as reasonably practicable” can therefore be determined by weighing the purposes of the NPS-IB provisions, with the complexities in implementing those provisions.

3.4 The Section 32 Report cites the “limited” amount of time between the NPS-IB coming into force and the notification of the PKDP as a reason for not giving

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<sup>32</sup> NPS-IB, clause 4.2(1).

<sup>33</sup> NPS-IB, clause 4.2(2).

<sup>34</sup> NPS-IB, clause 4.1(2).

<sup>35</sup> *Royal Forest & Bird Protection Society of New Zealand Inc v Whakatane District Council* [2017] NZEnvC 51, at [51].

effect to the NPS-IB during the planning process.<sup>36</sup> The NPS-IB came into force on 4 August 2023 and the PKDP was notified on 28 April 2025. The s32 Report notes that Council is “not committing the time and resources” into implementing the NPS-IB in accordance with its decision making principles.<sup>37</sup>

3.5 Notwithstanding the paused NPS-IB provisions, the NPS-IB was already in force as the plan review was undertaken. EDS submits that “as soon as reasonably practicable” obligation requires giving effect to NPS-IB through the PKDP, which offers an appropriate occasion to implement the provisions of the NPS-IB not affected by section 78. EDS does not accept that there was insufficient time to give effect to NPS-IB, given it came into effect 20 months before the PKDP was notified.

3.6 To the extent that the Council decided not to give effect to the NPS-IB because of uncertainty surrounding upcoming reform, EDS submits that such an approach is unlawful. There is a requirement on Council to apply the law as it exists at the time, which was summarised by the Courts as:

*“the Panel was required to apply the law as it stood at the time it made its decision. Ministerial statements suggesting a possible legislative change to the mandatory requirements ... were not relevant to the substantive evaluation the Panel was required to carry out.”<sup>38</sup>*

3.7 This approach has put the s42A officer in a somewhat difficult position, as he considers he does not have sufficient information to fully give effect to the NPS-IB. While the s42A officer has recommended some changes to give effect to NPS-IB, EDS considers that further changes are both required and able to be made to more fully give effect to the NPS-IB and to meet the Council’s obligations under sections 6(c) and 31. These are addressed below and set out in the Appendix to these submissions.

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<sup>36</sup> S32 Report, at para. 6(d).

<sup>37</sup> Ibid.

<sup>38</sup> *Box Property Investments Limited v Expert Consenting Panel* [2025] NZHC 1773, at [35].

***Requirement to recognise and provide for protection of significant indigenous biodiversity***

- 3.8 As set out above, despite the pause on requirements to map NPS-IB SNAs, there is still a requirement to recognise and provide for the protection of significant indigenous biodiversity under section 6(c) of the RMA.
- 3.9 Despite the pause on mapping NPS-IB SNAs, areas of significant indigenous biodiversity still exist within the Kaipara District.<sup>39</sup> These must be protected as a matter of national importance. Protection has been held to mean “to keep safe from harm, injury or damage” and may occur through implementing rules, policies, and objectives in a plan.<sup>40</sup>
- 3.10 EDS submits that, while clause 3.10 of the NPS-IB will not technically apply to areas of significant indigenous biodiversity (as it only applies to NPS-IB SNAs), the framework set out in those clauses nevertheless represent an appropriate approach to protecting areas of significant indigenous biodiversity in a section 6(c) sense. Thus, EDS submits that the effects of new subdivision, use and development on areas of significant indigenous biodiversity that are identified through the consenting process should be managed in a manner that is consistent with clause 3.10.
- 3.11 While changes to the matters of discretion in ECO-R1 and ECO-R2 recommended by the section 42A officer enable the identification of areas of significant indigenous biodiversity,<sup>41</sup> the objective and policy framework of the ECO Chapter as drafted does not sufficiently enable the Council to meet its obligations under section 6(c).
- 3.12 In that regard, EDS submits that “avoid, remedy, mitigate” approach in ECO-P2 is not enough to achieve the section 6(c) outcomes, especially in light of NPS-IB provisions which are the “latest word” on what is required to “protect” significant indigenous biodiversity.

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<sup>39</sup> Statement of Evidence of I Corkery dated 22 May 2026; Statement of evidence of AJ Townshend dated 22 May 2026.

<sup>40</sup> *Royal Forest and Bird Protection Society of New Zealand Inc v New Plymouth District Council* [2015] NZEnvC 219, at [63].

<sup>41</sup> EDS notes that DOC’s evidence is that the NRPS Appendix 5 criteria will result in substantially the same outcome as the NPS-IB criteria for assessing significance.

