

BEFORE THE INDEPENDENT HEARINGS PANEL

PROPOSED WAIKATO DISTRICT PLAN (STAGE 1)

Under the Resource Management Act 1991 (**RMA**)

In the matter of hearing submissions and further submissions on the Proposed Waikato District Plan (Stage 1) – **Hearing 21a Significant Natural Areas**

By Hynds Pipe Systems Limited (Submitter, Further Submitter)
Hynds Foundation (Further Submitter)

Statement of evidence by Dharmesh Chhima, TSC

(Planning)

Dated: October 2020

INTRODUCTION

1. This is a planning statement of evidence on behalf of Hynds Pipe Systems Limited and Hynds Foundation in relation to the Significant Natural Area (**SNA**) proposed to be applied to the site at 62 Bluff Road, Pokeno.
2. Hynds Pipe Systems Limited are a submitter (S983) and further submitter (FS1341). Hynds Foundation are a further submitter (FS1306). The further submissions of both Hynds Pipe Systems Limited and Hynds Foundation support the Grander Investments submission (S548) seeking changes to the SNA identified on the planning maps for the property at 62 Bluff Road. Grander Investments were the former owners of 62 Bluff Road and the land is now owned by the Hynds Foundation.
3. Hynds Pipe Systems Limited and Hynds Foundation are referred to collectively as **Hynds** in this evidence unless the distinction is made between the two organisations. Hynds has presented evidence at the Industrial / Heavy Industrial Zones, Residential Zone and Rural Zone hearings.

Experience and Qualifications

4. My full name is Dharmesh Chhima. I am a Senior Planner at TSC in Pukekohe. I hold a Bachelor of Planning (Hons) and a Masters of Architectural Studies (Hons) from the University of Auckland.
5. My relevant professional experience spans 12 years working for local authorities and 4 years in my current private sector role at TSC. In my 12 years with local authorities (Auckland Council and former Franklin District Council) I was involved in assessing a wide range of land use, subdivision, water take and discharge consent applications. In my 4 years at TSC I have been the lead planner on resource management projects from the feasibility and design stage through to project completion. This has included the preparation and lodgement of rural and urban land use and subdivision consent applications in the Waikato District.

Code of Conduct

6. I confirm that, in preparing this statement of evidence, I have read the Environment Court's Code of Conduct for Expert Witnesses contained in Practice Note 2014 and agree to comply with it in giving this evidence. I also confirm that I have not omitted to consider any material facts known to me that might alter or detract from the opinions expressed in my evidence. The opinions I express are based on my qualifications and experience, and are within my area of expertise, except where relying on the opinion or evidence of another person.

SCOPE OF EVIDENCE

7. In my evidence I will address:
- (a) The submission relating to the SNA mapping at 62 Bluff Road;
 - (b) Council's response (s42A Report) to the SNA mapping.

SUBMISSION RELATING TO THE SNA MAPPING

8. The notified version of the Proposed Waikato District Plan Maps identifies two SNA's on the property at 62 Bluff Road. The submission by Grander Investments opposed the identification of the northern SNA due to its low ecological value. The submission was supportive of retaining the other SNA identified at the southern end of the site. The two SNA's are shown in the image below:

