

# **SECTION 42A REPORT**

Rebuttal Evidence

## **Hearing 21A : Natural Environments - Indigenous Vegetation and Habitats**

Report prepared by: Susan Chibnall

Date: November 2020



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## I Introduction

1. My name is Susan Chibnall. I am employed by Waikato District Council as a policy planner within the Resource Management Team.
2. I am the writer of the original s42A report for Hearing 21A: Natural Environments - Indigenous Vegetation and Habitats.
3. In the interests of succinctness I do not repeat the information contained in Parts One, Two and Three of that s42A Hearing Report for Hearing 21A: Natural Environments - Indigenous Vegetation and Habitats, and request that the Hearings Panel take this as read.

## 2 Purpose of the report

4. In the directions of the Hearings Panel dated 26 June 2019, paragraph 18 states:
 

*If the Council wishes to present rebuttal evidence it is to provide it to the Hearings Administrator, in writing, at least 5 working days prior to the commencement of the hearing of that topic.*
5. The purpose of this report is to consider the primary evidence and rebuttal evidence filed by submitters.
6. Evidence was filed by the following submitters within the timeframes outlined in the directions from the Hearings Panel<sup>1</sup>:
  - a. Warwick Cheyne [268]
  - b. Dharmesh Chhima and Dr Bellingham on behalf of Hynds Pipes Systems and Hynds Foundation [FS1341] and [FS1306]
  - c. Craig Pilcher on behalf of Bathurst BT Mining
  - d. Richard Matthews on behalf of Genesis Energy
  - e. Hill Country Farmers Group
  - f. Anthony Blomfield on behalf of Dilworth Trust
  - g. Hillary Walker on behalf of Federated Farmers
  - h. Christopher Scrafton on behalf of TaTa Valley Ltd
  - i. Marc ter Beek
  - j. Pauline Whitney on behalf of Transpower
  - k. Christine Foster on behalf of Meridian Energy
  - l. Miffy Foley and Dr Yanbin Deng on behalf of Waikato Regional Council
  - m. Terence Denton and Bernardina Van Loon
  - n. Lynette Wharfe on behalf of Horticulture New Zealand
  - o. Kim Robinson on behalf of Lochiel Farmland Limited
  - p. Sarah Nairn on behalf of The Surveying Company
  - q. Mike Wood on behalf of Waka Kotahi (NZ Transport)
  - r. Phil Swan

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<sup>1</sup> Hearings Panel Directions 21 May 2019

7. Rebuttal evidence was filed by the following submitters within the timeframes outlined in the directions from the Hearings Panel<sup>2</sup>:
  - a. Richard Matthews on behalf of Genesis Energy
  - b. Chris Scrafton on behalf of TaTa Valley Ltd
  - c. Hilary Walker on behalf of Federated Farmers of New Zealand (FFNZ).
8. Late evidence was filed by the following submitters:
  - a. Department of Conservation on 30<sup>th</sup> October 2020
  - b. CMG Solutions on behalf of Delta Property Group on 9<sup>th</sup> November.
9. Mr Warwick Cheyne lodged draft evidence on 28 October 2020 then sought an extension of time from the Hearings Panel for the filing of a final version. The final version was received on the 2<sup>nd</sup> November 2020.

## 3 Consideration of evidence received

### 3.1 Matters addressed by this report

10. I have structured this report by the main topics raised in evidence and rebuttal evidence from submitters, as follows:
  - a. General submissions
  - b. SNA Mapping
  - c. Objective 3.1.1
  - d. Policy 3.1.2
  - e. Objective 3.2.1
  - f. Policies 3.2.2 - 3.2.7
  - g. Chapter 13: Definitions
  - h. Land use rules - Earthworks
  - i. Land use - Vegetation clearance.
11. I have identified my recommended amendments from my original section 42A report in **red strikethrough and underlining**, and any subsequent recommended amendments arising from my consideration of evidence as **blue strikethrough and underlining**.

### 3.2 Corrections to the section 42A Report

12. Unfortunately, the following submission was omitted from my Section 42A report:

Submission point	Submitter	Summary of submission
648.2	Chorus New Zealand Limited	Retain Objective 3.1.1 - Biodiversity and ecosystems as notified.

13. In respect of the submission from Chorus New Zealand Limited where they have sought to retain Objective 3.1.1 Biodiversity and ecosystems, I consider that Objective 3.1.1 should be retained, as it supports the maintenance or enhancing of biodiversity and ecosystems.

<sup>2</sup> Hearings Panel Directions 26 June 2019

However, I recommend accepting this submission only in part, as I have recommended amendments to the objective in response to other submissions.