- 3.13 EDS supports the approach proposed in DOC's evidence – although does not consider it appropriate to apply the effects management hierarchy where effects on significant indigenous biodiversity cannot be avoided. EDS submits that DOC's approach (with minor amendment) would also reflect the precautionary approach of Policy 3 of the NPS-IB and ensures the best protection for significant indigenous biodiversity in light of the mapping pause, fulfilling section 6(c) requirements.
- 3.14 EDS also submits that it would be appropriate to include a pathway for mapping areas of ecological significance in consultation with tangata whenua (despite the pause on SNA mapping) as the most efficient way of fulfilling obligations to protect significant indigenous biodiversity under section 6(c).

***Requirement to give effect to “no net loss” objective***

- 3.15 The ECO Chapter at present does not give effect to the objective of the NPS-IB to ensure no-net-loss of indigenous biodiversity. The s42A Report notes that the author does not consider this is required at a district level.<sup>42</sup> EDS submits to the contrary – no-net-loss must apply at district level otherwise it cannot be achieved.
- 3.16 Where districts do not undertake a no-net-loss approach, indigenous biodiversity may be fragmented.<sup>43</sup> Without protection of indigenous biodiversity at the district level, no-net-loss cannot be achieved at a regional level.
- 3.17 The “no-net-loss” approach has been incorporated at the district level across numerous plans, including in Waipā,<sup>44</sup> Hurunui,<sup>45</sup> and Waikato districts.<sup>46</sup> This shows an understanding that the no-net-loss objective can only be achieved where the approach is applied across all levels of local planning.

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<sup>42</sup> S42A Report, at para. 156(c).

<sup>43</sup> Statement of Evidence of I Corkery dated 22 May 2026.

<sup>44</sup> *Royal Forest and Bird Protection Society of New Zealand Inc v Waipā District Council* [2024] NZEnvC 107

<sup>45</sup> *Friends of Conical Hill Inc v Hurunui District Council* [2024] NZEnvC 324

<sup>46</sup> *Director-General of Conservation v Waikato District Council* [2025] NZEnvC 197

3.18 This approach is supported by clause 3.16(3) of the NPS-IB, which requires effects on indigenous biodiversity to be managed to give effect to the no-net-loss objective. Clause 3.16 remains a live provision of the NPS-IB, and hence Council must give effect to it.

3.19 Clause 1.7 of the NPS-IB outlines what it means to maintain indigenous biodiversity as follows:

“Maintaining indigenous biodiversity requires:

- a. the maintenance and at least no overall reduction of all the following:
  - i) the size of populations of indigenous species:
  - ii) indigenous species occupancy across their natural range:
  - iii) the properties and function of ecosystems and habitats used or occupied by indigenous biodiversity:
  - iv) the full range and extent of ecosystems and habitats used or occupied by indigenous biodiversity:
  - v) connectivity between, and buffering around, ecosystems used or occupied by indigenous biodiversity:
  - vi) the resilience and adaptability of ecosystems; and
- b. where necessary, the restoration and enhancement of ecosystems and habitats.”<sup>47</sup>

3.20 When fulfilling their functions under the RMA,<sup>48</sup> and in applying Policy 8 of the NPS-IB, Councils can look to this definition of maintaining indigenous biodiversity.

### ***Application of effects management hierarchy***

3.21 The NPS-IB represents the most up-to-date approach on managing and protecting indigenous biodiversity. This includes the NPS-IB iteration of the

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<sup>47</sup> NPS-IB, clause 1.7

<sup>48</sup> RMA, section 31(1)(b)(iii).

effects management hierarchy. The PKDP ECO Chapter does not incorporate the NPS-IB effects management hierarchy as drafted.

3.22 The s42A Report Author has recommended changes to ECO-P2 to make the application of the effects management hierarchy clearer. EDS supports this, except:

(a) the effects management hierarchy should not apply to significant indigenous biodiversity except in relation to clause 3.11 changes; and

(b) the proposed changes do not adequately reflect clause 3.16 of the NPS-IB, because they do not incorporate the cascade of effects management correctly. That is, that adverse effects are required to be avoided where practicable, if not then remedied, if not then mitigated, and so on.

3.23 For those reasons we support the proposed amendments made by the Director General of Conservation.<sup>49</sup>

***Requirement to include objectives, policies or methods to manage adverse effects on highly mobile fauna areas***

3.24 Clause 3.20(3) of the NPS-IB requires the Council to include objectives, policies or methods in the PKDP for managing the adverse effects of new subdivision, use and development on highly mobile fauna areas, in order to maintain viable populations of specified highly mobile fauna across their natural range (see also Policy 15).

3.25 The section 42A officer recommends giving effect to these requirements through a future plan change on the basis that identifying these areas requires significant further technical work.

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<sup>49</sup> See DOC Planning Evidence. Amendments are contained in Appendix 1 to these submissions.