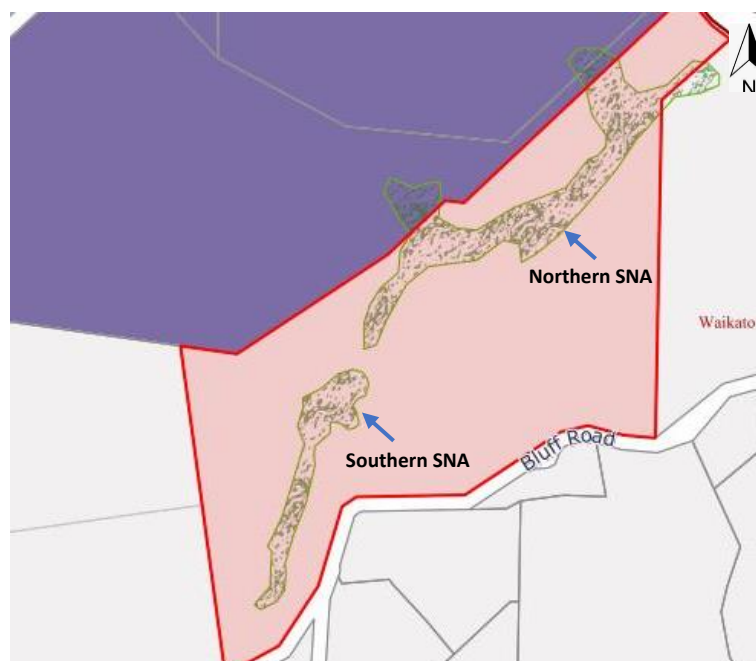


Figure 1: The two SNA's mapped at 62 Bluff Road.

COUNCIL'S RESPONSE (s42A REPORT)

SNA Identification

9. Paragraph 719 of the s42A report (Part 3 – SNA Mapping) prepared by Susan Chibnall has recommended that all SNA's be removed from the planning maps where ground truthing has not been undertaken. This is until such time as ground truthing and a plan change (or series of plan changes) can be undertaken by Council to include those areas qualifying as SNA's in the planning maps (paragraph 66).
10. In paragraph 950, Ms Chibnall specifically addresses the 62 Bluff Road property and acknowledges that no site visit / ground truthing has been undertaken. Therefore, Ms Chibnall has recommended that the SNA's be removed from the planning maps for this property. I accept the reasoning given by Ms Chibnall for the SNA's being removed.
11. I note that even if Ms Chibnall had not recommended removal of the northern SNA, the evidence of Dr Mark Bellingham on behalf of Hynds has confirmed (by ground truthing) that this area does not meet the criteria for significant indigenous biodiversity in the Proposed Waikato District Plan.

SNA definition

12. The one concern that I have in relation to Ms Chibnall's s42A report relates to the recommended amendment to the definition of SNA as set out below (Black text is the rule as notified. Red text is the s42A amendment):

Means an area of significant indigenous biodiversity that is identified as a Significant Natural Area on the planning maps or meets one or more criteria in Appendix 2 Criteria for Determining Significance of Indigenous Biodiversity.

13. I consider that the above amendment will create uncertainty for landowners seeking to use or develop land that has indigenous vegetation. The uncertainty lies in whether the SNA rules apply to a landowner's property which is dependent on an assessment as to whether an area qualifies as an SNA under Appendix 2 of the Proposed Waikato District Plan.

14. Under the amended definition, landowners will have to obtain the input of an ecologist to determine if an area is an SNA or not, and therefore if earthworks and/or vegetation clearance is a permitted activity or not. In this case, there could be debate or disagreement amongst parties as to whether an area meets the criteria in Appendix 2. For example, the Council may not agree with the landowner's ecological assessment after the works have already been undertaken and may come to a different conclusion over the permitted activity status of the earthworks or vegetation clearance.
15. In my opinion, it is important for all parties (Council, landowners and other plan users) to have a clear understanding on whether an activity is permitted or not. This should be achieved by avoiding rules that reserve discretion or create uncertainty around compliance. Furthermore, as noted by the Environment Court in *Friends of Pelorus Estuary Incorporated v Marlborough District Council* [2008] Decision C004/08 at [101]:

There are practical disadvantages in adopting conditions requiring evaluation to determine whether or not a proposal is a permitted activity. Rules by which permitted activities are defined in such a way are regrettable, and might be questioned when the instrument is open for submissions and appeals.

16. Whilst I acknowledge that the s42A approach is being promoted as an interim measure until the ground truthing work has been undertaken, being an interim measure does not excuse creating uncertainty or achieving less than optimal planning practice.

CONCLUSION

17. I agree with the removal of the SNA as identified on the planning maps. However, I do have a concern that the s42A amendment to the proposed definition of SNA will create uncertainty for landowners and the Council when it comes to implementing the earthworks and vegetation clearance rules.

Dharmesh Chhima

October 2020