

Before Independent Hearing Commissioners In Ngāruawāhia

Under the Resource Management Act 1991 (the Act)

In the matter of The Proposed Waikato District Plan – Hearing 21A: Natural
Environments – Indigenous Vegetation and Habitats

Summary Statement of Evidence of Marie-Louise (Miffy) Foley

for Waikato Regional Council

1 Introduction

1.1. I am supportive of a number of the recommendations made in the Section 42A report for Hearing 21A: Significant Natural Areas (SNA). However, as per my evidence, I have concerns with, or comments relating to, some of the recommendations in the s42A report and rebuttal report, particularly in relation to:

- Removal of SNAs that have not been ground truthed from map overlay;
- Significant habitats of indigenous fauna,
- Removal of Policy 3.2.2 Recognise and identify,
- Inclusion of environmental compensation in Policy 3.2.3 Management hierarchy, and
- Policy 3.2.6 Providing for vegetation clearance.

2 Removal of SNA mapping

2.1 I do not support the s42A report recommendation to remove the majority of SNA from the planning maps and instead rely on the criteria for an SNA contained in Appendix 2 of the proposed plan due to the inaccuracy of the SNA mapping.

2.2 I note Ms Chibnall's recommendation¹ to include land managed by Department of Conservation (DOC) and SNAs that are covenanted by the Queen Elizabeth Trust on the SNA mapping on the proposed plan maps. I support this recommendation.

2.3 For much of the District's significant indigenous biodiversity, removing the mapping is maintaining the status quo approach which I do not believe gives effect to the RPS, particularly Section 11 of the RPS which seeks to address declining biodiversity through policies and implementation methods aimed at maintaining or enhance indigenous biodiversity.

2.4 As highlighted in Dr Deng's evidence, Mr Turner's report is not adequately robust or comprehensive to be used as the basis for a decision of this magnitude. Further, the plan is progressing through a comprehensive consultation process as per Schedule 1 of the Resource Management Act 1991 (RMA), in addition to the multiple opportunities for landowners to be involved in the lead up to the notification of the plan.

¹ Paragraph 64, Section 42A Rebuttal Report

- 2.5 In my experience, plan mapping is a representation of reality rather than a confirmation of the exact location of an item or area on the ground. I note that recent approaches of District Plans notified under the NZ planning standards contain terms and conditions to address this matter. The Panel could consider a similar approach here.
- 2.6 As outlined in Dr Deng's evidence, there are significant risks associated with not showing SNA sites on the planning map in terms of potential further loss of biodiversity across the District. Identifying SNAs on the plan maps provides a clear and certain way of addressing a matter of national importance under the RMA. Not mapping SNAs places a more onerous requirement on landowners who wish to clear or modify indigenous vegetation under permitted activity standards as each one will need to engage specialist ecological services to assess the vegetation which I do not believe would be efficient or effective in meeting Objectives 3.1.1 and 3.2.1 of the Plan of as per the s32 of the RMA. The implications of having a SNA inaccurately identified on a property are minor or could be mitigated to an extent by permitted activity standards.
- 2.7 Including the mapping in the proposed district plan is WRC's preferred position as outlined in my evidence and this could be done as a variation to the proposed district plan to allow for refinement of the mapping to be undertaken and then add the mapping to the plan at a later date. I understand that the NPS IB is currently 'pending approval' and likely to be released in April 2021 which would allow incorporation of NPS requirements at the same time.
- 2.8 While this is being undertaken, a more general rule could be included in the plan. Ms Chibnall² has asked for some guidance on what this might look like. I suggest a combined rule that applies to 'indigenous vegetation clearance' rather than separate rules for 'vegetation within an SNA' and 'indigenous vegetation outside an SNA' – an example is included in Appendix 1. This would mean that a landowner would not need to know if the indigenous vegetation on their property is an SNA to undertake a permitted activity. Only if they are intending to exceed those thresholds would the landowner need to ascertain whether the indigenous vegetation on their property is an SNA. The restricted discretionary and discretionary rule framework can then specify

² Paragraph 57 Section 42A Rebuttal Report

different requirements depending on the whether the indigenous vegetation is assessed as being and SNA or not.

