

BEFORE THE INDEPENDENT HEARINGS PANEL

UNDER THE

Resource Management Act 1991
("RMA")

IN THE MATTER OF

The Proposed Kaipara District Plan
("PDP"): Hearing Topic 17:
Ecosystems and indigenous
Biodiversity

**LEGAL SUBMISSIONS FILED ON BEHALF OF
TE URI O HAU SETTLEMENT TRUST.**

Date: 5 June 2026

INTRODUCTION

1. This Te Uri o Hau Settlement Trust (TUoH) is the post-settlement governance entity for Te Uri o Hau, who are mana whenua/tangata whenua for the northern Kaipara and mana moana over the Kaipara. TUoH holds kaitiakitanga obligations over the indigenous biodiversity, ecosystems, and taonga species within its rohe, which encompasses a significant portion of the Kaipara District.
2. TUoH lodged Submission 367 on the Proposed Kaipara District Plan (PDP). A number of submission points were allocated to Hearing 17, addressing the Ecosystems and Indigenous Biodiversity chapter (ECO chapter). The Section 42A officer's recommendations (the s42A report) have accepted some of TUoH's relief in full, accepted other points in part, and rejected others entirely.

Statutory Framework

3. The following statutory instruments are of direct relevance to these submissions:
Resource Management Act 1991 (RMA): In particular: Part 2 s5(2) consideration of future generations to provide for their social and cultural needs¹, s6(e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga; s6(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna, s6(g) the protection of protected customary rights; s7(a) — kaitiakitanga as a matter to which particular regard must be had; s7(d) — intrinsic values of ecosystems; s8 — principles of the Treaty of Waitangi; s31(1)(b)(iii) — KDC's function to maintain indigenous biodiversity.
NPS-IB 2023 (amended December 2025): Objective 2.1 (at least no overall loss; kaitiaki recognition; stewardship; future generations); Policy 2 (kaitiakitanga); Policy 8 (biodiversity outside SNAs); Policy 13 (restoration); Clause 3.3 (tangata whenua as partners — not deferred); Clause 3.16 (EMH outside SNAs — mandatory); Clause 3.18 (specified Māori land); clause 3.19 identification of

¹ *Te Runanga o Taumarere v Northland Regional Council [1996] NZRMA 77:*

However it is also our opinion that it is a reasonably foreseeable need of future generations that the tangata whenua and other sections of the community are enabled to provide for their social and cultural needs, and that provision for wellbeing and health of people and communities is not done at the expense of enabling the tangata whenua or any other section of the community to provide for their social and cultural wellbeing (except perhaps if that is demonstrably unavoidable) A possible alternative disposal method which would avoid that failure has not been investigated to the stage where it is demonstrated not to be feasible. To that extent we find that the proposal fails to meet the objective of s 5(2)(a).

taonga, Clause 3.21 (restoration priorities); Clause 3.24 (information requirements); Clause 4.1(1) (give effect as soon as reasonably practicable).

NZ Coastal Policy Statement 2010 (amended 2025): Policy 11 — protection of indigenous biodiversity in the coastal environment, Policy 3, precautionary principle.

Northland Regional Policy Statement 2016 (NRPS): Objective 3.4, Policy 4.4.1 (protection of significant indigenous vegetation and habitats); Method 4.4.3; Appendix 5 (ecological significance criteria); Objective 3.12 (tangata whenua kaitiaki role).

4. *Under the RMA hierarchy of planning instruments, policies and objectives higher up should be “given effect” to by planning instruments lower down. “Give effect” means “implement”.*⁴⁰

SCHEDULE 1 AND SCOPE OF SUBMISSIONS

5. Te Uri o Hau has addressed separately, in a legal memorandum dated 17 April 2026, procedural issues relating to Schedule 1 of the RMA and the adequacy of consultation undertaken by KDC in preparing the Proposed District Plan. Following the filing of that memorandum, a pre-hearing meeting was held between Te Uri o Hau and the Council. Minutes of the meeting have not yet been received by Te Uri o Hau.
6. At the meeting, the parties expressed a willingness to file a joint memorandum recording areas of agreement. KDC subsequently withdrew from that approach. However, the parties have since re-engaged and are exploring whether a joint memorandum can still be filed. If that is not possible, Te Uri o Hau intends to file a further memorandum updating the Panel on the outcome of those discussions and how it proposes to proceed.
7. For now, Te Uri o Hau intends to file a late submission addressing several matters arising from identified consultation deficiencies. Acceptance of that submission is a matter for the Panel's discretion. Te Uri o Hau intends to file the submission as soon as practicable and will address the issue of leave in legal submissions.
8. Of relevance to this chapter, effects of KDC's Schedule 1 failures were not confined to the SASM chapter and Māori Purpose Zone. The ECO chapter was not developed in the Exposure Draft consulted on with TUoH in 2022, with the chapter itself noted as a placeholder pending finalisation of the NPS-IB. While TUoH was provided with a draft of the PDP in March 2025, TUoH was given only 11 days to provide feedback, an inadequate timeframe for a chapter of this complexity and significance, particularly

for a resource-constrained iwi authority. This meant that TUoH had no meaningful opportunity to engage on the ECO chapter provisions, including the identification and protection of taonga species, prior to notification.

9. Te Uri o Hau has addressed these matters where possible in these submissions and identified where relief may extend beyond the strict scope of its primary submission. TUoH asks that the Panel defer any determination on scope until it has received and considered TUoH's late submission.
10. The section 32 and section 42 reports fail to accurately capture the feedback provided by Te Uri o Hau on the exposure plan and the consultation record (as set out by Ms Kemp²). Particular in 2022 Te Uri o Hau noted a number of matters in response to the SASM chapter which are also relevant to the ecology and indigenous biodiversity chapter and identification of taonga species, **see Schedule 1**.