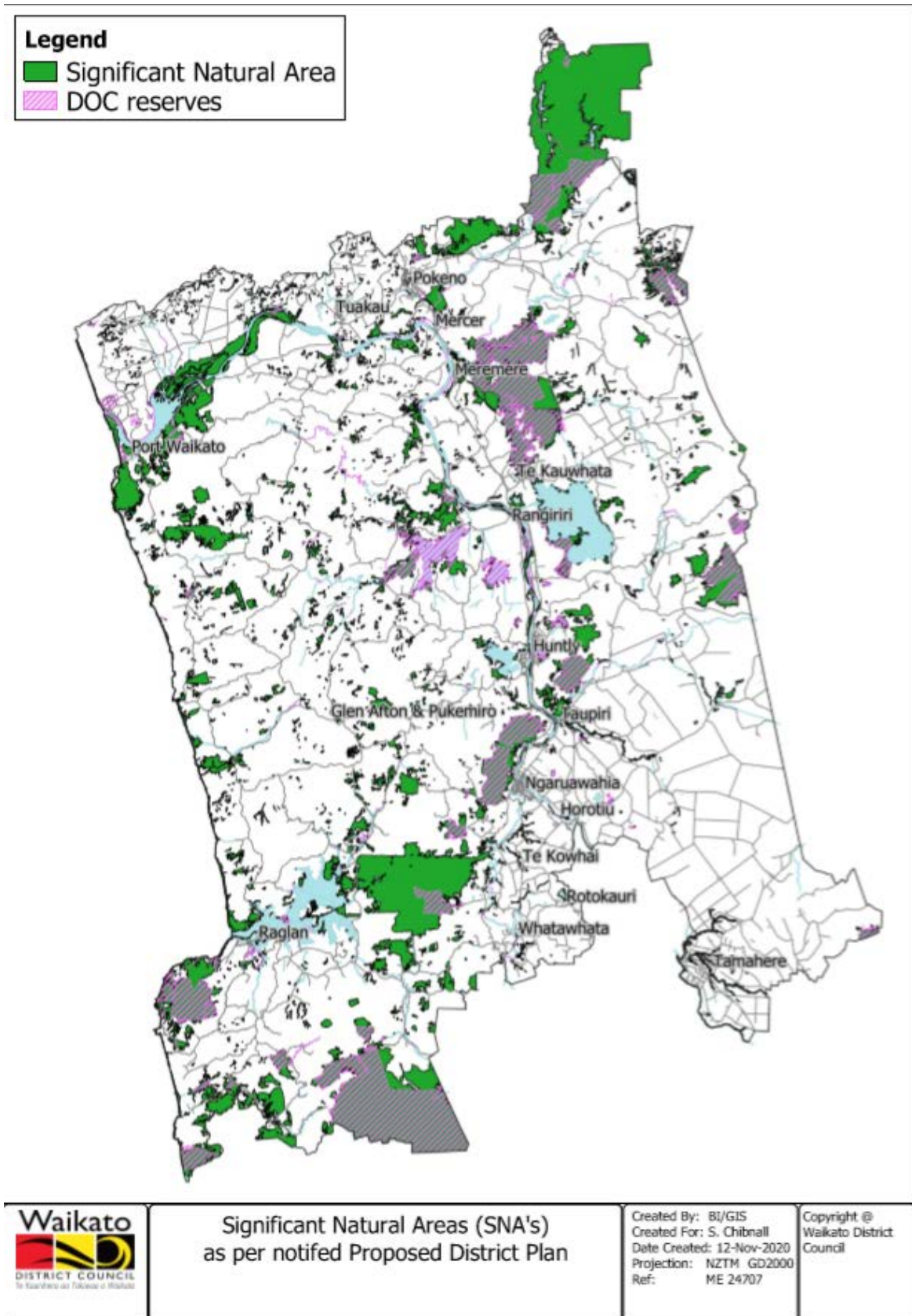
## 4 General submissions

### 4.1 Analysis

14. There were a four original submission points from Warwick Cheyne - [268.1], [268.3], [268.4] and [268.7]. These generally sought to delete rules in relation to earthworks, vegetation clearance and deleting the SNA mapping on the property at 648 Waipuna Road Waerenga. I note however that the property has since had a change of ownership.
15. The evidence submitted by Mr Cheyne has provided a discussion on the approach to the management of SNAs. I would like to acknowledge Mr Cheyne's evidence; however, I have difficulty in relating his evidence to the s42a report and whether he agrees with any of the recommendations. Mr Cheyne may wish to speak to his evidence at the hearing to clarify his evidence. The points I took away from his evidence is a request for deferring implementing SNA for 3 years, but if deferring is not an option, then he requests removal of the SNA from the property 648 Waipuna Road. The property at 642 Waipuna Road has a small area of SNA identified on it and was not visited as part of this process. My recommendation is for all mapping to be deleted, other than the areas that have been verified by a site visit. Mr Cheyne also seeks removing SNAs from all privately-owned property until there is clarity and surety of compensation to these land owners. Unfortunately, not all SNAs are on land owned by a government organisation such as Council or the Department of Conservation. In recognition of the protection of SNA on behalf of the whole district, there is funding available by way of the Conservation Strategy Fund.

## 5 SNA Mapping

16. The map below identifies the extent and location of the SNAs as notified in the Proposed District Plan.



## 5.1 General discussion

17. There has been much discussion in the evidence on the mapping of SNAs. I accept that property owners are constantly needing to navigate changes in legislation, where land with indigenous vegetation has become the landowner's responsibility to look after for the greater good of the district. The Resource Management Act (RMA), the Regional Policy Statement and soon-to-be -released National Policy Statement on Indigenous Biodiversity provide a strong view that protection of indigenous biodiversity is vital. I am mindful that there is a risk that RMA practitioners write ideal outcomes for the greater good, without necessarily considering how provisions can be implemented in a practical way. However, my past experience as a Monitoring Officer means that I am aware of how enforcement works when implementing district plan rules and the need for meaningful rules that are enforceable. In respect of mapping, I agree that ideally SNAs would be mapped, as this would give certainty to property owners as to where provisions apply.
18. I agree that indigenous vegetation should be protected, however I also believe that assistance should be afforded to property owners rather than the stick that represents enforcement (although I accept that sometimes this is necessary). This approach is also strongly supported by Federated Farmers and other private landowners. I am a firm believer that property owners' buy-in is essential, and working closely with landowners will ensure the best possible outcome for the district.
19. My experiences with property owners are that, when given the opportunity and encouragement and support for active management, they could expand these areas even more. Of the 40 site visits undertaken, practically all were actively undertaking some form of care and enhancement of the indigenous vegetation on their property and were keen to engage with council and learn about their SNA.
20. Discussions with Council's GIS team has informed me that the SNA spatial data in 2018 (date of notification of the proposed plan) used an aerial that used 2012 as the base information. This I believe has exacerbated the mapping issue due to the aerials now being 8 years out of date.
21. In my s42A report I outlined some options to address the inaccuracies of the mapping. My recommended option is to remove the mapping, except for the sites where ground-truthing has been undertaken. In these cases, I recommend that the mapping of SNAs be retained on the planning maps.
22. My recommended approach to removing the SNA mapping until a ground-truthing exercise has been undertaken, has received evidence mainly in support of this approach and one submission against. The definition of an SNA is intrinsically linked to the question of delineating the SNAs on the planning maps, thus I have considered both of these aspects of the evidence.
23. The table below contains the submitters' responses to the mapping issue as well as the response to the recommendation to amend the definition of SNA.

<b>Submitter</b>	<b>Mapping removed from the planning maps</b>	<b>Amendments to the definition</b>
BT Mining (Craig Pilcher)	Supports	No comment
Genesis Energy (Richard Matthews)	Supports	Not supported
Hill Country Farmers Group	Supports	No comment
Dilworth Trust (Anthony Blomfield)	N/A	No comment
Federated Farmers (Hillary Walker)	Supports	No comment
TaTa Valley Ltd (Christopher Scrafton)	No specific comment as still may wish to	Not supported

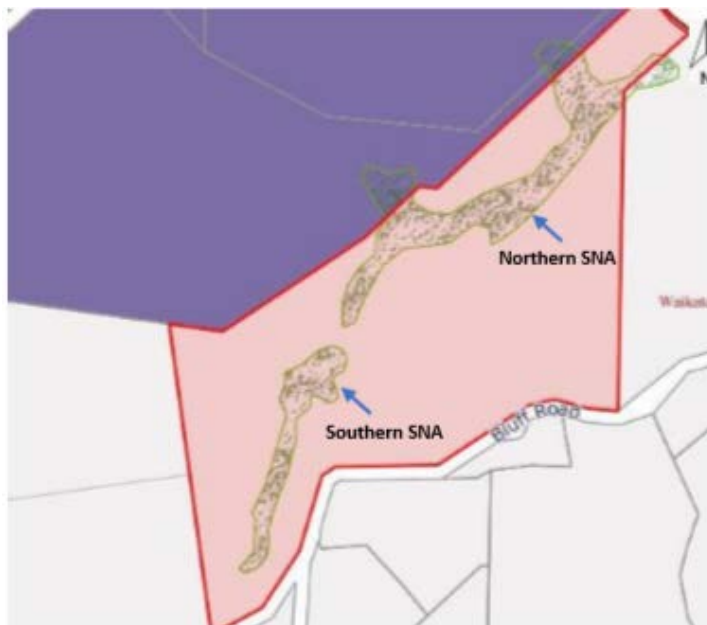
	pursue site-specific approach	
Waikato Regional Council (Miffy Foley) Waikato Regional Council (Dr Yanbin Deng)	Not supported	No specific comment
Marc ter Beek	Supports	No comment
Meridian Energy (Christine Foster) addressing Transpower evidence	No comment	No comment
Transpower (Pauline Whitney)	No comment	No specific comment
Terence Denton and Bernardina Van Loon	Inconclusive	Not supported
Horticulture NZ (Lynette Wharfe)	No comment	No comment
Hynds (Dharmesh Chhima) Hynds (Dr Bellingham)	Supported	Not supported
Lochiel Farmland Limited (Kim Robinson)	No comment	No comment
The Surveying Company (Sarah Nairn)	Supports	Not supported
Waka Kotahi-NZ Transport (Mike Wood)	Supports	No comment
Phil Swan	Supports	No comment
Warwick Cheyne	Not stated	No comment
Department of Conservation	Supports	Supports

