Submission 546

Remember submissions close at 5pm, Friday 21 October 2022

Proposed District Plan submission form

Clause 6 of Schedule 1, Resource Management Act 1991

Feel free to add more pages to your submission to provide a fuller response.

Form 5: Submission on Proposed Far North District Plan

TO: Far North District Council

This is a submission on the Proposed District Plan for the Far North District.

1. Submitter details:

Full Name:	Ian Diarmid Palmer		
Company / Organisation Name: (if applicable)			
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2. (Please select one of the two options below)

☑ I **could not** gain an advantage in trade competition through this submission
☐ I **could** gain an advantage in trade competition through this submission

If you could gain an advantage in trade competition through this submission, please complete point 3 below

3. ☑ I **am** directly affected by an effect of the subject matter of the submission that:
(A) Adversely affects the environment; and
(B) Does not relate to trade competition or the effect of trade competition

☐ I **am not** directly affected by an effect of the subject matter of the submission that:
(A) Adversely affects the environment; and
(B) Does not relate to trade competition or the effect of trade competition

Note: if you are a person who could gain advantage in trade competition through the submission, your right to make a submission may be limited by clause 6(4) of Part 1 of Schedule 1 of the Resource Management Act 1991

The specific provisions of the Plan that my submission relates to are:
(please provide details including the reference number of the specific provision you are submitting on)

The Ecosystems and indigenous biodiversity chapter of the Plan and other chapters that reference Special Natural Areas (SNAs)

PROPOSED DISTRICT PLAN

Confirm your position: ☐ Support ☐ Support In-part ☑ Oppose
(please tick relevant box)

My submission is:
(Include details and reasons for your position)

References to Special Natural Areas (SNAs) should not be in the PDP.

Policy and rules related to SNAs in any FNDC proposed or operative District Plan (DP) should only derive from a well-considered and formally adopted Regional Policy Statement (RPS) that has been formulated (in relation to SNAs) based on a formally adopted Government **National Policy Statement on indigenous biodiversity ('NPSIB').**

However, there is no currently operative NPSIB. The Government has never formally adopted any NPSIB.

The SNA policy and rules in the PDP appear to have been based largely on the SNA regime prescribed in the RPS which in turn was based largely on the **New Zealand Coastal Policy 2010 (CPS)**. However, the CPS based SNA regime was intended to be superseded by the Government's November 2019 **draft** NPSIB. But the operative RPS was last updated in 2018 and so could not have given authority or the requirement for the FNDC to adopt draft Government policy that was promulgated after the RPS was published. Therefore, the purported obligations on the FNDC regarding SNAs per the RPS are based on superseded and/or not formerly adopted Government policy.

The latest available information as to Government progressing towards adopting a NPSIB appeared in a DoC Departmental Briefing paper (GS ref: 22-B-042 DOCCM: 7052875) to Hon Poto Williams, Minister of Conservation, dated 20 June 2022 in which the relevant non-redacted passage read:

> *"National Policy Statement on Indigenous Biodiversity (NPSIB) will be a regulatory instrument in the RM system and a key lever for implementing the ANZBS. It will strengthen and clarify the requirements already in place for local authorities to manage indigenous biodiversity. On 9 June an exposure draft of the NPSIB was released for targeted engagement for six weeks."*

The referenced **June 2022 exposure draft NPSIB** is substantially different to the November 2019 draft NPSIB and if the SNA aspects of the PDP are to be based on any draft NPSIB, it should clearly be the most recent one promulgated by Government.

As of today, it remains unclear what if any NPSIB will be formally adopted by Government and if one is adopted when that might occur. Given the long gestation period so far for the formulation of a NPSIB, and the associated controversial nature of the subject matter, it is reasonable to assume a NPSIB will not be adopted any time soon and may well not be adopted prior to the next General Election, after which a change of Government could set the policy development on an entirely different course.

The FNDC has decided not to include the SNA maps that appeared in the draft PDP as an overlay in the Notified PDP. This leads to ambiguity and lack of transparency as to what land the policy and rules in the PDP is intended to apply to. If the FNDC's intention is to apply the PDP's SNA policy and rules to RC applications concerning land that is the subject of the withdrawn SNA maps, then SNA maps must be included as an overlay in the PDP.

However, in so far as the SNA maps that appeared in the draft PDP were invalid, inaccurate or inappropriate in any way (as alleged by parties including myself who made submissions in this regard as part of FNDC's consultation on the draft PDP) these issues must be fully addressed and the maps updated accordingly before being included as the SNA overlay in the PDP. In this regard I attach (to be taken as part of this submission) the submission I made and sent to the FNDC in June 2021 titled : "Feedback Concerning the FNDC's Draft Proposed District Plan in relation to Special Natural Areas", which in part challenged aspects of an SNA map (FN042) labelled "Butlers Point Forest" that concerned Sites that my wife and I own.

I seek the following decision from the Council:
(Give precise details. If seeking amendments, how would you like to see the provision amended?)