2.9 The permitted activity rules recommended in the s42A report³ for inside and outside an SNA are reasonably similar as can be seen in the table below (based on the rural zone rules).

| Outside SNA | Inside SNA |
|--|---|
| <p>P1 (a) Indigenous vegetation clearance outside a Significant Natural Area identified on the planning maps or in Schedule 30.5 (Urban Allotment Significant Natural Areas) must be for the following purposes:</p> <ul style="list-style-type: none"> (i) Removing vegetation that endangers human life or existing buildings or structures; (ii) Maintaining existing tracks and fences; (iii) Maintaining existing farm drains; (iv) Conservation fencing to exclude stock or pests; (v) Gathering of plants in accordance with Maori custom and values; or (vi) A building platform and associated access, parking and manoeuvring up to a total of 500m² clearance of indigenous vegetation and there is no practicable alternative development area on the site outside of the area of indigenous vegetation clearance. (vii) In the Aggregate Extraction Areas, a maximum of 2000m² in a single consecutive 12 month period per record of title | <p>P1 (a) Indigenous vegetation clearance in a Significant Natural Area identified on the planning maps or in Schedule 30.5 (Urban Allotment Significant Natural Areas) for the following purposes:</p> <ul style="list-style-type: none"> i) Removing vegetation that endangers human life or existing buildings or structures; ii) Conservation fencing to exclude stock or pests; iii) Maintaining existing farm drains; iv) Maintaining existing tracks and fences; or v) Gathering plants in accordance with Maaori customs and values. vi) Conservation activities |
| <p>P2 deleted as all manuka and kanuka is technically SNA</p> | <p>P2 Removal of up to 5 manuka and/or kanuka outside of the Coastal Environment or a wetland per single consecutive 12 month period per property for domestic firewood purposes and arts or crafts</p> <p>P3 (a) Indigenous vegetation clearance outside of the Coastal Environment for building, access, parking and manoeuvring areas in a Significant Natural Area identified on the planning maps or in Schedule 30.5 (Urban Allotment Significant Natural Areas) must comply with all of the following conditions:</p> <ul style="list-style-type: none"> (i) There is no practicable alternative development area on the site |

³ Appendix 2 Recommended amendments

| Outside SNA | Inside SNA |
|--|--|
| | <p>outside the Significant Natural Area; and</p> <p>(ii) The total indigenous vegetation clearance does not exceed 250m².</p> <p>(iii) The vegetation clearance is at least 10m from a natural waterbody</p> |
| <p>P3 (a) On Maaori Freehold Land or Maaori Customary Land, the clearance of indigenous vegetation clearance outside a Significant Natural Area identified on the planning maps or in Schedule 30.5 (Urban Allotment Significant Natural Areas) must not exceed:</p> <p>(i) 1500m² for a Marae complex including associated access, parking and manoeuvring;</p> <p>(ii) 500m² per dwelling including associated access, parking and manoeuvring; and</p> <p>(iii) 500m² for a papakaainga building including associated access, parking and manoeuvring.</p> <p>(iv) And there is no practicable alternative development area on the site outside of the area of indigenous vegetation clearance</p> | <p>P4 (a) On Maaori Freehold Land or Maaori Customary Land, the clearance of indigenous vegetation clearance outside a Significant Natural Area identified on the planning maps or in Schedule 30.5 (Urban Allotment Significant Natural Areas) must not exceed:</p> <p>(i) 1500m² for a Marae complex including associated access, parking and manoeuvring;</p> <p>(ii) 500m² per dwelling including associated access, parking and manoeuvring; and</p> <p>(iii) 500m² for a papakaainga building including associated access, parking and manoeuvring.</p> <p>(iv) And there is no practicable alternative development area on the site outside of the area of indigenous vegetation clearance</p> |
| <p>P4 Indigenous vegetation clearance associated with gardening outside a Significant Natural Area</p> | <p>P4 Indigenous vegetation clearance associated with gardening outside a Significant Natural Area</p> |
| | <p>P5 & P6 deleted</p> |
| | <p>P7 Removal of manuka and/or kanuka to maintaining productive pasture complying with the following:</p> <p>(i) up to 2000m² per single consecutive 12 month period; and</p> <p>(ii) plants are less than 4m in height; and</p> <p>(iii) outside of the Coastal Environment; and</p> <p>(iv) outside a wetland; and</p> <p>(v) more than 10m from a waterbody.</p> |
| <p>P5 Vegetation clearance of non-indigenous species outside a Significant Natural Area</p> | <p>P8 The trimming or pruning of indigenous vegetation in a Significant Natural Area which will not directly result in the death, destruction, or irreparable damage of the vegetation</p> <p>P9 Vegetation clearance of non-indigenous species outside a Significant Natural Area</p> |