NOTIFICATION

11. Te Uri o Hau was not notified by the Council of the Ecosystems and Indigenous Biodiversity hearing³. While Te Uri o Hau maintains an active engagement in the plan process, it has limited capacity, as has been communicated to the Council. The failure to notify contributed to TUoH missing the evidential deadlines for Hearing 17. TUoH reserves its position on the consequences of this failure for the purposes of the Panel's consideration of scope and leave.

SCOPE: IDENTIFICATION OF TAONGA SPECIES

12. TUoH's primary submission to the proposed draft addressed taonga species within the ECO chapter. It sought amendments to ECO-O1 to recognise "significant water bodies and taonga species identified by mana whenua" (S367.27), and amendments to ECO-P1–ECO-P5 recognising kaitiakitanga in the protection of indigenous biodiversity, ecosystem health, and taonga species and habitats (S367.10-12, S367.27–S367.33, s367.75), avoiding adverse effects to mana whenua cultural values, sites of significance and taonga species. The submission also asserted that KDC had failed to take the IHEMP into account under s 74(2A) of the RMA and identified wāhi taonga as matters not addressed in the Plan.

² Statement of Evidence filed by Fiona Kemp, dated 14 April 2026.

³ Which was acknowledged by email from Council last week.

13. TUoH submits that identifying specific taonga species recorded in the IHEMP and Deed of Settlement falls within the scope of the primary submission points. The relief now sought merely particularises and gives effect to the protection of taonga species sought in the primary submission; it does not raise a new issue. Attached as **Schedule 2** is a list of identified taonga species from these existing planning documents.

IDENTIFICATION OF TAONGA SPECIES

14. The NPS-IB requires local authorities to work in partnership with tangata whenua in the management of indigenous biodiversity. This includes involving tangata whenua in the processes for implementing the NPS-IB, recognising and valuing the mana of tangata whenua as kaitiaki of indigenous biodiversity, providing specific opportunities for the exercise of kaitiakitanga, and involving tangata whenua in determining how taonga species, populations and ecosystems are identified and managed (NPS-IB Policy 2; Clause 3.3, clause 3.19). These are current, non-deferred obligations⁴. They do not await the completion of SNA mapping or any other process.

15. "Acknowledged taonga" includes indigenous species, populations and ecosystems identified by tangata whenua as taonga but not yet identified in a plan.⁵ As the definition sets out, it is for tangata whenua to identify taonga, not council in accordance with the agreed process under 3.19. This definitive is aligned and supported by a considerable body of case law⁶. Iwi and hapū are the authority and specialists on their own tikanga and mātauranga.⁷ Therefore use of the word "determine" under 3.19 is procedural not substantive, i.e council are not the arbitrators on what is or not taonga within its district, that is a matter of tikanga.

⁴ Only Subpart 2 of Part 3 (the SNA provisions) was deferred to 31 December 2030.

⁵ Definitions, NPSIB.

⁶ *Ngāti Maru Trust v Ngāti Whātua Ōrākei Whaia Maia Ltd [2020] NZHC 2768 Tauranga Environmental Protection Society Inc v Tauranga City Council [2021] NZHC 1201, 22 ELRNZ 669 at [65] and [66]*. A court may consider the *credibility and reliability of the evidence of mana whenua and cannot substitute its own view of cultural effects*.

⁷ *Ngāti Maru Trust v Ngāti Whātua Ōrākei Whaia Maia Ltd [2020] NZHC 2768*

16. Clause 3.19 specifically requires territorial authorities to work in partnership with tangata whenua to identify taonga species, populations and ecosystems and, once identified, to include them in district plans. Importantly, local authorities must also work in partnership with tangata whenua **to protect both identified and acknowledged** taonga as far as practicable.
17. The obligation to protect applies to those taonga that are acknowledged but not yet identified in the plan. This gives rise to two distinct requirements in the ECO chapter: first, objectives and policies providing for the protection of acknowledged taonga pending regulatory identification; and second, provisions that will apply to identified taonga once that process is complete and those species are scheduled in the plan. The plan-making process is a legislated vehicle through which the partnership obligations imposed by Clause 3.19 can be given effect. Schedule 1 of the RMA sets out the minimum requirements for territorial authorities in discharging partnership obligations when consultation on plan changes.
18. The reporting officer accepted that clause 3.19 of the NPS-IB requires a process to identify taonga species but proposes deferring that process to a future change. No reasons are provided for that deferral or for why the current plan-making process could not meet the clause 3.19 obligation. While Te Uri o Hau supports the interpretation that clause 3.19 contemplates engagement beyond the plan change process itself, that is not exclusive of engagement through the plan change if tangata whenua elects to do so.
19. The Te Uri o Hau Kaitiakitanga o te Taiao (IHEMP) identifies a number of indigenous plant species as having cultural, medicinal, customary and historical significance to Te Uri o Hau and accordingly of acknowledged taonga status. These include kawakawa, tūpākihi, kohekohe, karamu, pūwharawhara, harakeke, pīngao, kakaho, para and kauri. Kawakawa, tūpākihi, kohekohe, karamu and pūwharawhara are identified in the IHEMP as plants used by TUoH for rongoā — customary medicine for healing wounds, bruising and rheumatism. Harakeke, pīngao and kakaho are identified as taonga weaving plants. Para (king fern) carries foundational cultural significance: the very name "Kaipara" derives from "Kai" (food) and "Para" (king fern), recording TUoH's relationship with this species across generations. Kauri is identified in the IHEMP biodiversity section as a species of particular concern within TUoH's rohe. The IHEMP expressly commits TUoH to "identify indigenous plant species and reserves useful for rongoā, and practice customary lore in the harvesting and use of rongoā" (IHEMP, p.64). All of these species are terrestrial or riparian in

nature. They are not excluded by Clause 3.19(9) of the NPS-IB, which limits its exclusion to aquatic species, populations and ecosystems solely located in waterbodies, and populations and ecosystems in the coastal marine area.