First Preference: Remove all references to Special Natural Areas (SNAs) from the PDP.

S546.001
S546.002

Second Preference: If the above First Preference is not adhered to then: Include SNA maps as an overlay in the PDP, but only after completing a thorough process of validating such maps including addressing any alleged invalidities, inaccuracies or inappropriateness of any SNA maps intended to be used as part of an SNA overlay in the PDP.

☑ I **wish** to be heard in support of my submission
☐ I **do not wish** to be heard in support of my submission
(Please tick relevant box)

If others make a similar submission, I will consider presenting a joint case with them at a hearing
☑ Yes ☐ No

Do you wish to present your submission via Microsoft Teams?
☐ Yes ☑ No

Signature of submitter:
(or person authorised to sign on behalf of submitter)

Date: 21/10/22

(A signature is not required if you are making your submission by electronic means)

Feedback Concerning the FNDC's Draft Proposed District Plan in relation to Special Natural Areas

This submission is on behalf of the Landowners of, and concerns Allotments on the Rangitoto Peninsula (i.e. the Mangonui Harbour Eastern Headland), as detailed in Attachment 1.

This submission relates specifically to the proposed 'Butlers Point Forest' Special Natural Area (SNA ID FN042) that encompasses much of the Landowners' Allotments, however many of the points made have general relevancy to the entire proposed SNA regime for the Far North District (FN SNA Regime) as detailed in the FNDC's Draft Proposed District Plan (DDP).

Summary of Concerns and Objections:

1. **Inconsistent with NPS-IB**: The FN SNA Regime is unnecessarily inconsistent with the 'Draft National Policy Statement for Indigenous Biodiversity' (NPS-IB); in particular by not distinguishing between Medium and High criteria SNA areas, and this causes it to be unreasonably onerous to a large number of landowners in the Far North District (FND).

2. **Contrary to the Need for Active Management:** The bigger threat to indigenous biodiversity and healthy ecosystems in the FND is not the lack of area that has native vegetation on it or the deliberate clearing of native vegetation, but rather the impact of pest animals and invasive non-indigenous plants on areas of native vegetation. The FN SNA Regime, when viewed in combination with other provisions of the Draft Proposed District Plan (DDP) that aim to 'lock up' large areas as SNAs, does not promote the Active Management needed to address pest issues and so is counterproductive to its own objectives as a result.

3. **Inaccurate Spatial Definition:** The SNA boundaries are defined by aerial imagery acquired between 2014 and 2016 which in many cases will not correctly reflect the state of the land when the Proposed District Plan (PDP) is Notified (when the relevant rules will take effect), and in any event can't accurately define what land areas do and don't meet the criteria for SNAs.

4. **Undermines Covenanting Regime:** No guarantee has been given that the FNDC will retain its current policy and practices of providing rates relief in return for landowners voluntarily protecting areas by way of conservation covenants once the land that might otherwise be covenanted has becomes 'protected' under the FN SNA Regime.

5. **Undermines Conditions of Consent Regime:** Currently activities that are not Permitted or Controlled are often given RMA Resource Consent (RC) in return for

environmental offsets involving the landowner proposing / accepting conditions requiring protection of areas of indigenous bush by subjecting those areas to conservation covenants. The FN SNA Regime in effect takes that 'card' from the landowner's hand and places it in the Consenting Authority's hand, which will make obtaining RCs more difficult for landowners and hence negatively impact economic activity and growth in the FND.

6. **Discourages enhancement of non-SNA land:** The FN SNA Regime penalises landowners who in the past have facilitated land reverting to regenerating indigenous bush by subjecting them to restrictive land use rules, whereas landowners who have cleared land and kept it largely clear of native bush are exempt from such penalty. This sets a precedent and sends a strong signal which will change future behaviour of landowners, counter to the objectives of the SNA regime.

7. **Rules for SNAs unreasonably restrictive:** The rules for land subject to an SNA under the DDP are dramatically more restrictive than the rules in the Operative District Plan (ODP) even for land currently zoned Outstanding Landscape. This fact has not been made clear to the public in the publicity associated with the FN SNA Regime, contrary to principles of transparency and open government. For example, in general, clearing any indigenous vegetation from an SNA area inside the Coastal Environment beyond 5 square metres per annum (on average over the expected ten-year life of the DP) will be a Non-Complying activity per the DDP and hence unlikely to be authorised by way of a Resource Consent application. This is a monumental and unreasonable increase in restrictiveness over the current ODP which most affected landowners will be unaware of due to the inadequate publicity and the complexity in the way the rules are set out in the DDR.

8. **Overlay Overload:** The proposed SNA overlay in the DDP adds to a plethora of new overlays not seen as necessary in the ODP, each with its own set of rules restricting land use. This will create an unnecessarily complex RC regime which will add to burdens and costs on landowners and the FNDC. Some rationalisation of overlays is needed.