2.10 Within an SNA, there are several additional rules applying to kanuka and manuka given that by default kanuka and manuka are classified as SNA through their classification as threatened. This won't then allow the broadening of the permitted clearing outside of an SNA so makes no change to what is permitted outside an SNA. There are two

instances where the vegetation clearance rules are less stringent outside of an SNA that I suggest removing or modifying – P1 (a) (vi) & (vii). P1 (a) (vii) relates to clearance within Aggregate Extraction Areas which are shown on an overlay on the planning maps. From my reading of the plan, there is no particular rule framework for the Aggregate Extraction Areas, rather they are identified in relation to reverse sensitivity. Extractive industries require resource consent, therefore, any vegetation removal is best considered through that process rather than as a permitted activity rule.

2.11 In regard to P1 (a) (vi), it allows for indigenous vegetation clearance outside of an SNA of up to 500m² to allow for building platform and associated access, parking and manoeuvring. Within an SNA, the rule only allows for an area of 250m² which would represent a halving of the area that could be cleared. I appreciate that this is a significant change and may result in some landowners needing to get resource consent where they might otherwise, but without any maps to guide the identification of an SNA, this trade off would allow a simpler rule framework that does not require every landowner to have an assessment of indigenous vegetation proposed to be cleared under permitted activity rules to know which rules apply.

2.12 Ms Chibnall⁴ raises the potential of some SNA being missed on the maps I agree with this point and, as per my evidence, I request that a mechanism to manage areas that meet the WRPS 11A criteria be included as per WRC submission point 81.20, should mapping be retained.

3 Significant habitat of indigenous fauna

3.1 I believe that Ms Chibnall⁵ may have misunderstood my point in my evidence in relation to identified areas of significant habitat of indigenous fauna – the WRC submission on the National Policy Statement on Indigenous Biodiversity related to councils not being resourced to undertake surveying, sourcing and disseminating data or protection of species and that this should remain a DOC responsibility. My understanding of this is that DOC should undertake the surveying and mapping of, and overall protection of these species, but that DOC should provide this information to councils to include in resource management plans with the aim of habitat protection. As noted in my evidence there is the opportunity to include additional matters of control and matters

⁴ Paragraph 56, Section 42a Report Rebuttal Evidence – Hearing 21A

⁵ Paragraph 167, Section 42a Report Rebuttal Evidence – Hearing 21A

of discretion to ensure that habitat that meets Criterion 3⁶ is considered when activities are proposed that might impact that habitat.

4 Policy 3.2.2 Recognise and identify

- 4.1 As with my position on the mapping, I request that Policy 3.2.2 Recognise and identify be retained but with amendments to address Ms Chibnall's concerns about cross-referencing to the RPS. This policy is giving effect to Policy 11.2 of the RPS which in turn addresses the requirements of s6(c) of the RMA to protect areas of significant indigenous vegetation and significant habitat of indigenous fauna in terrestrial, freshwater, coastal and marine environments.

5 Environmental compensation

- 5.1 Ms Chibnall recommended an additional subclause to allow for environmental compensation but noted that it would be beneficial for WRC to provide comment on environmental compensation in light of RPS subclause 11.1.8 (b) Plan Development which states that local authorities should consider using other economic instruments to maintain or enhance indigenous biodiversity. The RPS does not mention environmental compensation but it could potentially be considered as an alternative economic instrument. In my evidence, I considered that more work should be undertaken to define clear limits as to when and how it would be used. I note the DOC have discussed this in their evidence⁷ and suggested a definition. I support the inclusion of a definition to support the addition of the concept of environmental compensation to the plan to provide context and parameters around its use.