20. Under section 74(2A) of the RMA, the Council must take the Te Uri o Hau IHEMP into account when preparing the District Plan. The identification of these species within the IHEMP provides an evidential basis for recognising them as acknowledged taonga for the purposes of Clause 3.19. TUoH submits that KDC has not adequately taken the IHEMP into account in preparing the ECO chapter, and that this failure is also relevant to TUoH's submission that the Council did not comply with its obligations under Schedule 1 of the RMA in preparing the Proposed District Plan.

21. These acknowledgements are reinforced by the Deed of Settlement and the Settlement Act. Deed of Settlement Schedule 5.17 and Settlement Act 2002 Schedule 13 (s102) record the Crown's formal acknowledgement of TUoH's statement that "all indigenous species of fish, flora and fauna are inter-related through whakapapa and all are precious to Te Uri o Hau", a Crown-acknowledged kaitiaki relationship with all indigenous species within the DoC Protocol Area. Deed of Settlement Schedule 5.18 (DoC Protocol, clause 7.1) formally defines "cultural materials" as including "plants, plant materials, materials derived from animals, or birds... of importance to Te Uri o Hau in maintaining its culture, including medicinal practices and gathering of mahinga kai", directly capturing the rongoā plants named in the IHEMP. Deed of Settlement Schedule 5.18 clause 11.1 also expressly identifies "protection of indigenous vegetation and habitats" as a matter of mutual concern between TUoH and the Department of Conservation under the RMA, supporting TUoH's position that the ECO chapter must give effect to these obligations.

22. Beyond the plant species, Deed of Settlement Schedule 5.18 (DoC Protocol, clause 9.3) specifically names the New Zealand Fairy Tern (*Tara Iti*) as a species of such importance within the Te Uri o Hau DoC Protocol Area that the Department of Conservation made specific commitments to consult TUoH on all research, monitoring and recovery programme work for this species. The New Zealand Fairy Tern is one of New Zealand's most critically endangered birds, with its primary nesting habitat on the beaches and dunes of the Kaipara Harbour northern entrance, within TUoH's rohe. It is not aquatic and is not solely located in waterbodies. It is therefore not excluded by Clause 3.19(9). The Crown's specific acknowledgement of its significance to TUoH in the Deed of Settlement, combined with its critically threatened status,

makes it one of the most compelling candidates for formal identification as an identified taonga in the plan.

23. TUoH submits that the rongoā and weaving plants identified in the IHEMP, and the New Zealand Fairy Tern specifically named in the Deed of Settlement, constitute acknowledged taonga for the purposes of Clause 3.19(4). These species are listed in **Schedule 2** of these submissions. Further taonga species not listed in existing planning documents will be included in Te Uri o Hau's late submission.

New Objective and policies for acknowledged and identified Taonga

24. Alongside the changes sought in its primary submission, and for the reasons set out above, TUoH seeks that the ECO chapter include the following provisions:

New Interim protection policy:

Outside of primary submission

Where a resource consent application may affect indigenous species, populations or ecosystems acknowledged by tangata whenua as taonga, decision-makers must:

(i) seek input from the relevant tangata whenua on the significance of those species or ecosystems and any proposed effects;

(ii) have regard to the relationship of tangata whenua with those species or ecosystems; and

(iii) manage adverse effects on those species or ecosystems as far as practicable.

25. Te Uri o Hau submits that the interpretation of process of identification should include a plan change process and also formal planning documents, agreements or legislation where mana whenua have identified through engagement with a crown entity taonga species in their rohe.

26. This proposed policy is consistent with clause 3.19(4) of the NPS-IB, which requires local authorities to work in partnership with tangata whenua to protect acknowledged and identified taonga as far as practicable. It is also consistent with NPS-IB Policy 3 and clause 3.7, which require a precautionary approach where there is uncertainty about effects on indigenous biodiversity.

PART A: OBJECTIVES

A1. New Standalone Objective – Tangata Whenua Relationship with Taonga

27. TUoH sought a new objective recognising and providing for the cultural values of mana whenua associated with the natural environment, whether within the Strategic Direction chapter or the Ecology and Indigenous Biodiversity chapter (submission point 367.75). The relief was summarised as a request for a new objective in the Ecology and Indigenous Biodiversity chapter:

Protect and preserve the cultural values of mana whenua associated with the natural environment, taonga species and indigenous biodiversity.

28. DoC sought an objective recognising the relationship of tangata whenua with indigenous vegetation and fauna (submission point 304.66). The reporting officer has suggested incorporating recognition of kaitiakitanga within ECO-O4 rather than introducing a standalone objective.

29. Te Uri o Hau supports the proposed amendment to ECO-O4, as it gives effect to clause 3.3(2)(b) and clause 3.5 of the NPS-IB. However, the recognition of tangata whenua broader relationships with indigenous biodiversity is a distinct outcome that warrants expression through a standalone objective.

30. Kaitiakitanga and the broader relationship of Māori are dealt with separately in higher order planning documents, with s6 matter requiring a higher level of protection, “recognise and provide” versus “have particular regard to under s7(a) Kaitiakitanga. This is then adopted in the NRPS at policy 8.1.2 which separates s6(e) and (7(a) obligations.

31. Objective 2 in the NPSIB frames kaitiakitanga as one mechanism through which the mana of tangata whenua is recognised⁸, the decision-making principles which inform the implementation of the NPSIB at Clause 1.5 refer to the broader components: consideration of mauri as a priority, a relationship grounded in whakapapa⁹ which carries an obligation and responsibility of care¹⁰, which is expressed through

⁸ Clause 2.1(b)(i).

⁹ Clause 1.5(c).