Detailed Submission

1) Inconsistent with NPS-IB:

It is appreciated that the FN SNA Regime is in response to the NRC's operative Regional Policy Statement re Policy 4.4 'Maintaining and Enhancing Indigenous Ecosystems and Species' (RPS), whereas the NPS-IB is yet to be formerly gazetted; i.e. it is not yet operative and hence the FNDC is not yet legally mandated to follow it. It is also recognised that the RPS and NPS-IB are broadly consistent, nevertheless the

NPS-IB includes key refinements to the RPS which are highly significant and relevant to proposing a FN SNA Regime.

The RPS itself was in large part a response to Policy 11 ('Indigenous biological diversity') of the New Zealand Coastal Policy Statement 2010 (CPS). So, if the FN SNA Regime documented in the DDP were to survive into the PDP it would be more than 11 years late and out of date in the sense of being superseded by more recent government policy. In so far as the NPS-IB can be regarded as a refinement to the RPS, there is no legal impediment to the FNDC refining its SNA regime accordingly and thereby making it consistent with both the RPS and the NPS-IB.

A key refinement to the SNA regime in the NPS-IB over the RPS is the discrimination between Medium and High categories of SNAs which are required to have correspondingly different levels of protection and hence different strictness of rules. Also, by defining Medium and High sub-categories for SNAs implies there is a 'Low' ecological value category for SNAs that don't meet the Medium threshold which don't deserve additional new protection rules at all. This current Government policy direction is highly relevant for any new rules-based SNA regime for the FND where 42% of the total land area has been defined as being in one or other of 685 SNAs. Clearly some of these areas are of very high ecological value representing bushland that is representative of (or close to) the biodiversity of that land prior to major human instigated changes (in the language of the RPS *"typical of what would have existed circa 1840[1]"*. However much of the land in the 685 SNAs in the FN SNA Regime is regenerating bush land, including land where that regeneration started relatively recently and where biodiversity is poor and/or where the land is highly threatened by, or currently heavily impacted by, pest animals and invasive non-indigenous vegetation. To lump all such land into one pot is clearly inappropriate, which is no doubt why Government is revising the relevant national policy accordingly.

It is recognised that the NPS-IB allows Territorial Authorities up to five years from its commencement date to categorise all SNAs in their districts as High or Medium[2]. However, this proposed legal time limit does not prevent the FNDC from recognising the High and Medium distinction in its Proposed District Plan (PDP) in recognition that the five-year limit will expire during the ten year expected life of the DP. Provisions could be included in the PDP whereby when a landowner applies for a RC that might be impacted by whether some or all of an SNA affecting the land in question was High or Medium category, a specific detailed assessment of that SNA could be undertaken at that time and the High, Medium (and Low) sub-categorisations established.

Also, importantly, the NPS-IB has a special carve out caveat wrt kanuka and manuka where it states:[3] *"Subclause (1) does not apply to managing adverse effects in …. an area comprising kanuka or manuka and that is identified as an SNA solely because it's*

[1] NRC 2016 RPS, Appendix 5, page 175 item)1 (a) ii) in the list of criteria for 'Representativeness'
[2] Draft National Policy Statement for Indigenous Biodiversity, clauses 3.8 (3), (4) & (5), p20
[3] Draft National Policy Statement for Indigenous Biodiversity, clause 3.9 (4) c), p22

at risk from myrtle rust" (where the referenced Subclause (1) mandates local authorities to avoid, rather than manage using effects management hierarchy, ecological adverse effects). This is highly relevant to the Landowners' circumstances where for large areas of the proposed SNA over their Allotments (i.e. SNA FN042) the dominant native vegetation is kanuka, with no other large native trees and very limited biodiversity or other ecological 'special' values. The SNA FN042 data sheet sent to the Landowners by the FNDC identifies only kanuka and pohutukawa as the flora of note and indicates both are 'Threatened -Nationally Vulnerable' while emphasising myrtle rust as the key threat. This does not sit well with the kanuka/manuka 'carve-out' deliberately written into the NPS-IB.

If SNA FN042 was to be subdivided between High and Medium and Low per the NPS-IB criteria then the coastal periphery where the noted old large pohutukawa trees are present might legitimately be ranked High, whereas the majority of the rest would be ranked Medium or Low.

The FNDC's Greg Wilson has stated[4] that: *"Feedback from our ecological specialist suggested that the majority of the Far North's significant natural areas would satisfy the 'high' criteria and therefore be subject to a stringent protection policy framework."* Even if this was true in terms of the gross area of SNAs (i.e. the 42% of the entire FND land area) that doesn't mean that the majority of land within particular SNAs would correctly be ranked 'High'. To impose rules that assume all the area of a specific SNA are High category when it can be demonstrated that some or all of the area does not meet that threshold (as in the case of SNA FN042) is grossly unreasonable.