3.26 EDS disagrees with this assessment because:

- (a) Clause 3.20(1) requires the regional council to record these areas where that information is available. It does not require the Council to undertake that work.
- (b) Clause 3.20(3) requires this Council to include relevant objectives, policies and methods regardless of whether the regional council has identified these areas;
- (c) DOC's evidence is that highly mobile fauna areas are likely be protected through their assessment of ecological significance in accordance with NRPS Appendix 5 criteria;<sup>50</sup> and
- (d) It does not represent significant or complex work to amend the objectives and policies to give effect to Policy 15 and clause 3.20.

#### ***Interaction of SNAs and NESCF***

3.27 While the plan leaves management of forestry and SNAs to the commercial forestry regulations contained in the National Environment Standard on Commercial Forestry, there is a gap in the framework because there are no mapped SNAs. This risks indigenous biodiversity being materially adversely affected in the intervening years before mapping.

3.28 To prevent such adverse effects, EDS submits that the RPS ecological significance assessment should be applied in order to identify whether an area is an SNA in terms of regulation application. The chapter note should be amended accordingly.

#### ***Application of National Policy Statement for Infrastructure***

3.29 The section 42A officer recommends amending ECO-P3 to remove the words "regionally significant" before "infrastructure. This has the effect of requiring the recognition of the functional or operational need for any infrastructure

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<sup>50</sup> Statement of Evidence of AJ Townshend dated 22 May 2026.

(not just regionally significant infrastructure) to locate in areas of significant indigenous biodiversity.

3.30 EDS submits that this is inappropriate. While the National Policy Statement for Infrastructure (NPS-I) requires infrastructure to be provided for in all locations and environments, that does not have the effect of overriding the requirement to protect significant indigenous biodiversity in terms of section 6(c).

3.31 In addition, Policy 9 of the NPS-I specifically requires the NPS-I to be read alongside “relevant national direction, regional policy statements and regional and district plans”. The NPS-I does not “trump” those other planning instruments.

#### **4. AMENDMENTS SUPPORTED AND SOUGHT**

4.1 In light of the above, and EDS’ position that it is inappropriate for the PKDP to not give effect to the remaining provisions of the NPS-IB. EDS considers there are deficiencies in the ECO Chapter provisions.

4.2 Appendix 1 sets out the relevant provisions of the ECO Chapter along with EDS’ comments in support or opposition to those provisions and amendments proposed.

4.3 EDS has had the benefit of reviewing the DOC evidence, including both technical and planning experts, and rely on those statements where necessary to support amendments sought.

**APPENDIX 1 – EDS POSITION ON PROPOSED AMENDMENTS**

Provision	Party	Amendment Proposed	EDS Position
Definitions	Director General of Conservation	<p><b><u>Biodiversity compensation</u></b>  <u>Means a conservation outcome that meets the requirements in Appendix 4 of the National Policy Statement for Indigenous Biodiversity and results from actions that are intended to compensate for any more than minor residual adverse effects on indigenous biodiversity after all appropriate avoidance, minimisation, remediation, and biodiversity offsetting measures have been sequentially applied.</u></p>	Support
	Director General of Conservation	<p><b><u>Biodiversity offset</u></b>  <u>Means a measurable conservation outcome that meets the requirements in Appendix 3 of the National Policy Statement for Indigenous Biodiversity and results from actions that are intended to:</u>  <u>(a) Redress any more than minor residual adverse effects on indigenous biodiversity after all appropriate avoidance, minimisation, and remediation measures have been sequentially applied;</u>  <u>and</u>  <u>(b) Achieve a net gain in type, amount, and condition of indigenous biodiversity compared to that lost.</u></p>	Support
	Director General of Conservation	<p><b><u>Effects Management Hierarchy</u></b>  <u>The effects management hierarchy means an approach to managing the adverse effects of an activity on indigenous biodiversity that requires that:</u>  <u>(a) Adverse effects are avoided where practicable; then</u>  <u>(b) Where adverse effects cannot be avoided, they are minimised where practicable;</u>  <u>(c) Where adverse effects cannot be minimised, they are remedied where practicable; then</u>  <u>(d) Where more than minor residual adverse effects cannot be avoided, minimised, or remedied, biodiversity offsetting is provided where possible; then</u>  <u>(e) Where biodiversity offsetting of no more than minor residual adverse effects is not possible; then</u>  <u>(f) If biodiversity compensation is not appropriate, the activity itself is avoided.</u></p>	Support
ECO-O2	Director General of Conservation	<p>Adverse effects on indigenous biodiversity are managed to maintain its extent and diversity <u>by achieving a no net loss that to</u> provide for the social, economic, and cultural well-being of people and communities.</p>	Support but further amendment required to give effect to requirements re highly mobile fauna