¹⁰ Clause 1.5(d).

mātauranga Māori and te ao Māori¹¹ and requires strong and effective partnership¹². Clause 3.19(4) requires that taonga are protected to the extent practicable. Clause 3.19(6) requires that adverse effects on taonga be understood to include effects on the mauri of the taonga, the values identified by tangata whenua, and the historical, cultural and spiritual relationship of tangata whenua with the taonga. Taken together, these provisions describe a relationship with indigenous biodiversity that is whakapapa-based, tikanga-driven and mātauranga-informed.

32. While recognition of kaitiakitanga is an important component of the framework, it does not fully reflect the broader cultural, ancestral and customary relationships that tangata whenua maintain with taonga species, habitats and ecosystems.

33. The appropriateness and practicability of including such recognition is demonstrated by the Proposed Far North District Plan. Objective IB-O3, notified on the same date as the Kaipara Proposed District Plan (29 January 2026), provides:

"The relationship between tangata whenua and indigenous biodiversity, including taonga species and habitats, is recognised and provided for."

A2. ECO-01 – Protection of Significant Indigenous Vegetation and Habitats

34. TUoH supports the officer's recommendation to add "for current and future generations" to ECO-01 (in response to NRC [332.12]). This aligns with NPS-IB Objective 2.1(b)(iv) (wellbeing of people and communities "now and in the future") and with TUoH's intergenerational kaitiaki obligations.

35. Te Uri o Hau also sought the following change to ECO-01 as follows:

Areas of significant indigenous vegetation and significant habitats of indigenous fauna, including significant water bodies and taonga are protected.

36. The officer rejected this on the grounds that significant water bodies are a regional council function and that taonga species identification requires a dedicated partnership process.

¹¹ Clause 1.5(f).

¹² Clause 1.5(g).

37. Te Uri o Hau accepts that significance water bodies should not be in this part of plan due to section 3.19(9) of the NPSIB which explicitly excludes aquatic species, populations and ecosystems solely located in waterbodies and populations and ecosystems in the coastal marine area but does not accept that sites of significance to Māori cannot include water bodies¹³ and will address that point within submissions on the SASM chapter.

38. Therefore, Te Uri o Hau seeks the following revision of its relief:

Areas of significant indigenous vegetation and significant habitats of indigenous fauna and taonga are protected.

39. For the reasons set out above, namely; s6(e) RMA and NPSIB directs that council protect acknowledged and identified taonga where practicable and that NPSIB and partner with tangata whenua in that protection (NPSIB 3.19(4)), TUoH say that taonga should be included.

A3. ECO-02 — Maintenance of Indigenous Biodiversity

40. TUoH did not lodge a primary submission on ECO-02. However, TUoH adopts DoC's submission and supporting expert evidence that the ECO chapter should reflect the NPS-IB Objective 2.1(a) standard: "at least no overall loss in indigenous biodiversity." TUoH's kaitiaki obligations require TUoH to advocate for the strongest available standard of protection for indigenous biodiversity in its rohe.

A4. ECO-04 — Stewardship and Kaitiakitanga

41. TUoH supports the officer's recommendation to amend ECO-04 to recognise mana whenua as kaitiaki (S367.28, accepted in part). However, the amendment does not fully address the revised relief TUoH relief (with removal of freshwater bodies as set out above in para[35]:

¹³ The Waikato District Plan's SASM Schedule (SCHED3) is one of the more detailed examples. Lake Kopuera is scheduled as significant as a food basket (mahinga kai) for Waikato hapū. Similarly, Lake Waikare is scheduled as a historical food basket for Waikato hapū, with its surrounding lands and margins identified as sites of significance as they were papakāinga, nohoanga kai, pā tuna and also urupā. The Waikato River itself also features prominently throughout the schedule, with numerous sites along its margins listed.

Landowners, and council, act as stewards in partnership with mana whenua who act as kaitiaki in the protection maintenance and restoration of indigenous biodiversity and protection of taonga species in freshwater bodies.

42. Te Uri o Hau accepts that the partnership obligation sits on council and not landowners but seeks that policy be provided that encourages consultation between landowners and mana whenau and that consultation guidelines as set out in the IHEMP and developed with Te uri o Hau be included in the plan (see submission). Therefore alternative relief is sought for ECO-O4:

Landowners act as stewards and tangata whenua as kaitiaki in the protection, maintenance and restoration of indigenous biodiversity, in partnership with Council.

SECTION B — POLICIES

B1. ECO-P1 and ECO-P2 — Effects Management Language and Kaitiaki Provisions

43. TUoH's submissions on ECO-P1 (S367.10, S367.29) and ECO-P2 (S367.11, S367.30) were rejected or accepted only at a framework level, with the officer concluding that mana whenua cultural values are more appropriately addressed in the SASM chapter. While that may apply to sites of significance, the submissions also sought recognition and protection of taonga species.
44. If the higher-order objectives are amended to recognise taonga species, that recognition should be reflected in the associated policies. Where policies reference indigenous biodiversity they should also reference taonga species.
45. Effects management language in ECO-P1 and ECO-P2 should be the NPS-IB language ("avoid, minimise, remedy, offset, or compensate") rather than the older RPS-based "avoid, remedy or mitigate" formulation. DoC (Whitelock rebuttal) specifically identified this inconsistency. The NPS-IB hierarchy requires minimisation before remediation, and imposes strict principles on any offsetting or compensation under Appendices 3 and 4. The distinction is material to TUoH's kaitiaki interests , it means

more must be done to reduce biodiversity impacts before offsetting is even considered.

ECO-P3 — Protection and Maintenance / Whenua Māori Clause

46. TUoH's S367.12 (new clause 5 enabling development on whenua Māori and Treaty settlement land) was accepted in full.

ECO-P4 and ECO-PX — Restoration Priorities and Māori Land Incentives

47. TUoH's S367.32 sought a kaitiaki clause in ECO-P4. The officer accepted this in part, amending ECO-P4 clause 1 to recognise tangata whenua as kaitiaki in the restoration of indigenous biodiversity. TUoH supports this amendment.