In summary, the FNDC can and should devise an SNA regime for the FND that does not contravene the RPS (while it remains operative) but which is also a refinement to that regime consistent with the NPS-IB that is expected to be operative for most or all of period that the FNDC's new DP will be operative.

If the FNDC considers the NPS-IB is not just a refinement to the RPS, but rather that the two regimes are mutually inconsistent such that it is not possible to create an SNA regime for the FND that is consistent with both, then the FNDC should hold off implementing a formal FN SNA Regime in its DP until the NPS-IB is gazetted and then work with the NRC update its RPS accordingly and then develop a SNA regime for the FND based on the then operative NPS-IB and updated RPS. Given the time that has already elapsed since the CPS became operative (in December 2010), a further modest delay to a FN SNA Regime should be acceptable to all levels of Government when such delay is predicated on the aim of abiding by the most relevant and updated national and regional policy prescriptions.

[4] Email Greg Wilson to Ian Palmer dated May 23rd, 2021

2) **Contrary to the Need for Active Management:**

The Landowners' support the contention stated in the RPS[5] that:

"In Northland, reduced indigenous biodiversity is due to both a loss of area and a loss of ecological condition. ***Currently the threats resulting from pest [flora and fauna] species and reduced connectivity are considered greater than loss in overall area ….."*** [emphasis added].

The FN SNA Regime however concentrates exclusively on limiting the reduction in area (by rules limiting vegetation clearing) and ignores and arguably will exacerbate the more serious pest threats noted by the NRC.

Limiting activities on SNA land including by limiting subdivision will in many cases lead to poorer ecological outcomes. Active Management[6] is required, including by improving access (e.g. in some circumstances by cutting all terrain vehicle tracks) and most importantly by committing resources including manual labour to address land management issues particularly re invasive non-indigenous plants. This is best facilitated by allowing land with SNAs to be subdivided into smaller Allotments with consent conditions and/or covenants that require Active Management of the pest threats. While the RPS concentrates on the importance of Active Management, the DDP only mentions it in passing and has no tangible policies or rules that promote it or directly reward it. Policy could for example be introduced that obliged the FNDC as the Consent Authority to have particular regard for Active Management re pest management measures as offsets when considering RC applications for Activities that may be deemed to have some negative environmental impact (consistent with clause 104 (1) (ab) of the RMA[7]).

The Rangikapiti Pā Historic Reserve juxtaposed to the Rangitoto Recreation Reserve (RRR) on the opposite sides of the Mangonui Harbour, provide a powerful example of the need for and impact of Active Management. The two reserves with their historically linked Pā sites are similar landforms which were in similar condition thirty years ago. Subsequently a large amount of labour and resources has been expended on Rangikapiti, largely by the Friends of Rangikapiti volunteers, to improve its biodiversity by diverse native planting and addressing major pest animal and invasive plant infestations. In contrast the RRR has been neglected with virtually no Active Management. The result is the contrast evident today where Rangikapiti is now a high value ecological site with continually improving native biodiversity, whereas the RRR is

[5] Regional Policy Statement for Northland , May 2016, Section 3.4, p36

[6] The definition of Active Management derives from the 24 references to that term in the RPS

[7] Clause 104 (1) (ab) of the RMA, 1991 requires a Consent Authority in considering any RC application to have regard to: *"any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity"*.

in a parlous state of worsening weed infested degradation. This result is despite of the fact that the RRR has been well 'protected' from any activity that would have required a RC (whether or not it was private or public land) under the ODP or DDP rules, but it has nevertheless suffered catastrophic degradation owing to the neglect of Active Management by its vested owner.

There is a widespread misconception that 'benevolent neglect' is a viable strategy for native bush reforestation in the FND. This notion derived from historic experience that NZ's 'traditional' pest plants (particularly gorse, tobacco weed and pampas) are pioneer opportunists that will be shaded out as native trees return. Unfortunately, the FND is now heavily impacted by invasive plants that don't succumb in this way, including in particular (at least in areas around Mangonui that the Landowners are most familiar with):

- shade loving, bird dispersed invasives such as climbing asparagus fern (asparagus scandens) and wild ginger (Hedychium flavescens and Hedychium gardnerianum),
- smothering vines such as moth plant (araujia sericifera),
- non-indigenous pioneer canopy trees such as wilding pines and wattles (racosperma dealbatum and racosperma longifolium) that outcompete indigenous pioneers such as bracken, kanuka and manuka, and
- other tenacious invasives such as lantana (lantana camara var aculeata) and boneseed (chrysanthemoides monilifera)

all of which continue to invade native bush areas without human intervention. The prevalence of these and other pernicious invasive species have put paid to 'benevolent neglect' as a viable strategy for native bush reforestation in the FND - as the Friends of Rangikapiti group can and do attest to[8].

Requiring private landowners to effectively lock-up large areas as SNAs will result in such pest infestations overwhelming their resources and capability. Smaller life-style blocks with appropriate consent conditions and/or covenants would encourage settlement of more ecologically minded landowners that would better address the pest threats.