## 5.2 Analysis

24. The question of whether to map or not map SNAs has created tension between landowners' rights and the 'greater good'. A variety of reasons were provided in the evidence for deleting the delineation of SNAs from the planning maps until ground-truthing has been undertaken, and I have summarised the main reasons in the following paragraphs.
25. Pam Butler on behalf of KiwiRail has provided evidence supporting the removal of SNA mapping from KiwiRail designations and has accepted the recommendations in the s42A report.
26. Sarah Nairn has provided evidence on behalf of the Surveying Company. The Surveying Company supports the removal of the SNAs which have not been ground-truthed and the retention of the 40 sites that have been ground-truthed on the proposed maps. The Surveying Company considers that there are two negative consequences if the inaccurate mapping were retained on the maps:
- (a) *The provisions will require unnecessary resource consents for vegetation clearance and earthworks. This is not only a waste of applicant's and Council's time and resources but is also unfair as it is a burden placed on some landowners and not others;*
  - (b) *The integrity of the PWDP will be eroded as it will contain provisions which are known to be inaccurate. This will result in difficulties implementing the SNA provisions but may also cast doubt over the accuracy and necessity of other parts of the plan.*



27. The evidence from The Surveying Company expresses concerns regarding the recommended amendment to the definition of SNA, which is discussed further on in this report.
28. The evidence received in support of deleting the SNAs from the planning maps was often in the context of a specific property.
29. Marc ter Beek [46.3] has provided evidence in support of his submission, which sought to delete the SNA mapping from his property at 49 Swallow Lane Tamahere. The s42A report recommended in Part 3 Mapping to amend the mapping, and the evidence provided by Mr ter Beek supports the acknowledgement of incorrect mapping.
30. Phillip Swan has supported the removal of SNA mapping from 1384/1665 Whaanga Coast Road and has provided photos of the farm from a 1966 view to a 2020 view and the areas they wish to maintain as productive farmland.
31. Dharmesh Chhima on behalf of Hynds Pipe Systems Limited and Hynds Foundation has provided evidence relating to the SNA mapping on the property at 62 Bluff Road and Council's response to the SNA mapping in the s42A report. The original submitter was Grander Investments, who had sought changes to the SNA identified on the planning maps for the property at 62 Bluff Road Pokeno. However, the property is now owned by the Hynds Foundation.
32. Mr Chhima in his evidence has accepted the reasoning for the SNA mapping being removed from the property at 62 Bluff Road. The s42A report recommended that, as no ground-truthing was undertaken at the site, the SNA mapping be removed. Mr Chhima also states in his evidence that even if the s42A report had not recommended to remove the SNA in the northern part of the property, the evidence provided by Dr Mark Bellingham on behalf of Hynds would have confirmed by ground truthing that the northern area does not meet the criteria for significant indigenous biodiversity. The evidence from Dr Bellingham has however indicated that the southern area may meet some of the criteria of Appendix 2: Criteria for Determining Significance of Indigenous Biodiversity, and would need further ground-truthing. These areas are shown below:



33. Dr Bellingham has provided an analysis of Area I (Northern SNA) in respect of the National Policy Statement for Freshwater Management 2020 (NPSFM) and the National Environmental Standards for Freshwater 2020 (NESFM). This analysis has indicated that this area is not a natural ecosystem and not a wetland under the RMA, the NPSFM or the NESFM. This analysis further supports the submitter's view that this area does not meet the criteria for a SNA.

34. Notified version of SNA mapping at 62 Bluff Road



35. Recommended area for removal from the SNA (shown in blue)



36. Mr Chhima has also raised concerns in relation to the recommendation to amend the definition of an SNA, which I discuss further in this report.

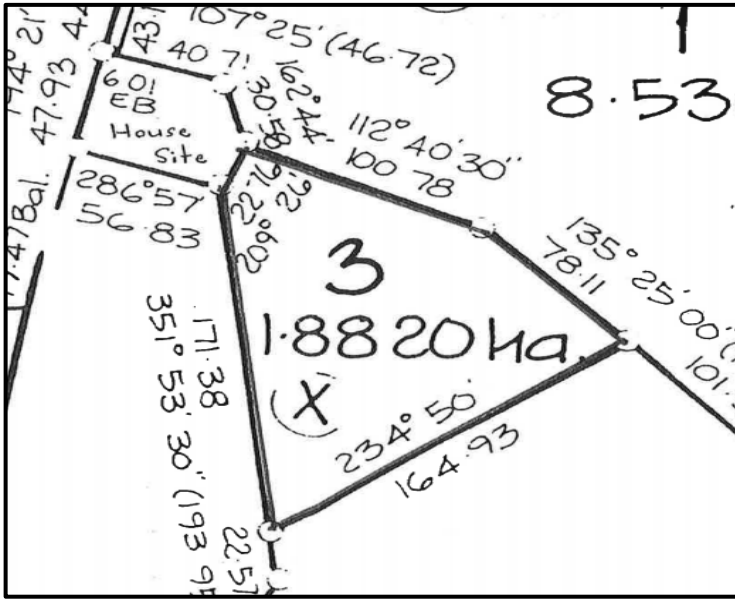
37. Craig Pilcher on behalf of BT Mining supported the removal of SNA mapping. His evidence indicates that the submitter had concerns that the mapping was undertaken without ground-truthing. He further states that where there is a 'genuine' SNA is one issue; but where constraints are imposed based on a high level and untested desktop review, that approach is concerning. Mr Pilcher considers that because a coal deposit is fixed in location and must be extracted at that location, that coal mining has a functional need to be located where the coal deposits are. He considers that it is more efficient to establish new coal mining in locations that can utilise existing infrastructure, such as the proposed new coal mining in Ruawaro/Rotowaro North, rather than construct new infrastructure.
38. Mr Pilcher has provided insight into the assessments undertaken by AECOM ecologists of areas they could access safely, and have recommended that the boundaries of the SNAs be reduced, as they do not meet the criteria of the RPS. Mr Pilcher notes that the WRPS criteria do not include text that explains how the criteria should be applied or include definitions of key words used, for example 'representative', and further questions as to how to apply the various criteria of Appendix 1 IA of the RPS. Mr Pilcher has concluded that it is not possible to identify SNAs without proper ecological assessment, and sees further difficulties with using the criteria in Appendix 2.
39. Richard Matthews on behalf of Genesis Energy has generally supported the removal of SNA mapping, however has indicated that if the Appendix 2 criteria were to apply, then they should not apply to the areas that they have planted, as they are not 'natural', and non-natural areas should be excluded from being considered as a SNA. In response to this, I note that the definition for indigenous vegetation excludes landscape planting, however I accept that the SNA definition has the potential to encompass a purposely-planted area. However, I consider that it should not make any difference whether the area has been deliberately planted or is naturally occurring. The important matter is whether the vegetation meets the Appendix 2 criteria. Mr Matthews has not agreed with the recommendation to amend the definition of SNA, which I discuss further in this report.
40. The Hill Country Farmers Group has supported the removal of SNA mapping and acknowledged the problem of inaccuracy. Their evidence considers that as most SNAs exist in a stable equilibrium with current land use, ground-truthing could be deferred until prompted by a change in status or land use. I understand their point, however accurate mapping as a subsequent process will provide certainty to both Council and landowners. In addition, it is highly likely that the forthcoming National Policy Statement on Indigenous Biodiversity will require SNAs to be mapped within 5 years of the policy statement being gazetted.
41. Hillary Walker on behalf of Federated Farmers has supported the removal of SNA mapping. However, her concerns relate to the transition period between the proposed plan and the decision, as no timeframes have been provided for the interim solution whereby land owners may end up in a 'no-man's-land', as the option recommended elevates all indigenous vegetation to a significant threshold until proven otherwise. Ms Walker supports the principle of a planning approach that identifies SNAs using robust methodology, and targeted provisions as being more appropriate than a general catch-all rule which elevates indigenous vegetation to a significant status until proven otherwise. I agree that this is an unfortunate outcome for property owners and will potentially transfer the cost of assessment to them. Ms Walker expresses concern that landowners who have not had their sites ground-truthed will be expected to pay for an ecological assessment to determine whether the SNA criteria are met or not, or put any works on hold until council has done it.
42. Ms Walker has suggested alternative approaches:
- a. Retain the mapped SNA sites in the planning maps only where council is certain of the extent and quality of the indigenous vegetation as a result of ground-truthing.
  - b. Amend all other areas to a reduced 'alert' layer status with an advice note: Where a proposed activity requires a resource consent solely as a result of an area being