48. TUoH also supports the new ECO-PX (restoration priorities) policy recommended by the officer. Priority (5) in ECO-PX — "Areas of indigenous biodiversity on specified Māori land where restoration is advanced by the Māori landowners" — directly implements NPS-IB Clause 3.21(2)(e).

ECO-P5 — Non-Regulatory Mechanisms

49. TUoH's S367.33 sought a kaitiaki clause in ECO-P5. The officer accepted this in part via the ECO-O4/P4 framework. TUoH notes that the Far North PDP (IB-P6(e)) explicitly references "working directly with iwi and hapū, landowners and community groups on ecological protection and enhancement projects" as a non-regulatory method. This is also consistent with NPS-IB Clause 3.3(2)(c) (specific opportunities for kaitiakitanga) applied at the non-regulatory level. And policy 3.21(3) in terms of providing incentives for restoration work on Māori land should recognize the opportunity cost of maintaining indigenous biodiversity on that land.

Seek new wording:

Not in primary submission

working directly with iwi and hapū, landowners and community groups on ecological protection and enhancement projects

5. SECTION C — RULES

50. TUoH did not lodge a primary submission on ECO-R1. TUoH supports the officer's recommended amendments including the reduction of vegetation age from 10 to 5 years (clause (i)), the Biosecurity Act clearance addition (clause (d)), and the infrastructure track clarification. These amendments better protect regenerating ecosystems and improve pest management pathways consistent with ECO-PY.

51. TUoH raises two additional matters for ECO-R1 that arise from the NPS-IB and the Far North PDP comparator:

Not in primary submission

(a) Rongoā Māori permitted clearance: The Far North PDP (IB-R1(5)) permits the "sustainable non-commercial harvest of plant material for rongoā Māori (customary medicine)" as a permitted activity under its equivalent of ECO-R1. This directly gives effect to NPS-IB Clause 3.3(2)(d), which requires local authorities to "allow for the sustainable customary use of indigenous biodiversity in accordance with tikanga." The Kaipara ECO-R1 has no equivalent. TUoH seeks the addition of a new permitted activity clause in ECO-R1 for the sustainable non-commercial harvest of plant material for rongoā Māori. This is within the scope of submissions from parties seeking amendments to ECO-R1 and from TUoH's overall submission on recognising the kaitiaki relationship with indigenous biodiversity. A number of plant species have been identified as Rongoa in the IHEMP, see **schedule 2** below.

(b) Kauri dieback management: DoC (Beauchamp) provided uncontested technical evidence that kauri dieback management requires a kauri dieback earthworks management plan for most activities within a kauri hygiene zone, and that the Biosecurity Order (clause 19.6(c)) allows district councils to include provisions for this. TUoH supports the inclusion of an advice note in ECO-R1 directing that where an activity is proposed within a kauri hygiene zone, or on land known to be contaminated with kauri dieback spores, a kauri dieback earthworks management plan must be obtained. This is relevant to TUoH's rohe which includes contaminated areas around Kaiwaka. TUoH kaimahi are actively working with DOC and other crown agencies on the issue of Kauri dieback.

ECO-R2 – General Indigenous Vegetation Clearance Thresholds

52. TUoH supports the officer's recommendation to reduce the permitted clearance thresholds in ECO-R2 from 1,000m² to 500m² (rural zones) and from 500m² to 250m² (other zones) per site per calendar year. This is consistent with TUoH's kaitiaki obligations and reduces the risk of cumulative biodiversity loss across TUoH's rohe in the absence of SNA mapping. TUoH considers that this reduction is not enough and reserve its position to provide a further submission of this point under a late submission process.
53. TUoH notes, that the officer's deletion of the mandatory ecological assessment requirement from ECO-R2.2 moves the Kaipara PDP away from the approach taken in the Far North PDP (IB-R4), which requires an ecologist's report confirming non-significance before higher-threshold clearance is permitted. TUoH opposes this approach. NPS-IB Clause 3.24 provides that local authorities must require resource consent applications with more than minor adverse effects to include a report from a suitably qualified ecologist and , as required any other person with suitable expertise such as someone with expertise in mātauranga Māori. The officer wrongly treats Clause 3.24 as deferred until 2030. TUoH submits that the deletion of the mandatory ecological assessment weakens protection compared to both the Northland model and the NPS-IB direction and that this is required and it out of alignment with the precautionary approach and the NPSIB provisions.
54. DoC (Townshend) gave evidence that even the halved thresholds (500m²/250m²) may still be too permissive for areas of significant ecological value, and that the RPS Appendix 5 significance criteria should be used to assess clearance applications. DoC (Beauchamp) reinforced that threshold-only rules are insufficient to protect fauna habitat. TUoH adopts and aligns with this position.

5 June 2021



R Haazen

Legal Counsel for Te Uri o Hau Settlement Trust and Environs

Schedule 1

Te Uri o Hau and Te Roroa Feedback on Exposure Draft (October 2022) — Ecology, Biodiversity and Taonga Species Related Provisions

Note: The Ecosystems and Indigenous Biodiversity chapter of the Exposure Draft was a placeholder (dated 14 September 2022): "This is a placeholder chapter — Awaiting finalisation of the National Policy Statement on Indigenous Biodiversity." The KDC Exposure Draft Submissions Index confirms the ECO chapter received ZERO COMMENTS from all respondents. The feedback below records TUoH's concerns about ecology, biodiversity and taonga species as expressed in adjacent chapters.