The invasive plant issues tend to be worst in the Coastal Environment near long standing townships ; i.e. 'peri-urban areas' in Planner speak (as many of the invasive plant species probably originated from town domestic gardens); e.g. in the Mangonui vicinity. However, the DDP has the most restrictions on activities in, and subdivision of, such SNA peri-urban Coastal Environment land (including the area of the Landowners' Allotments), which will impede Active Management of such land to the worst extent.

[8] email dated May 23rd, 2021 from the coordinator of Friends of Rangikapiti, John Haines, to Ian Palmer (that Mr Haines has authorised Ian Palmer to provide copy of to the FNDC on request)

The above contention re subdivision being positive for biodiversity, is entirely consistent with the RPS, including re S. 3.15 where it states:

"Appropriate subdivision, use and development can be the most effective means to achieve on-going management and improvement of these resources and can provide opportunities to address ongoing impacts / risks and result in net positive effects that may not otherwise occur. Landowners and community groups are generally best placed to undertake Active Management because:

- *Councils have limited resources and do not have the capacity for the day-to-day on-site management that is often required, particularly for managing pest plants and animals;*
- *While rules may go some way to maintaining special areas, maintenance enhancement cannot be compelled by rules and relies on motivated people;*
- *Landowners have the ability to make decisions on how to use their land;*
- *Landowners, iwi, hapū and communities are better placed to use local knowledge, networks and resources; and*
- *Communities and iwi, hapū have a better idea of what they want and / or need regarding the matters listed."*

3) **Inaccurate Spatial Definition**

The two-page Ecological Report (ER) for the 'Butlers Point Forest' Special Natural Area (SNA FN042) as provided to the Landowners by the FNDC is dated June 24th, 2019 and is an attachment from a 2019 Wildland Consultant's report[9] (which the Landowners have obtained copy of from Wildlands). The report reveals that this Wildland's SNA identification project was entirely a desktop exercise (at least wrt FN042) which relied on ground survey work undertaken as part of DoC's 'Protected Natural Area Programme' (cryptically referenced in the SNA data sheets as "Coning 2002") where the reconnaissance work dates to 1994-1996; i.e. out of date by more than quarter of a century. In 2001 DoC's Peter Bellingham published a paper[10] high-lighting weaknesses in the PNA Programme and the associated reports that are the primary references in Wildland's SNA data sheets.

It is apparent that there has been no effective evaluation of the land within the Landowners' Allotments (which are not even located on Butler's Point - the Allotments are on the Rangitoto Peninsula) to validly assess what if any land meets the RPS SNA criteria or the draft NPS-IB criteria.

It appears that the boundaries of SNA FN042 as they pertain to the Landowners' Allotments were based solely on aerial photography acquired in August 2016 which is both out of date and cannot correctly distinguish between vegetated areas that do and don't meet the SNA criteria. Wildlands has been unable or unwilling to reveal the provenance of the photographic data set used but has conceded it is not as stated on the FN042 data sheet[11]. The spatial definition of the SNAs (at least FN042) need to accurately reflect the status of the land and the various vegetation forms existing on it on or about the time that the PDP is Notified. The aerial imagery used by Wildlands as a basis for defining FN042 to be a SNA is demonstrably not fit for this purpose.

The Land Landowners state for the record that considerable portions (and possibly all) of the proposed SNA over the Landowners' Allotments is land areas that do not meet the stated RPS criteria[12] and certainly don't meet the threshold for the "High" designation per the relevant criteria listed in the NPS-IB.

The justifications given for the FN042 SNA designation centre on the area being 'pohutukawa forest'. However, in the case of the Landowners' Allotments the extant mature pohutukawa trees are almost exclusively confined to a very narrow coastal fringe, with the vast majority of the remainder of the proposed SNA land being regenerating kanuka scrub and encompassing some areas bereft of any native trees at

[9] "Significant Indigenous Vegetation and Habitats of the Far North District", Wildlands Contract Report No. 4899d, dated December 2019.
[10] "Evaluating Methods for the Protected Area Programme", DoC Science and Research Internal Report 190, Peter Bellingham, June 2001
[11] Emails between Wildland's Principal, Nick Goldwater and Ian Palmer between June 1st, and June 11th, 2021
[12] The FN042 SNA ER lists the criteria met to justify its SNA designation as 1a(i), 1a(ii) and 2a(ii) which, while not stated, are understood to be references to SNA criteria outlined in Appendix 5 of the RPS.

all. The whole area is plagued by invasive plant infestation requiring ongoing Active Management, which thus far has only been partially successful (and in the case of the portion of FN042 covering the RRR, has been entirely neglected by its vested owner).

Historic aerial photographs evidence that much of the present-day scrub land was grazing pasture with few or no trees present until relatively recently. Even the portions of the proposed SNA that have evidently been regenerating bushland for a longer period certainly have been cleared at some point post European arrival (in addition to probably having been cleared multiple times by tangata whenua in pre-European times) given the poor biodiversity and absence of large canopy trees. This is certainly not land that typifies the highly biodiverse coastal landforms what would have been prevalent in the FND in circa 1840.