identified as a significant natural area (SNA) and the site has not been ground-truthed, Council will meet the costs of the ground-truthing assessment to confirm the status and boundaries of the significant natural area. The assessment will be carried out by a Council-approved suitably-qualified and experienced ecologist prior to an application for resource consent being lodged.

OR

- c. Remove all SNA sites from the planning maps that have not been groundtruthed and amend the SNA provisions to include a general clearance rule supported by methods to identify the ecological significance of indigenous biodiversity on an application basis.
  - d. Introduce a plan change to reintroduce the full mapping concept back into the district plan and amend associated implementation methods in accordance with gazetted National Policy Statement for Indigenous Biodiversity identification process and timelines.
43. The most significant risk I see with this approach is that areas of SNA that have not been identified and mapped will be lost in the time it takes for Council to promulgate plan change(s) to identify and correctly map SNAs. Through the ground-truthing that Mr Turner and I have undertaken, we are aware of how erroneous the mapping is in the notified Proposed District Plan. Using the notified version as an “alert layer” is still an inherently incorrect database / information layer. The second part (b) of Ms Hillary’s suggestion is very similar to what I have recommended. Further on in this report I have also recommended an additional policy that will facilitate the covering of costs for an ecological assessment.
44. I see value in implementing a similar approach to the Waikato Operative Plan, where council will cover the cost of an assessment for an ecological assessment. This is a similar approach to how Hauraki Council managed the issue of inaccurate mapping.
45. Terence Denton and Bernardina Van Loon have provided evidence that generally discusses the issues with the mapping and the process that was undertaken. The evidence points out an error in the s42A report, and I thank Mr Denton for bringing this to my attention. The property at 40 Cameron Town Road Pukekohe contains a covenant that covers a large portion of the property, and I can see that the SNA mapping on the proposed planning maps has gone beyond the boundaries of the covenant and captured the back garden area of this property. This property was not visited by Mr Turner. Mr Denton has also helpfully provided photographs which clearly show that the area is a backyard garden. I agree that SNA mapping should not capture garden environments, and I would suggest that if the recommended approach to remove the mapping is accepted, then the area of concern would not be mapped.
46. Mr Denton has also pointed out that the removal of the areas that have not been ground-truthed will in fact remove the covenanted area as well. I am aware of this issue, and in the opening discussion of the s42A report I have identified the limitations of the spatial data of council’s conservation covenants. I believe that lack of spatial data in this regard is an inherent problem across the district and needs to be rectified. I acknowledge that the removal of the mapping and relying on the criteria within Appendix 2 could unintentionally capture garden areas if the gardens include indigenous species that meet the criteria in Appendix 2. My recommendation in this regard is to retain the SNA mapping on this property so that it only captures the covenant boundary, thereby removing the mapping from the garden environment, as sought by Mr Denton and Ms Van Loon. I believe that this will alleviate the concerns held in regard to the implementation of vegetation clearance and earthworks rules. I have included below the notified version and recommend that only the covenant boundary (taken from covenant document) be included as SNA on the proposed maps.

40 Cameron Road, Pukekohe - notified version and Covenant document  
Covenant Map for 40 Cameron Road, Pukekohe



Notified version of SNA Mapping at 40 Cameron Road



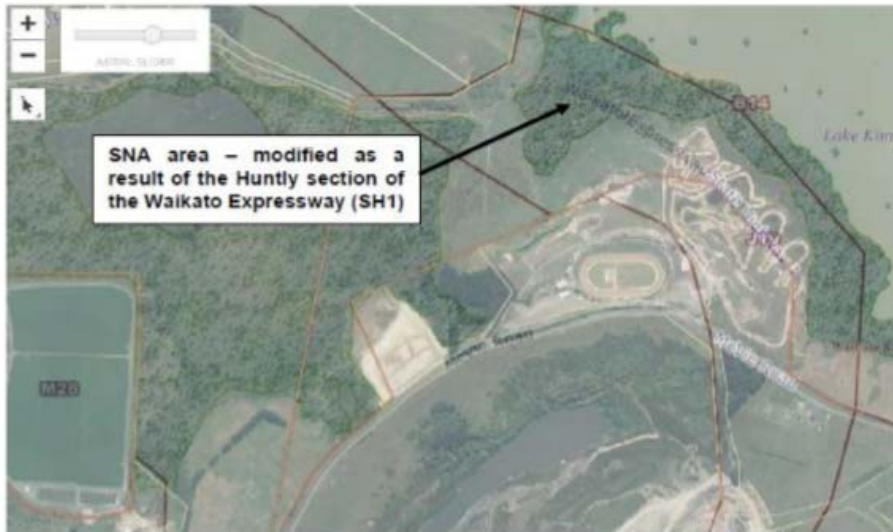
Recommended area for removal from the SNA (shown in blue)