ECO-P2	Director General of Conservation	<p>Outside the coastal environment:</p> <p>1. <u>Inside areas that meet the ecological significance criteria of Appendix 5 of the Northland Regional Policy Statement 2016 (Areas of significant indigenous vegetation and significant habitats of indigenous fauna) avoid, <del>remedy or mitigate</del> adverse effects of subdivision, land use and development to ensure adverse effects are no more than minor on; (except as outlined in Clause 3.11 of the NPS-IB) that would result in:</u></p> <p><u>a. loss of ecosystem representation and extent;</u>  <u>b. disruption to sequences, mosaics, or ecosystem function;</u>  <u>c. a reduction in the function of the vegetation or habitat as a buffer or connection to other important habitats or ecosystems; or</u>  <u>d. a reduction in the population size or occupancy of threatened or at risk (declining) species that are identified within the area for any part of their life cycle</u>  <u>e. Threatened and At Risk Indigenous species;</u>  <u>f. Areas of significant indigenous vegetation and significant habitat of indigenous fauna;</u>  <u>e. Areas of indigenous biodiversity protected under other legislation; and</u></p> <p>2. <u>For activities exempt under Clause 3.10(2) of the NPS-IB or where adverse effects cannot be avoided, implement the effects management hierarchy.</u></p> <p>3. <u>Outside of areas that do not meet the ecological significance criteria of Appendix 5 of the Northland Regional Policy Statement 2016 (Areas of significant indigenous vegetation and significant habitats of indigenous fauna) Apply the effects management hierarchy to avoid, minimise, remedy, <del>or mitigate</del>, offset or compensate any significant adverse effects of subdivision, land use and development to ensure there are no significant adverse effects on:</u></p> <p>a. Areas of predominantly indigenous vegetation; and  b. Indigenous species, habitats, and ecosystems that are important for recreational, commercial, traditional or cultural purposes or are particularly vulnerable to modification.</p> <p>4. <u>For the purposes of clauses (2) and (3) the implementation of the effects management hierarchy includes:</u></p> <p><u>a. Adverse effects are avoided where practicable; then</u>  <u>b. Where adverse effects cannot be avoided, they are minimised where practicable; then</u>  <u>c. Where adverse effects cannot be minimised, they are remedied where practicable; then</u>  <u>d. Where more than minor residual adverse effects cannot be avoided, minimised or remedied, biodiversity offsetting is provided where appropriate; then</u>  <u>e. Where biodiversity offsetting is not appropriate, biodiversity compensation is provided.</u></p>	<p>Support, except:</p> <ul style="list-style-type: none"> <li>• delete “or where adverse effects cannot be avoided” from P2.2.</li> <li>• delete “(2) and” from P2.4.</li> </ul>
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ECO-P3	S42A Officer	2. Recognises the operational need or functional need of <b>regionally significant</b> infrastructure to traverse or locate within areas of significant indigenous vegetation and significant habitat of indigenous fauna where there are no practicable alternative locations;	Oppose – not required by NPS-I and does not fulfill requirement to protect significant indigenous biodiversity
ECO-PY	Director General of Conservation	<b>Require landowners to manage pets and pest plants and animal species within their property though consent conditions where necessary to avoid <u>adverse effects risks</u> to Threatened and At-Risk indigenous species.</b>	Support
ECO-R1	Director General of Conservation	1. Clearance for the operation, repair or maintenance of the following activities where they have been lawfully established <b>shall not exceed 50m2 in any 12-month period per site:</b>	Support limits on clearance
	S42A Officer	i. The removal or clearance of indigenous vegetation from land that was previously cleared and where the indigenous vegetation to be cleared is less than <b>5 <del>10</del></b> -years old;	Support reduction in age of vegetation
ECO-R2	S42A Officer	1. Activity status: Permitted Where: a. It does not exceed <b><del>1,000</del> 500m2</b> in any calendar year in the Māori purpose zone, General rural zone, and Rural lifestyle zone; or b. It does not exceed <b><del>500</del> 250m2</b> per site in any calendar year in all other zones.	Support reduction in limits
	S42A Officer	3. Matters over which discretion is restricted: ... <b><u>f. Whether any of the indigenous vegetation proposed to be cleared meets the criteria in Appendix 5 of the Northland Regional Policy Statement 2016 (Areas of significant indigenous vegetation and significant habitats of indigenous fauna).</u></b>	Support requirement to consider significance of indigenous biodiversity
ECO Chapter Note 3		Indigenous vegetation clearance associated with plantation forestry is regulated under Regulations 93 and 94 of the National Environmental Standards for Commercial Forestry 2017 . The rules in this chapter apply to vegetation clearance that is carried out before afforestation of commercial forestry but do not apply to indigenous vegetation clearance associated with commercial forestry. <u>An ecological assessment in accordance with the Appendix 5 of the Northland Regional Policy Statement is required before undertaking afforestation in accordance with regulation 10 of the NESCF.</u>	EDS propose amendment