Chapter / Provision (Exposure Draft)	TUoH / Te Roroa Position	Feedback / Relief Sought	Relevance to ECO Chapter / Taonga Species
ECO Chapter (Ecosystems and Indigenous Biodiversity)	—	<p>No feedback provided. The chapter was a single-sentence placeholder: "This is a placeholder chapter — Awaiting finalisation of the National Policy Statement on Indigenous Biodiversity."</p> <p>KDC Exposure Draft Submissions Index (verbatim report, p.47) records: "ZERO COMMENTS."</p> <p>One other respondent called for "an exposure draft of the Ecosystems and Indigenous Biodiversity chapter be released for consultation before the Proposed Plan goes out for consultation."</p>	<i>The absence of any ECO chapter provisions meant TUoH had no opportunity to engage on biodiversity objectives, policies or rules — including the identification and protection of taonga species — at the exposure draft stage. This is the direct precursor to the consultation gap TUoH submits occurred prior to notification.</i>
General Comment (opening)	General	"We have provided comments on priority parts of the plan/chapters of specific concern. However, we have not had sufficient time/resourcing to address all provisions, or consult broadly, and we intend to continue to work with KDC on plan development until the plan is notified. Our comments should therefore be taken as feedback only, and we reserve the right to raise additional matters through continued engagement."	<i>TUoH expressly reserved the right to raise further matters. Resourcing constraints were identified as a barrier to full engagement. This reservation directly covers the ECO chapter which contained no provisions at that time.</i>
SASM (Sites and Areas of Significance to Māori) SASM-04 (NEW)	New — Add	<p>Sought new objective for "integration of the ecosystem."</p> <p>"Kaitiakitanga is about application of a practice that protects our sites and mātauranga associated with it. We need access to these sites to monitor mauri and well-being of our taonga species, and spiritual wellbeing. Essentially cultural monitoring is part of 'enabling exercise of kaitiakitanga'"</p> <p>"Can we acknowledge the ecosystem."</p>	<i>Directly raises the need to monitor and protect taonga species as part of kaitiakitanga. Demonstrates TUoH's concern about taonga species protection was clearly expressed at the 2022 stage — but in the SASM chapter because no ECO chapter existed.</i>
SASM SASM-P1	Support / Amend	<p>"Not clear what is asked of the reader — do they identify the site and put it into the schedule in consultation with tangata whenua/mana whenua?"</p> <p>Sought to clarify that engagement is required: "to understand the value and relationships tangata whenua/mana whenua have with sites... to enable sustainability of mauri and the spiritual relationship."</p>	<i>TUoH raised at 2022 stage the need for a clear partnership identification process — consistent with what is now sought under NPS-IB Clause 3.19 for taonga species identification. TUoH was pressing for identification processes in partnership, applied here to SASM but equally applicable to biodiversity/taonga.</i>
SASM	Oppose —	"Opposing because this gives a tick list for an AEE. The reader is making the	<i>TUoH asserted at 2022 stage that only mana whenua</i>

SASM-P3	Delete and Replace	determination to council that they have met this policy therefore exempted from meaningful engagement with mana whenua. This is a weak policy that allows agents to determine impact. BUT it is us that need to make that determination." "Values are associated to the site because of the mātauranga that comes with it — only we hold this."	<i>can determine cultural and ecological significance — including of taonga. This directly supports the submission that the identification of taonga species must be led by TUoH in partnership.</i>
SASM SASM-P5 / SASM-P6	Oppose / Support — Amend	Sought to amend SASM-P6 to include protection language: "providing for the following activities within SASM areas where they avoid significant adverse effects on the connections to tangata whenua to these areas and the ability of the areas to support taonga species and mahinga kai, and protect the mauri and site integrity of the areas: [including] indigenous vegetation clearance."	<i>TUoH expressly sought protection of taonga species in the context of indigenous vegetation clearance at the 2022 stage. This directly links to ECO-R1 and ECO-R2 vegetation clearance rules and to the taonga protection framework TUoH now seeks in the ECO chapter.</i>
CE (Coastal Environment) CE-P9 / CE-P10	Amend	Sought amendment to CE-P10 to add: "3. The ecological values and attributes of other indigenous biodiversity in the coastal environment. 4. The relationship of Tangata Whenua/Mana Whenua with ancestral sites, sites of significance, wāhi tapu, customary activities and/or taonga"	<i>TUoH sought recognition of both the ecological values of indigenous biodiversity and the taonga relationship of mana whenua in the coastal environment chapter. The Kaipara Harbour coastal environment is TUoH's primary rohe. This feedback supports TUoH's current submission on ECO-P1 (coastal biodiversity) and the Kaipara Harbour taonga/statutory acknowledgement arguments.</i>
Strategic Direction — Tangata Whenua/ Mana Whenua	General	TUoH raised concerns about the lack of recognition of TUoH's relationship with "the Ripiro, Kaipara Moana/Harbour and Mangawhai Harbour coastal marine areas" and sought to understand "all of the provisions (particularly rules) that KDC believe provide them the tools to have regard to any effects of natural and physical resource use and/or activities on the whenua that impacts" those areas.	<i>TUoH raised specific concern about the management tools for the Kaipara Harbour ecosystem at the 2022 stage — but had no ECO chapter tools to comment on. Reinforces that TUoH's kaitiaki interests in the harbour's indigenous biodiversity and taonga were clearly expressed, and that the ECO placeholder prevented meaningful engagement on those interests.</i>
General District-wide Matters / IHEMP reference	Seek	TUoH sought that activities could be assessed as controlled or restricted discretionary "particularly if it is in accordance with an IHEMP." Reference: KDC Exposure Draft Full Report, p.979.	<i>TUoH flagged the IHEMP as a planning tool at the 2022 stage, supporting the current submission that the IHEMP must be taken into account under RMA s74(2A) and that IHEMP-identified taonga species (kawakawa, tūpākihi, kohekohe, karamu, pūwharawhara, para, harakeke etc.) constitute acknowledged taonga for the purposes of NPS-IB Clause 3.19(4).</i>

Sources: Te Uri o Hau and Te Roroa Feedback — Exposure Draft Kaipara District Plan (16 October 2022); KDC District Plan Exposure Draft Full Report Verbatim (21 October 2022); Exposure Draft Final Public Version (September 2022).