There are some small pockets of bush on the Rangitoto Peninsula inland from the pohutukawa coastal fringe that evidently escaped clear felling and burning by both the European and Maori tangata whenua; these being confined to certain extremely steep gullies and escarpments where a few large old canopy trees (including puriri) are extant. The Landowners recognise that these limited areas, which are mostly on the RRR but which extend onto one of the Landowner's Properties contiguous with the RRR to the south of it, may meet the criteria for SNA designation, notwithstanding that even these areas are far from exhibiting their original biodiversity and are also subject to pest flora and fauna infestation.

A combination of on ground site inspection by a qualified ecologist combined with the most recent high resolution remote sensing data sets and associated technologies would be required to correctly and accurately define the parts of the Landowners' Allotments (if any) that do and don't meet the SNA criteria.

The Landowners are aware of much more sophisticated aerial imaging technology than used by Wildlands in their 2019 work that can be applied to more accurately identify and differentiate types of vegetation, including oblique photography and LiDAR data combined with AI techniques, and also high resolution multi spectral data as collected as part of the drone flown Hihi UAV Pilot Project.[13] There are however privacy issues associated with gathering some or all of such data and using the above techniques and therefore the Land Landowners reserve their position as to whether they would or wouldn't authorise the FNDC or it's consultant's to do such data collection and analysis in relation to SNA mapping of the Land Landowners' Allotments.

[13] Refer Hihi UAV Pilot project coordinator Rebecca McAtamney <RMcAtamney@linz.govt.nz>

4) **Undermines Covenanting Regime:**

Major John Carter has been reported[14] to have stated: *"some compensation will be available when protecting SNAs via a council conservation or private covenant".* But is this intended to be official FNDC policy as part of the FN SNA Regime and what exactly does this statement mean?

It is noted that the FNDC's Long Term Plan 2021 (LTP21) included a Rating Relief Policy referenced as 'P21/01' that included provision for rating relief where landowners subjected their land to a covenant, including by way of a Conservation Covenant under Section 77 of the Reserves Act 1977 (and this policy is broadly consistent with the comparable policy in the previous LTP18). Currently this policy ties in with 12.2.5.13 of the ODP which states: *"The Council will postpone or remit rates where an area is afforded permanent legal protection through a covenant or reserves status where Council's Rates Remission Policy is met."* However, neither the word "*remission*" or "*rates*" appears anywhere in the 548 pages of the DDP and consequently the Landowners' fear that once the FN SNA Regime rules become enforceable (when the PDP is Notified) the FNDC will be disinclined to offer such rates relief and consequently less land will be protected by being so covenanted.

While a voluntary covenant may place added restrictions on land that it relates to, and/or may create additional obligations on a landowner (e.g. re pest control) the most tangible and verifiable elements of a covenant will typically largely mimic the FN SNA Regime rules re prohibiting or severely limiting removal of indigenous vegetation, undertaking earthworks and building structures (as can be seen by comparing the terms in the *'Sample of a Conservation Covenant Agreement'* on the FNDC's website[15] with the relevant FN SNA Regime rules in the DDP). Therefore, once land becomes subject to the rules associated with the FN SNA Regime, and notwithstanding the FNDC's current Rates Remission Policy, it is to be expected that the FNDC will not be inclined to extend rates relief in exchange for landowners voluntarily protecting SNA land by covenant.

If the FNDC does not believe or intend the outcome suggested above, then it needs to amend its Rates Remission Policy and the DDP to explicitly state that it will not use the argument that land that becomes 'protected' by its FN SNA Regime as a reason for denying rates relief in exchange for voluntary covenanting (e.g. by way of a Covenant under Section 77 of the Reserves Act 1977).

A policy that guarantees no rates will be levied on land subject to SNA is the fairest way to spread the burden associated with a SNA regime that purports to be a 'public good' measure across all of the public.

[14] Article headlined "What constitutes significant area of high ecological value", Northland Age, May 13th, 2021
[15] https://www.fndc.govt.nz/District-Plan/Conservation-covenants

5) **Undermines Conditions of Consent Regime:**

It is long established practice that Consent Authorities (CAs) such as the FNDC will in effect acquiesce to some degree of non-compliance with DP rules in return for a Resource Consent (RC) applicant agreeing to conditions of consent that involve them subjecting certain portions of their land to conservation covenants (or other types of covenant). Consent authorities are in fact required to consider such 'trade-offs' by S. 104 (1) (ab) of the RMA.

By making 42% of all land in the FN part of one or other SNA, there will less opportunity for such trade-offs and/or the offer of a covenant as a trade-off will be devalued as the land concerned will be regarded by the FNDC Planners as protected without a covenant. This again will make gaining RC more difficult for landowners which will reduce economic development and growth in the FND.