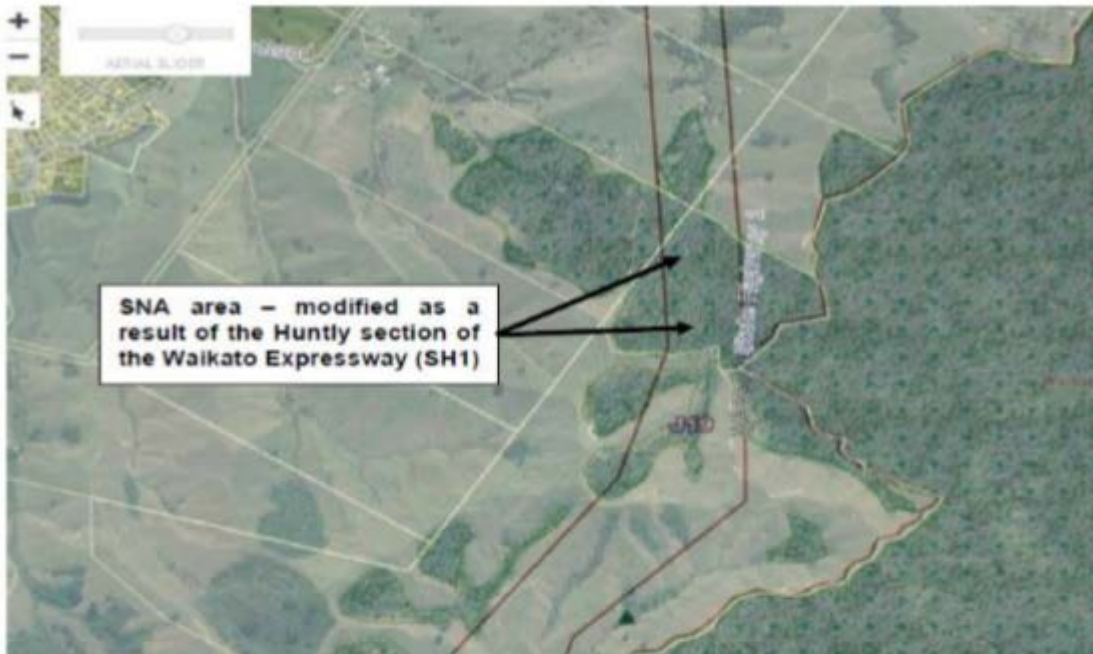
47. Michael Wood on behalf of Waka Kotahi (Transport Agency) has provided evidence that largely supports the s42A recommendations regarding the following submissions: [742.185], [742.5],[742.6],[742.7],[742.8],[742.189] and [FS/202.42]. The evidence focuses on Part 3 - Mapping of the SNAs on Waka Kotahi's designations and the recommended addition made to Policy 3.2.6 (providing for vegetation clearance).
48. The original submission from Waka Kotahi [742.185] sought to delete the SNA mapped on existing NZTA designations. Mr Wood has reconsidered the Waka Kotahi submission and advises that it does not seek the total removal of SNAs from the designations. He generally supports the use of SNAs as a tool to protect ecological areas, providing these areas do not unduly impact on the maintenance or minor upgrades of the highway network and have been mapped on the basis of ground-truthing. Mr Wood has stated that there are approximately 25 SNAs located on NZTA designations, and from a desk top review, that these are located a sufficient distance away from the carriageway to not cause any impact on the maintenance or upgrade of the highway network. It is understood that these areas have not been ground-truthed, therefore Mr Wood has supported the recommendation to remove these areas until ground-truthing has been undertaken. Mr Wood has acknowledged that the recommendation of Option 5 relies on an area meeting one or more of the criteria in Appendix 2: Criteria for Determining Indigenous Biodiversity, as a protection measure for these areas. Mr Wood suggests that it would be helpful if Council could identify which specific criteria from Appendix 2 each of the 25 SNAs exhibits. In response to this, the difficulty with the spatial data provided is that it does not specifically provide that information, and assessment of each SNA against the criteria in Appendix 2 would be undertaken at the time of ground-truthing.
49. Mr Wood has provided maps which provide an indicative insight to the modification of SNAs on the Huntly Section of the Waikato Expressway. Although these areas have not been ground-truthed as part of this process, I believe they were subject to much consideration during the project's construction. I consider with this information that these areas could inform the spatial data that is on the proposed plan maps and the SNA mapping be updated accordingly without the need for another ground-truthing exercise by Council.

## Proposed Waikato District Plan: Huntly section of Waikato Expressway (SH1) – Significant Natural Areas

### Significant Natural Area 1



## Significant Natural Area 2



50. John Riddell on behalf of Department of Conservation has generally supported the recommended approach in respect of the SNA mapping as recommended in the s42A report. Mr Riddell considers that the approach could overall result in the protection of SNAs, however has suggested that there are some details that need further refinement. These mainly consist of re-writing Policy 3.2.2 - Identify and Recognise. This policy is discussed further in this report.



51. Mr Riddell has also recommended to retain the SNA mapping as an information layer. I explored this option and due to the inaccuracies in mapping, an information layer will still not provide any certainty for property owners as to whether provisions apply or not.

### **Oppose the removal of SNA mapping**

52. The evidence provided by Miffy Foley on behalf of Waikato Regional Council is comprehensive. I believe, ultimately, that both councils are seeking the same outcome - one being legislative and the other more pragmatic and considerate of landowners. Dr Deng from Waikato Regional Council considers that there are significant risks associated with not showing the SNA sites on the planning maps, as she considers that this will lead to further loss. I consider that the difficulty with a line on a map is that it not only represents a perceived barrier to the landowner, but also to the SNA itself. Naturally, the SNA if left would increase in area during the life of the plan. If mapped in 2020, and left alone, in 2030 it would be likely to have extended beyond its current boundaries. Andrew Riddell on behalf of Department of Conservation has also alluded to this in paragraph 103 of his evidence, where he states that the dynamic expansion of areas of SNAs is to be expected. A line on the district plan maps delineating an SNA is likely to lead to status quo at best, rather than any net gain of indigenous biodiversity.
53. However, I consider it is not the line on the map that protects the SNA - this is simply a spatial delineation of where provisions apply. It is the provisions that protect the biodiversity.
54. Ms Foley has indicated that WRC do not support removing the majority of the SNA mapping for and relying on Appendix 2: Criteria for Determining the Significance of Indigenous Biodiversity. In her experience, Ms Foley considers that plan mapping is a representation of reality rather than confirmation of the exact location of an item on the ground. Unfortunately, this approach is not conducive for enforcement. From the site visits that Mr Turner and I have undertaken, it is clear that the mapped SNAs are not an approximate representation of reality, they are fundamentally incorrect. In paragraph 3.5, Ms Foley states that the implications of having an SNA inaccurately identified are minor, and that the Schedule 1 process can be relied upon to the extent that Ms Foley suggests. I disagree that the implications of inaccurate mapping are minor.
55. As a former Monitoring Officer, when enforcement procedures need to be undertaken it is vital that rules can be clearly identified as to when they apply. If the mapping has captured areas that do not meet the criteria for being an SNA, then this becomes not only problematic for the enforcement officer but unreasonable for the property owner. I consider that the application of the rules needs to be clear for both parties. Ms Foley questioned whether there has been any issues with the identification of SNAs through the consent process. I have only responded to one query - where a subdivision was being undertaken (not a conservation lot) - and I noted that the perceived SNA was in fact sparse willow and doubtful whether it would have met the criteria, and had been removed several years before. As mentioned, I believe the correlation between the 2012 aerial and the 2018 data has contributed to the incorrect mapping.
56. Ms Foley has indicated that Dr Deng's evidence considers that there are significant risks associated with not mapping SNAs in terms of potential loss of biodiversity. In respect to this, as mentioned earlier in this report, in my view the mapping does not protect, the rule does. The mapping is merely a tool to advise where the rule applies. The significant errors in the mapping lead me to question how many legitimate SNA areas have been missed. Ms Foley's evidence discusses that mapping SNAs places a more onerous requirement on landowners who wish to clear or modify indigenous vegetation under permitted activity standards, as they will all need to engage an ecologist to assess the vegetation. In response to this (discussed further on in this report), I have recommended a non-regulatory policy that provides for Waikato District Council, in joint responsibility with Waikato Regional Council, to meet the

cost of an ecological assessment as per the RPS roles and responsibilities. In my view this should alleviate the concerns of not only WRC but also other submitters.