Schedule 2

Acknowledged Taonga Species — IHEMP and Settlement Legislation References

Note: All species listed below are terrestrial or riparian and are not excluded by Clause 3.19(9) of the NPS-IB (which excludes aquatic species, populations and ecosystems solely located in waterbodies, and populations and ecosystems in the coastal marine area). Kaimoana and aquatic species acknowledged as taonga are addressed separately through the Te Uri o Hau Claims Settlement Act 2002 fisheries and shellfish provisions.

Species (Common / Te Reo)	Significance to Te Uri o Hau	IHEMP Reference (Te Uri o Hau Kaitiakitanga o te Taiao)	Deed of Settlement / Settlement Act Reference	Relevance to ECO Chapter
Kawakawa	Rongoā Māori (customary medicine) — used externally for cuts, bites, grazes; as anti-oxidant and blood purifier.	p.19: Named explicitly as rongoā plant used by TUoH. p.64: IHEMP commits to "identify indigenous plant species and reserves useful for rongoā."	Deed Schedule 5.17 (TUoH statement of association with all indigenous species — inter-related through whakapapa). Deed Schedule 5.18 cl.7.1: "plants... of importance to TUoH in maintaining its culture, including medicinal practices."	Acknowledged taonga under Clause 3.19(4) NPS-IB. Supports ECO-R1 rongoā Māori permitted clearance and interim taonga protection policy.
Tūpākihi	Rongoā Māori — used to heal wounds and bruising.	p.19: Named explicitly as rongoā plant used by TUoH for healing.	Deed Schedule 5.17; Deed Schedule 5.18 cl.7.1.	Acknowledged taonga. Supports ECO-R1 rongoā Māori permitted clearance.
Kohekohe	Rongoā Māori — used for same healing purposes as tūpākihi.	p.19: Named explicitly as rongoā plant.	Deed Schedule 5.17; Deed Schedule 5.18 cl.7.1.	Acknowledged taonga. Supports ECO-R1 rongoā Māori permitted clearance.
Karamu	Rongoā Māori — used as anti-oxidant and blood purifier alongside kawakawa.	p.19: Named explicitly as rongoā plant.	Deed Schedule 5.17; Deed Schedule 5.18 cl.7.1.	Acknowledged taonga. Supports ECO-R1 rongoā Māori permitted clearance.
Pūwharawhara	Rongoā Māori — oil used to assist with rheumatism.	p.19: Named explicitly as rongoā plant.	Deed Schedule 5.17; Deed Schedule 5.18 cl.7.1.	Acknowledged taonga. Supports ECO-R1 rongoā Māori permitted clearance.
Harakeke (New Zealand flax)	Taonga weaving plant; gathered at Pouto and coastal areas for weaving, tools, tukutuku panels.	p.24: Listed explicitly as "Plants for weaving — pīngao, kakaho and harakeke." p.31: Gathered at Pouto peninsula wetlands.	Deed Schedule 5.17; Deed Schedule 5.18 cl.7.1: "plant materials... of importance to TUoH in maintaining its culture."	Acknowledged taonga. Habitat (wetlands, riparian margins) directly relevant to ECO chapter vegetation clearance provisions.
Pīngao (golden sand sedge)	Taonga weaving plant; coastal dune species.	p.24: Listed explicitly as "Plants for weaving — pīngao, kakaho and harakeke."	Deed Schedule 5.17; Deed Schedule 5.18 cl.7.1.	Acknowledged taonga. Coastal dune habitat — relevant to ECO-P1 (coastal environment provisions) and vegetation clearance rules.
Kakaho (toetoe / kākaho)	Taonga weaving plant; used in tukutuku panels.	p.24: Listed explicitly as "Plants for weaving — pīngao, kakaho and harakeke." p.35: "flax fibres for use in certain types of weaving, making tools."	Deed Schedule 5.17; Deed Schedule 5.18 cl.7.1.	Acknowledged taonga. Riparian and wetland habitat relevant to ECO chapter vegetation clearance provisions.
Para	Foundational cultural	p.32: "the very name given to the harbour,	Deed Schedule 5.11 (Statutory	Acknowledged taonga. Deeply embedded in

(king fern)	significance — the name "Kaipara" derives from "Kai" (food) and "Para" (king fern), recording TUoH's relationship with this species across generations.	Kai meaning food and Para meaning king fern, is our acknowledgment of the sustenance obtained by our people in and around the harbour."	Acknowledgement for Kaipara Harbour): records this etymology as part of TUoH's cultural, spiritual and historic association with the harbour. Settlement Act s102 + Schedule 13.	TUoH's identity and relationship with the Kaipara. Supports taonga identification objective and interim protection policy.
Mānuka	Indigenous species of spiritual, ecological and economic significance; TUoH seeks to regenerate mānuka on uneconomic Māori land.	p.86-87: Dedicated section on apiculture and mānuka regeneration. IHEMP advocates for mānuka replanting on uneconomic Māori land. Mānuka honey described as having "special medicinal properties."	Deed Schedule 5.17; Settlement Act s102 + Schedule 13.	Acknowledged taonga and economic resource. Mānuka regeneration on Māori land directly relevant to ECO-PX restoration priorities (Clause 3.21(2)(e) — restoration on specified Māori land) and ECO-P3 clause 5 (whenua Māori development).
Kauri (Agathis australis)	Significant indigenous tree; threatened by Phytophthora agathidicida (PTA/kauri dieback). TUoH rohe includes contaminated areas around Kaiwaka.	p.62: IHEMP biodiversity section: "PTA (Phytophthora taxon agathis) has affected kauri without any sign of a possible cure." Identified as a species of particular concern in TUoH's rohe.	Deed Schedule 5.18 cl.9.1-9.2: DoC's primary objective is to "enhance population numbers and distributional ranges of threatened indigenous species and subspecies" within TUoH DoC Protocol Area — kauri is a priority threatened species in this area. Settlement Act s102 + Schedule 13.	Acknowledged taonga. Kauri habitat protection relevant to ECO-R1 (kauri dieback management plan) and ECO-R2 (vegetation clearance thresholds). Supports submission on kauri dieback advice note in ECO-R1.
New Zealand Fairy Tern (Tara Iti) (Sternula nereis davisae)	Critically endangered native bird. Primary nesting habitat on beach/dune systems of Kaipara Harbour northern entrance — within TUoH's rohe.	Not named in IHEMP (birds referenced generally at p.29: "manu (birds) of many species... still nest and roost here today" at Mānukapua).	Deed Schedule 5.18 cl.9.3: Named explicitly — "Given the importance of the New Zealand Fairy Tern and its highly endangered status the Department will: (a) provide opportunities for [TUoH] to participate in research and monitoring projects; (b) provide [TUoH] with copies of proceedings and publications of the relevant species recovery group." Settlement Act s102 + Schedule 13.	Acknowledged taonga — specifically named in Deed of Settlement. Not excluded by Clause 3.19(9) (bird, not aquatic). Strong candidate for formal identification under Clause 3.19. Nesting habitat directly relevant to ECO-P1 (coastal environment) and ECO-R1/R2 vegetation clearance.