6) Discourages the enhancement of non-SNA land:

Any mandatory rule regime such as the FN SNA Regime that further restricts how land may be used is a potential economic cost on the owner of the land as it reduces the current and future owner's optionality for that land. A balance is of course required between private disbenefits and public (environmental) good. However, the 'carrot' approach to encouraging such public good outcomes (e.g. per the rates relief and conditions of consent regimes discussed above) creates an incentive to protect and enhance the ecological values of non-SNA land, while the 'stick' approach of a prescriptive and highly restrictive rules base regime such as the FN SNA Regime, does not.

Where non-SNA land has regenerating native bush on it and is approaching SNA criteria, the FN SNA Regime will incentivise destroying or impeding that regenerating native ecosystem to stop it falling into the SNA regime. Similarly, where a landowner is considering the pros and cons for fencing off marginal farmland so it can become a regenerating native bush or wet land area, the FN SNA Regime, in at least some cases, will tip the balance against an environmentally positive decision, whereas the current 'carrot' regime has been leading to such positive behaviours in many cases.

7) Rules for SNAs Unreasonably Restrictive

Publicity associated with the FN SNA Regime, including the May 4th Media release, appears to have been designed to minimise public alarm regarding the impact of the proposed changes by not spelling out the extent of change to the relevant Rules. The relevant Rules as set out in the DDP are difficult to navigate even for someone well versed in navigating complex legal documents. To be transparent, what should be laid out is what is Permitted now versus what is Permitted under the SNA Regime, at least for some representative examples.

Statements such as *"The proposed District Plan will include specific rules for SNAs related to clearing vegetation or when subdividing and this is when landowners may need to apply for resource consent."* imply to the 'uninitiated' that at worst the changes will mean one will be able to do what one can now, just that it may require a RC application. Nothing could be further from the truth. As the initiated well understand, the outcome of a RC application is entirely dependent on the relevant Rules and what designation the Activity ranks (per the RMA's six teers of Activities). For example:

Currently for land zoned General Coastal and not within an Outstanding Landscape overlay, clearance of at least 1000M^2 of indigenous vegetation is Permitted in any ten-year period subject to certain conditions which can often be met (per 12.2.6.1.3 (e) of the ODP). Even for Outstanding Landscape land there is provision for the Permitted removal of up to 1000M^2 of indigenous vegetation for a house site (per 12.1.6.1.2 (a)) and for a list of 16 other purposes, including for the creation and maintenance of firebreaks (per 12.1.6.1.2 (n)).

In contrast, under the FN SNA Regime much of the same land would be subject to the IB-S1 standard which limits Permitted Indigenous Vegetation clearance to 50m^2 over the life of the DP; i.e. less than 5m^2 per annum on average given the likely life of the DP – anything more than this will, in the Coastal Environment, be categorised as Non-Complying, and hence highly unlikely to be allowed by way of RC application. This appears to apply no matter how small the indigenous vegetation is and how weed infested (so for example kanuka seedlings that pop up everywhere on such land would be caught by this rule).

The list of exemptions to this rule (i.e. per PER-1 and PER-2 under IB-R1) is extremely restrictive compared to the exemptions that currently apply to Outstanding Landscape (per 12.1.6.1.2 in the ODP); for example creating or maintaining a firebreak in kanuka scrubland would become a Non-Complying activity in a SNA in the Coastal Environment[16], notwithstanding that it is well established that kanuka and manuka scrubland is known to be highly at risk of fire to an increasing degree due to climate change.

[16] There is an exemption for fire breaks within IB-S2 but that standard does not apply to SNA land, as under PER-2 of IB-R1 (that relates to SNA land) the only standard that applies is IB-S1. Where an Activity on SNA land is not Permitted it is Discretionary if the SNA is outside of the Coastal Environment, but it is Non-complying if it is inside the Coastal Environment.

Mayor Carter's May 24th media release endeavours to deflect blame for the restrictiveness of the FN SNA Regime on the NRC and the NZ Government. This is disingenuous in that the specific rules included in the FN SNA Regime and their degree of strictness and lack of exemptions, are not dictated by the NRC or the NZ Government, they are entirely the creation of FNDC Planning staff. It is entirely possible to devise a SNA regime that will satisfy FNDC's legal obligations wrt the RMA and RPS while being far less restrictive and having far more exemptions, as per the equivalent rules in other District Council PDPs e.g. New Plymouth District Council's 2019 Notified PDP.

8) Overlay Overload:

Under the current ODP the Landowners' Allotments are zoned General Coastal with effectively just one overlay ('Outstanding Landscape') affecting one of the three titles[17]. Under the DDP the land is proposed to be zoned Rural Production with five separate overlays on large portions of all three of the titles; i.e.:

- Heritage Area (HA)
- Coastal Environment (CE)
- Natural Character (NC)
- Outstanding Natural Landscape (ONL)
- Special Natural Area (SNA)

While they each may be defined by subtly different features of the land, they all end up as rules restricting land use particularly re clearing of native vegetation, undertaking earthworks and erecting buildings and other structures. Having such a proliferation of overlays with related but different set of rules will overly complicate RC applications and be an unnecessary drain on the FNDC's and the Landowners' resources. Some rationalisation of overlays is surely possible and desirable for all concerned.