57. In Paragraph 4.3 Ms Foley discusses the preference to retain the SNA mapping and suggests an option where the rule framework is amended to refer to SNAs more generally, which would allow for an applicant to have an assessment of a mapped SNA to determine its boundaries, should they wish to go beyond the permitted activity standards. This may have some merit, and I ask WRC for some guidance on what a general approach may look like. I remain concerned that legitimate SNAs have been missed. The approach suggested by Ms Foley does not resolve the issue that if there is no application, there is still inaccurate mapping on the proposed maps applying to sites, and this will be reflected in any Land Information Memorandum. In my view, it would be more effective and efficient to simply cover the cost of an assessment in the first instance, and then undertake a plan change to update the planning map accordingly. Indications are that the forthcoming National Policy Statement will require this anyway.
58. As mentioned, I agree that mapping is preferred, but this *must* be accurate and verified by ground-truthing. I also agree that the mapping can be retained on the maps that have been ground-truthed and are on properties that are under Department of Conservation management and/or held in covenants under the Queen Elizabeth Trust. This approach could also be applied to covenants as a result of subdivision.
59. There are many references in the evidence provided by WRC about the comprehensive consultation process that they consider was undertaken. The evidence states that the notified plan contains 698 SNA sites across the district, however I point out that these 698 cover multiple titles, which would equate to many more property owners. I have been advised by Council's GIS Team that there are 4,127 titles that have an SNA identified on them. The information provided by the GIS team also indicates that there are 7,129 property owners affected by the SNA layer (although I recognise that this includes DOC and properties with multiple owners). During consultation 678 phone calls were received, and 152 landowners provided feedback. This means there is a significant number of property owners who did not engage. I do not consider that the Schedule 1 process can be relied upon to the extent that Ms Foley suggests. This is also the view of Mr Matthews' (Genesis Energy) rebuttal evidence, who cites examples from submitters where it has been established that the mapping was incorrect. I agree with Mr Matthews' opinion.
60. I do not believe that an absence of a response indicates that a property owner is in agreement with the mapping. I accept that consultation was undertaken, but I do not consider that this can be deemed to be comprehensive engagement by the community (and more importantly, those landowners affected by an SNA). All of the 40 sites that Mr Turner and I visited had the same experience (including myself as a landowner) where follow-up on this consultation did not occur. A letter was sent by Council, and feedback requested. The landowners who provided this feedback received no further correspondence from either council. I acknowledge that in some instances the mapping was amended, however this was not relayed to the property owner, while in other instances amendments to the maps were sought but not made and no explanation given. I acknowledge and understand that at the time of the consultation process, staff were overwhelmed by the workload. I participated in many of the open days and they resulted in long queues, and people simply left without speaking to staff. Although the consultation process may have had intentions of being comprehensive, in reality it is likely that many affected landowners were not engaged with.
61. Dr Deng considers that Mr Turner's report is not adequately robust or comprehensive enough to be used as the basis for removing the SNA mapping. In response to this, Mr Turner's brief for technical input is only in relation to those property owners who made a submission. Any analysis outside of this would be out of scope of the submission process. In terms of methodology that was used in the initial analysis for the spatial layer, it is still evident that the

mapping has a very high level of inaccuracy. Council's legal advice is that to use data that is not accurate creates an unacceptable risk for council, not to mention poor planning outcomes. In my view, the most effective and reasonable way is by ground-truthing. The rebuttal evidence received from Mr Matthews on behalf of Genesis Energy in response to Ms Foley also generally concurs with my thoughts on this.

62. Further to this, only 50 sites were selected for actual ground-truthing, and from these there were amendments made to the maps. I have reviewed 14 of the assessments undertaken by Gerry Kessells (Tonkin and Taylor), and this has shown that of the 14, all but 2 of these required amendments to the maps. In my view, whether the amendments are large or small makes no difference when enforcement is concerned. I agree that ideally SNAs would be mapped, as this would ensure that landowners have a clear understanding where provisions apply. However, I maintain the view that the line on the map must be at least reasonably accurate. Without accurate data the plan will not be efficient or effective.
63. In paragraph 4.12 Ms Foley considers that there are internal inconsistencies with how other overlays within the plan are dealt with. She provides the example that landscape layers and coastal environments are mapped, and that there is no logical planning reason not to map an SNA. I respectfully disagree. An Outstanding Natural Feature or Landscape is a human construct based on an intangible concept, whereas an SNA is tangible. The criteria used to assess landscape values include aesthetic values, expressiveness, and sensory or perceptual qualities, and the line is highly subjective as to where these start and stop.

### **5.3 Recommendations**

64. Having considered the points raised in evidence and rebuttal evidence, I have not changed my recommendations to remove the SNA mapping from the sites that have not been ground-truthed, however I am persuaded by the evidence of Waikato Regional Council to include SNA mapping on the proposed plan maps on land managed by Department of Conservation and SNAs that are covenanted by the Queen Elizabeth Trust. I am persuaded by the evidence provided by Mr Denton and Ms Van Loon to amend the maps on the property at 40 Cameron Road Pukekohe. I am also persuaded by evidence provided by Waka Kotahi (The NZ Transport Agency) to amend the maps for the Huntly section of the Waikato Expressway (SH1).

### **5.4 Recommended amendments**

65. I therefore make the following amendment to my initial recommendation:

Amend the mapping of SNA on the following properties

- Mr Terence Denton and Bernardina Van Loon property at 40 Cameron Town Road Pukekohe.
- Huntly Section of the Waikato Expressway (SH1)
- Hynds Pipes 62 Bluff Road.

### **5.5 Section 32AA evaluation**

66. The recommendation to amend the SNA mapping do not require any additional s32AA evaluation beyond that undertaken in Section 4 of my s42A report.

## 6 Objective 3.1.1 Biodiversity and ecosystems

### 6.1 Analysis

67. FFNZ's original submission gave conditional support to Objective 3.1.1, whereby they understand that the intention of the objective is to give effect to the RMA and the WRPS. Ms Walker says this is the goal that many farmers and landowners share, and is a reminder for farmers to adopt responsible management and environmental practices. The conditional support depends on provision of appropriate policy that recognises the role that landowners play in protecting and enhancing biodiversity. I believe that the recommendation of additional non-regulatory policies helps towards achieving this.
68. Mr Riddell included evidence on Objective 3.1.1 on behalf of the Department of Conservation, despite the original submission seeking to retain the objective. Mr Riddell's evidence now seeks further amendment to the objective by including the additional wording 'attributes' and 'functioning'. Mr Riddell's evidence has not caused me to change my opinion, and I consider that the amendments I recommended in my s42A are appropriate. The additional wording suggested by Mr Riddell does not add any significant benefit.

## 7 Policies 3.1.2

### 7.1 Analysis

69. Mr Riddell on behalf of Department of Conservation sought in to rearrange Policy 3.1.2 so that the consideration of effects is not limited to those listed in the policy. I have considered Mr Riddell's suggestion, and agree that the considerations should not be limited to only those contained in the policy. The policy would then read as follows;

#### 3.1.2 Policies

(a)...

(b) ~~Consider the following when~~ avoiding, remedying or mitigating adverse effects on indigenous biodiversity, including by considering:...

### 7.2 Recommendations

70. Having considered the points raised in evidence and rebuttal evidence, I am persuaded by the evidence of Department of Conservation to rearrange Policies 3.1.2.

### 7.3 Recommended amendments

71. I therefore make the following amendment to my initial recommendation:

### 3.1.2 Policies

- (a) Enable activities that maintain or enhance indigenous biodiversity including:
- (i) Planting using indigenous species suitable to the habitat and eco-sourcing these<sup>3</sup>where practical;
  - (ii) the removal or management of pest plant and animal species;
  - (iii) biosecurity works.
- (b) ~~Consider the following when~~ avoiding, remedying or mitigating adverse effects on indigenous biodiversity, including by considering:
- (i) the required range of natural food sources;
  - (ii) habitats of threatened and at risk species;
  - (iii) ecological processes and corridors;
  - (iv) ecological sequences;
  - (v) migratory pathways;
  - (vi) pest plants and pest animals;
  - (vii) the Waikato river and its catchment;
  - (viii) natural character and landscape values of the area;
  - (ix) natural waterway habitats and hydrology;
  - (x) ecological corridors, natural processes and buffer areas;
  - (xi) legal and physical protection of existing habitat;
  - (xii) the effects of earthworks on Agathis australis (Kauri)
- (c) Provide for the removal of manuka or kanuka on a sustainable basis.