Sources: Te Uri o Hau Kaitiakitanga o te Taiao (IHEMP, 2011); Deed of Settlement (13 December 2000) — Schedules 5.17 and 5.18; Te Uri o Hau Claims Settlement Act 2002 — s102, Schedule 13. NPS-IB Clause 3.19(4) requires protection of acknowledged taonga as far as practicable. Clause 3.19(9) excludes aquatic species and waterbody-located ecosystems — all species above are terrestrial or riparian and are not subject to this exclusion.

Schedule 3:

55. The NPS-IB states the following in regard to protecting indigenous biodiversity and providing for Te Uri o Hau values:

Policy 2: *Tangata whenua exercise kaitiakitanga for indigenous biodiversity in their rohe, including through:*

- a. *managing indigenous biodiversity on their land; and*
- b. *identifying and protecting indigenous species, populations and ecosystems that are taonga; and*
- c. *actively participating in other decision-making about indigenous biodiversity.*

Policy 3: *A precautionary approach is adopted when considering adverse effects on indigenous biodiversity.*

3.2 Role of decision-making principles

(1) Local authorities must engage with tangata whenua, people and communities (including landowners) to ensure that the decision-making principles inform, and are given effect to, when implementing this National Policy Statement in their regions and districts. ...

3.3 Tangata whenua as partners

(1) Every local authority must involve tangata whenua (to the extent they wish to be involved) as partners in the management of indigenous biodiversity and, in particular:

(a) when identifying the local approach to giving effect to the decision-making principles; and

(b) in the processes (including decision-making processes) for managing the implementation of this National Policy Statement; ...

(2) When involving tangata whenua as required by subclause (1), and particularly when making or changing objectives, policies, or methods to give effect to this National Policy Statement, local authorities must:

(a) ensure that engagement with tangata whenua:

(i) is early, meaningful, and in accordance with tikanga Māori; and⁹

(ii) has regard to the different levels of whānau, hapū, and iwi decision-making structures; and

(b) in managing indigenous biodiversity, recognise and value the mana of tangata whenua as kaitiaki of indigenous biodiversity; and

(c) provide specific opportunities for tangata whenua to exercise kaitiakitanga in accordance with tikanga Māori; and

(d) allow for the sustainable customary use of indigenous

biodiversity in accordance with tikanga.

...

(5) Local authorities must, with the consent of tangata whenua, enable the application of mātauranga Māori relating to indigenous biodiversity when implementing this National Policy Statement.

3.19 Acknowledged and Identified taonga

- 1. Every territorial authority must work in partnership with tangata whenua of any rohe in their district, using an agreed process, to determine the indigenous species, populations, and ecosystems in that rohe that are taonga (and these are **acknowledged taonga**).*
- 2. Local authorities must recognise that tangata whenua have the right not to determine the indigenous species, populations and ecosystems in their rohe that are taonga, and to choose the level of detail at which any acknowledged taonga, or their location or values, are described.*
- 3. If tangata whenua agree, territorial authorities must identify acknowledged taonga in their district plans (and these are **identified taonga**) by:*
 - 1. describing the taonga and, to the extent agreed by tangata whenua, mapping their location and describing their values; and*
 - 2. describing, to the extent agreed by tangata whenua, the historical, cultural, and spiritual relationship of tangata whenua with the taonga*
- 4. Local authorities must work in partnership with tangata whenua to protect both acknowledged and identified taonga as far as practicable and to involve tangata whenua (to the extent that they wish to be involved) in the management of identified taonga.*
- 5. Identified taonga located on specified Māori land must be managed under clause 3.18, but if identified taonga are located within an SNA that is not on specified Māori land:*
 - 1. the identified taonga must be managed in a manner consistent with the management approach applying to the SNA; and*
 - 2. the matters listed in subclause (6) must be taken into account in managing the SNA.*
- 6. In managing effects on identified taonga, local authorities must recognise that the possible adverse effects on identified taonga include effects on:*
 - 1. the mauri of the taonga:*
 - 2. the values of the taonga as identified by tangata whenua:*
 - 3. the historical, cultural, and spiritual relationship of tangata whenua with the taonga, as identified by tangata whenua.*
- 7. Local authorities must make or change their policy statements and plans as necessary to ensure that the sustainable customary use of identified taonga by*

tangata whenua in accordance with tikanga and in a manner consistent with the protection of the identified taonga is provided for.

8. *Before acknowledged taonga are identified in a proposed district plan, the territorial authority must notify the relevant landowner of the presence of the taonga.*
9. *To avoid doubt, the following cannot be acknowledged as taonga under this clause:*
 1. *aquatic species:*
 2. *populations and ecosystems solely located in waterbodies:*
 3. *populations and ecosystems in the coastal marine area.*