[17] As Shown on the ODP Resource Map #15

Conclusions and Recommendations

Given the issues with the proposed FN SNA Regime as detailed above, it is proposed that the FNDC does not include a SNA overlay or set of SNA rules in its PDP, at least at the outset. S546.001 S546.002

The PDP could reference the 685 SNAs defined in the preparation of the FN SNA Regime in the same way that the ODP references the Protected Natural Areas (PNA) Programme currently. (Noting that when the Landowners applied for a RC for a boundary adjustment to their Allotments the FNDC had much regard for the particular PNA that related to the Allotments (PNA 004/207) and this was the starting point for reaching agreement on areas to covenant recognising that the PNA wasn't of sufficient resolution or sufficiently up to date to apply without further consideration of the current specifics of the land). S546.003

Then, when and if a landowner submits a RC application that relates to land subject to an SNA where the outcome of the application may be affected if the land in question met the High SNA criteria, then the landowner should have the right to have a detailed assessment of the area concerned undertaken (by consultants of his/her choice but at Council expense) applying the SNA assessment approach and criteria as set out in the NPS-IB, such that the SNA land in question can accurately and reliably be categorised as High, Medium or Low (where Low means doesn't meet the Medium threshold and hence is excluded from the SNA). S546.004

By this approach, the FNDC as the Consenting Authority can still have proper regard to information related to the SNA (as revised if appropriate per the prior paragraph) that relates to the land in question when deciding on RC conditions (and such conditions may require some or all of the SNA identified land in question to be subject to a conservation covenant). This is no different in concept to what the FNDC does now under the ODP when it has regard to PNAs even though there are no specific PNA overlay or PNA specific set of rules in the ODP.

This more flexible approach has many advantages, including:

- the precise area to be protected by covenant or RC conditions can be devised by having regard to all of the detailed specifics of the land in question after having a qualified ecologist undertake a detailed on-site inspection of the land in question.
- It preserves the flexibility of establishing covenant conditions that are customised to the specifics of the land in question and the proposed activities on that land and/or on the adjacent land the subject of the RC application.
- It is more consistent with the RPS in that the specific conditions of the RC and/or a conservation covenant may include appropriate Active Management commitments from the landowner (e.g. re dealing with pest

flora and fauna) whereas as the NRC has noted in the RPS, it is not viable to prescribe Active Management activities in a set of DP rules.

None of the above flexibility and fit for purpose conditions of consent will be possible if the highly prescriptive and highly restrictive 'one size fits all' broad brush approach of the proposed FN SNA Regime is adopted.

While the RMA requires that district plans must "*give effect"* to regional policy statements and must *"not be inconsistent"* with regional plans, there is nothing in the RMA or the RPS that dictates that the FNDC must give effect to Government and NRC SNA policy by having SNA overlays and specific prescriptive SNA rules in its next DP scheduled to become operative shortly. It is perfectly possible to give effect to the laudable SNA objectives and policy as set out in both the RPS and the NPS-IB in a flexible and less prescriptive, and above all else in a fairer fashion than currently proposed.

Ian Palmer Zejia Hu

June 11th, 2021

Attachment 1, Details of the Allotments associated with this Submission

	75 Peninsula Parade Title Details -Existing										
Existing Site No. (per Planning Report nomenclature)	**Legal Descriptions**	**Certificate Identifiers**	**Lot Areas per Titles (hectares)**	**Lot Areas Actual (est for Ltd)**	**Combined Title Areas**	**Informal Descriptors**	**Owner**	**Valuation Numbers**	**Rate Account Numbers**	**Comments**	
1 (Green)	Lot 1 DP322506	89829	6.4700	6.4700	6.4700	"Harbourside"	Zejia Hu	00085-07303	RTZ 2439079-1		
2 (Red)	Lot 1 DP391076	365563	0.3011	0.3011	10.2197	"Small Triangle"	Ian D. Palmer	00085-07301	RTZ 5013476-6		
	Lot 2 DP391076		7.5370	7.5370		"Panoramic Views"					
	Lot 1 DP204980	NA134D/247	6.0413	2.3816		"Northern Beach"				Discrepancy (Ha)=	3.6597
3 (Blue)	Allotment 79 Parish of Mangonui East	NA134D/248	0.6399	0.6399	0.6399	"Beach House Lot"	Ian D. Palmer	00085-07305	RTZ 5013477-4		
Total Property:			20.9893	17.3296	17.3296	42.82	acres				
Total by Owners:	*Ian D. Palmer:*				*10.8596*						
	Zejia Hu:				*6.4700*