## 7.4 Section 32AA evaluation

72. The recommended changes to the 3.1.2 Policies (b) are to acknowledge that considerations should not be not limited to just those listed in the policy.

### *Other reasonably-practicable options*

73. One option is to retain the policy as notified, the other option is to amend it so the policy recognises that considerations may go beyond those which are listed.

### *Effectiveness and efficiency*

74. The recommended amendments to Policy 3.1.2 (b) will still give effect to the Waikato Regional Policy Statement and will ensure that the adverse effects on the indigenous biodiversity are managed. The amendments improve the effectiveness of the policy in implementing Objective 3.1.1 and provide suitable guidance to plan users for the assessment of activities that affect indigenous biodiversity.

### *Costs and benefits*

75. There may be additional costs in terms of consideration being afforded to aspects that are not listed, however as the list is reasonably comprehensive already, I consider that any extra costs will be minimal. There are benefits to the environment with the revised policy, as it is clearer about how the effects will be managed. Other benefits are clearer guidance to plan users regarding the effects of activities on indigenous biodiversity.

### *Risk of acting or not acting*

76. There are no additional risks in not acting. There is sufficient information on the costs to the environment, and benefits to people and communities, to justify the amendment to the policy.

<sup>3</sup> Department of Conservation [585.40]

*Decision about most appropriate option*

77. The amendment gives effect to the Waikato Regional Policy Statement, and it is considered to be more appropriate in achieving the purpose of the RMA and Objective 3.1.1 than the notified version of Policy 3.1.2.

## 8 Objective 3.2.1- Significant Natural Areas

### 8.1 Analysis

78. Evidence provided by Chris Scrafton on behalf of TaTa Valley Ltd has suggested minor changes to Objective 3.2.1 Significant Natural Areas to better reflect Policy 11.1 of the Regional Policy Statement, which is to maintain or enhance indigenous biodiversity. Mr Scrafton considers that the objective as proposed says to protect and enhance, and that indigenous biodiversity in SNAs does not need to achieve both protection and enhancement. I agree, and recommend a minor amendment to the Objective as follows:

*Objective 3.2.1. Indigenous biodiversity in Significant Natural Areas is protected ~~and~~ or enhanced.*

79. Evidence provided by Christine Foster on behalf of Meridian Energy relates to Meridian Energy's submission which requested deletion of the word 'enhanced' from Objective 3.2.1, on the basis that section 6 (c) of the RMA uses 'protection' but does not require 'enhancement'. The evidence suggests that the term 'enhancement' is specific to spatial extent. Ms Foster has supported Ms Whitney analysis on behalf of Transpower New Zealand Limited. The evidence refers to Policy 11.2 of the Regional Policy Statement which says, 'Protect significant indigenous vegetation and significant habitats of indigenous fauna'. Although I can see some ambiguity in how the RPS is structured, in that Policy 11.2 does not specifically require 'enhancement', in my view Policy 11.1, which says 'Maintain or enhance indigenous biodiversity', refers to all indigenous biodiversity inclusive of SNAs and is an overarching policy. In response to evidence provided by TaTa Valley Ltd, I have recommended amending Objective 3.2.1 to read 'protect or enhance', which I believe may alleviate the concerns of Meridian Energy and Transpower New Zealand.
80. Ms Walker's on behalf of Federated Farmers evidence sought amendments to Objective 3.2.1 Significant Natural Areas as follows:
- Indigenous biodiversity in Significant Natural Areas is protected and enhanced through a range of regulatory and nonregulatory methods.*
81. The purpose of this amendment is to encourage active management through collaboration between landowners and council. Ms Walker has acknowledged the inclusion of a new non-regulatory policy, but still seeks the changes sought in FFNZ's original submission. I agree that collaboration is a vital component in the protection of SNAs, however I consider this is best managed in a non-regulatory framework, as components such as advice, support and encouragement are not conducive to a rule framework that would be needed to support the Objective. I consider that the amendments being sought are more appropriately contained in a policy rather than an objective, which is a statement of outcome. In my view a non-regulatory policy will help towards providing the submitter with some level of assurance that Council will be supporting landowners to manage these areas.

## 9 Policy 3.2.2 - Identify and Recognise

82. Ms Walker on behalf of Federated Farmers has acknowledged the reasons for the recommendation within the s42A report to delete Policy 3.2.2 Identify and Recognise. However, Ms Walker considers that the intention of the policy is sound, and considers that the amendments sought in their submission can help improve the purpose of the submission. Ms Foley and Mr Riddell have also requested that Policy 3.2.2 be retained. The reasons for deleting Policy 3.2.2 were because clause (a) of the policy does not add any value to the Proposed Plan as the mapping has been recommended to be removed, and clause (b) is covered by Policy 3.2.3 (at a broad level). Further to this, there are also no specific rules within the Proposed Plan that support Policy 3.2.2.
83. The evidence provided has not changed my recommendation to delete Policy 3.2.2.

## 10 Policy 3.2.3 - Management hierarchy

### 10.1 Analysis

84. Four pieces of evidence addressed Policy 3.2.3, which sets out the effects management hierarchy with respect to recognising and protecting indigenous biodiversity within SNAs. Pam Butler on behalf of KiwiRail has supported the recommendation of the s42A report on this policy.
85. Mr Scrafton's (TaTa Valley) evidence considers that the policy as drafted is overly restrictive because, whilst avoidance is generally preferred as a first response, it is not practicable in all circumstances, and the policy does not acknowledge that. He considers that the policy does not sufficiently give effect to Policy 11.2.2(b) of the RPS, which requires that activities avoid the loss or degradation of areas of significant indigenous vegetation and significant habitats of indigenous fauna in preference to remediation or mitigation. He considers that it does not align with RPS Policy 11.2.2(d), which requires that more than minor residual adverse effects shall be offset. Mr Scrafton suggests changes to Policy 3.2.3 to focus on the "values" of the SNA, rather than the SNA per se. Policy 11.2 of the Regional Policy Statement is clear that the characteristics (values and attributes) that make an area "significant" are not to be reduced. In this respect, I agree that the policy should be amended to focus on the values rather than the SNA as a whole.
86. Mr Scrafton also suggests that avoiding, remedying or mitigating be "as far as practicable". The RPS is not helpful in this regard, as on the one hand it seeks to "protect" significant indigenous vegetation and significant habitats of indigenous fauna (Policy 11.2), but on the other hand Policy 11.2.2(c) requires that unavoidable adverse effects be remedied or mitigated. As pointed out by Mr Scrafton, Policy 11.2.2(g) acknowledges that there may be a need for activities to be located in or near areas of significant indigenous vegetation and significant habitats of indigenous fauna where no reasonably-practicable alternative location exists. So while the RPS policy seems highly directive, the subsequent methods appear to weaken it. I note that Mr Riddell on behalf of the Department of Conservation considers that the policy should emphasise that the first step is to avoid adverse effects to the full extent practicable. I therefore recommend that some of Mr Scrafton's amendments be adopted, and that the avoid clause is amended to include "as far as practicable", but this concept is not included in the mitigate or remedy clauses.
87. Mr Riddell seeks inclusion of "in the first instance" in clause (a) to make it clear that avoidance of adverse effects is the preference. I agree that this better reflects Policy 11.2.2(b) of the RPS.