6 Policy 3.2.6 Providing for vegetation clearance

- 6.1 As per WRC's original submission, I request that *Policy 3.2.6 Providing for vegetation clearance* is amended to recognise that only clearance with minor adverse effects on indigenous biodiversity will be enabled as a permitted activity, and that the policy is relocated under *Section 3.1 Indigenous Vegetation and Habitats* with the specific reference to SNA removed to recognise that it also applies to other indigenous vegetation.

⁶ Waikato Regional Policy Statement - Table 11-1: Criteria for determining significance of indigenous biodiversity

⁷ Evidence of Ilse Corkery & Evidence of Andrew Riddell both on behalf of the Director General of Conservation dated 29 October 2020

7 Response to Council Rebuttal S42A Report

7.1 Ms Chibnall⁸ recommends a new non-regulatory policy as follows:

3.1.2 D Significant Natural Area Assessment Funding Policy

Council in joint responsibility with Waikato Regional Council will meet the costs of an ecological assessment to evaluate whether an area meets one or more of the criteria in Appendix 2: Criteria for Determining the Significance of Indigenous Biodiversity

7.2 While I support the intent of this policy, WRC has not been consulted on this proposal to assist with funding of ecological assessments. This would be an ongoing commitment of funding for an unknown amount which would need to be considered through WRC's funding and decision-making processes. As this has not occurred, I request that this recommendation be rejected. As noted in my evidence, WRC are keen to continue to work co-operatively with WDC to improve SNA mapping and management across the district.

Miffy Foley

16 November 2020

⁸ Paragraph 139, Section 42a Report Rebuttal Evidence – Hearing 21A

Appendix 1: Example of a combined indigenous vegetation clearance permitted activity standard rule (Rural Zone)

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| Combined rule |
| <p>P1 (a) Indigenous vegetation clearance for the following purposes:</p> <ul style="list-style-type: none"> vii) Removing vegetation that endangers human life or existing buildings or structures; viii) Conservation fencing to exclude stock or pests; ix) Maintaining existing farm drains; x) Maintaining existing tracks and fences; xi) Gathering plants in accordance with Maaori customs and values; or xii) Conservation activities. |
| <p>P2 Removal of up to 5m³ manuka and/or kanuka outside of the Coastal Environment or a wetland per single consecutive 12 month period per property for domestic firewood purposes and arts or crafts</p> |
| <p>P3 (a) Indigenous vegetation clearance outside of the Coastal Environment for building, access, parking and manoeuvring areas must comply with all of the following conditions:</p> <ul style="list-style-type: none"> (iv) There is no practicable alternative development area on the site outside of the area of indigenous vegetation clearance; and (v) The total indigenous vegetation clearance does not exceed 250m². (vi) The vegetation clearance is at least 10m from a natural waterbody |
| <p>P4 (a) On Maaori Freehold Land or Maaori Customary Land, the clearance of indigenous vegetation clearance must not exceed:</p> <ul style="list-style-type: none"> (v) 1500m² for a Marae complex including associated access, parking and manoeuvring; (vi) 500m² per dwelling including associated access, parking and manoeuvring; and (vii) 500m² for a papakaaingā building including associated access, parking and manoeuvring. (viii) And there is no practicable alternative development area on the site outside of the area of indigenous vegetation clearance |
| <p>P4 Indigenous vegetation clearance associated with gardening</p> |
| <p>P5 Removal of manuka and/or kanuka to maintaining productive pasture complying with the following:</p> <ul style="list-style-type: none"> (vi) up to 2000m² per single consecutive 12 month period; and (vii) plants are less than 4m in height; and (viii) outside of the Coastal Environment; and (ix) outside a wetland; and (x) more than 10m from a waterbody. |

P6 The trimming or pruning of indigenous vegetation which will not directly result in the death, destruction, or irreparable damage of the vegetation

P7 Vegetation clearance of non-indigenous species