88. Mr Riddell also seeks that clause (iv) be amended so that offsetting is not only for “significant” residual adverse effects. I am mindful that RPS Policy 11.2.2(d) refers to offsetting being for “more than minor residual adverse effects”. I consider that the language should be the same.
89. Mr Riddell gives significant attention to the clause regarding compensation, and considers that this is not appropriate in areas that meet the 'significance' criteria. He considers that Policy 11.2 of the Regional Policy Statement is clear that the characteristics (values and attributes) that make an area “significant” are not to be reduced, yet 'environmental compensation' intrinsically results in a reduction in the values and attributes that make an area 'significant'. He considers that environmental compensation, as a management tool, should only be available outside areas that meet the significance criteria in Appendix 2 of the Proposed Plan.
90. Ms Foley’s comments on compensation are that the RPS (in Implementation Methods 11.1.3 and 11.2.2) provides for biodiversity offsetting within a hierarchy of avoidance, remediation and mitigation and is applied to residual adverse effects that cannot be avoided, remedied or mitigated, and there is no mention of compensation. Her opinion is that if an activity cannot avoid, remedy or mitigate and offsetting is not feasible, then the activity should not be consented. She considers that compensation could potentially be considered as an alternative economic instrument, but that more work should be undertaken to define clear limits as to when and how it would be used to ensure that the overall RPS Objective 3.19 Ecological integrity and indigenous biodiversity and relevant policies would be met. I am therefore not clear on her position. I acknowledge that the RPS does not include compensation as an option. However, in my opinion inclusion of the policy may provide some benefit for SNAs. I note that the new definition refers to ‘*environmental compensation*’, and I believe that using the term ‘*economic*’ in the policy was an error - I recommend that this be changed to read ‘*environmental*’, which would be consistent with the definition.

## 10.2 Recommendations

### Policy 3.2.3 Management Hierarchy

Recognise and protect [the values of](#) indigenous biodiversity within Significant Natural Areas by:

- (i) avoiding ~~the significant~~ adverse effects of vegetation clearance and the disturbance of habitats [in the first instance as far as practicable](#) ~~unless specific activities need to be enabled~~
- (ii) remedying [and/or mitigating](#) any effects that cannot be avoided; then
- ~~(iii) mitigating any effects that cannot be remedied; and~~
- (iv) after remediation or mitigation has been undertaken, offset any [significant more than minor](#) residual adverse effects in accordance with Policy 3.2.4.
- (v) [If offsetting of any more than minor residual adverse effects in accordance with Policy 3.2.4. is not feasible then economic environmental compensation may be considered.](#)

### 10.3 Section 32AA

91. The amendment to Policy 3.2.3 recognises the importance of the values of indigenous biodiversity, and to avoiding adverse effects in the first instance.
92. The amendment to the Policy where ‘economic’ has been replaced with ‘environmental’ is to correct an error, and I consider no s32AA evaluation to be necessary.

*Other reasonably-practicable options*

93. One option is to retain the policy as notified. The other option is to amend the policy so that it recognises that in the first instance avoidance, if practicable, is preferred.



*Effectiveness and efficiency*

94. The recommended amendments to Policy 3.2.3 give effect to the Waikato Regional Policy Statement and will ensure that the adverse effects on the indigenous biodiversity are managed. The amendments improve the effectiveness of the policy in implementing Objective 3.1.1 and provide suitable guidance to plan users for the assessment of activities that affect indigenous biodiversity.

*Costs and benefits*

95. There are no additional costs from the recommended amendment. There are benefits to the environment with the revised policy, as it is clearer about how the effects will be managed. Other benefits are clearer guidance to plan users regarding the effects of activities on indigenous biodiversity.

*Risk of acting or not acting*

96. There are no additional risks in not acting. There is sufficient information on the costs to the environment, and benefits to people and communities, to justify the amendment to the policy.

*Decision about most appropriate option*

97. The amendment gives effect to the Waikato Regional Policy Statement and it is considered to be more appropriate in achieving the purpose of the RMA and Objective 3.1.1 than the notified version of Policy 3.2.3.

## 11 Policy 3.2.4 Biodiversity Offsetting

### 11.1 Analysis

98. Three pieces of evidence addressed Policy 3.2.4, which sets out the framework for offsetting. Ms Butler on behalf of KiwiRail has supported the recommendation of the s42A report on this policy.
99. I recommended deleting “significant” from the policy in the s42A report, however Mr Scrafton (TaTa Valley) disagrees with this recommendation. He considers that the proposed amendment will create uncertainty in determining what ‘level’ of residual adverse effects triggers the need for a biodiversity offset which creates uncertainty and varying degrees of interpretation for both users of the plan and WDC. He draws attention to Policy 11.2.2 of the RPS and suggests that the words ‘more than minor’ be included in the policy. I agree that the wording should match the RPS.
100. Mr Riddell on behalf of Department of Conservation seeks changes to clause (b) to reflect that avoidance is to the extent practicable, and to clarify that it is not just a net loss, but preferably a net gain. I support these changes as they will better reflect the RPS. Mr Riddell also seeks inclusion of a new clause at the end of the policy that recognises limits to the appropriate use of biodiversity offsetting, including because of the irreplaceability or vulnerability of the biodiversity affected. I consider that this approach is appropriate.

### 11.2 Recommended amendments

#### 3.2.4 Policy – Biodiversity Offsetting

- (a) Allow ~~for a~~ biodiversity offsetting ~~to be offered by a resource consent applicant~~ where an activity will result in **significant** residual adverse effects on a Significant Natural Area, ~~or on indigenous biodiversity outside such Significant Natural Areas.~~

- (b) Within a Significant Natural Area, a biodiversity offset will only be considered appropriate where adverse effects have been avoided [to the extent practicable, and then](#) remedied or mitigated in accordance with the hierarchy established in Policy 3.2.3; and
- (i) the biodiversity offset is consistent with the framework detailed in Appendix 6 Biodiversity Offsetting; and
  - (ii) the biodiversity offset can achieve no net loss, [and preferably a net gain](#), of indigenous biodiversity:
    - A. preferably in the affected area of Significant Natural Area; or
    - B. where that is not practicable, in the ecological district in which the affected area of Significant Natural Area is located.
  - [\(iii\) recognising that there are limits to the appropriate use of biodiversity offsetting, including because of the irreplaceability or vulnerability of the biodiversity affected.](#)

### 11.3 Section 32AA

101. The recommended additional clause to Policy 3.2.4 is to recognise that there are limits to the use of biodiversity offsetting.

#### *Other reasonably-practicable options*

102. One option is to retain the policy as notified, the other option is to amend Policy 3.2.4 so that the policy recognises the limitations of biodiversity .

#### *Effectiveness and efficiency*

103. The recommended amendments to Policy 3.2.4 will give effect to section 11 of the Waikato Regional Policy Statement and will ensure that the adverse effects on the indigenous biodiversity are managed. The amendments improve the effectiveness of the policy in implementing Objective 3.1.1, and provide suitable guidance to plan users for the assessment of activities that affect indigenous biodiversity.

#### *Costs and benefits*

104. There are no additional costs, therefore the costs are likely to be the same. There are benefits to the environment with revised Policy 3.2.4, as it is clearer about how the effects will be managed. Other benefits are clearer guidance to plan users regarding the effects of activities on indigenous biodiversity.

#### *Risk of acting or not acting*

105. There are no additional risks in not acting. There is sufficient information on the costs to the environment, and benefits to people and communities, to justify the amendment to the policy.

#### *Decision about most appropriate option*

106. The amendment gives effect to the Waikato Regional Policy Statement and it is considered to be more appropriate in achieving the purpose of the RMA and Objective 3.1.1 than the notified version of Policy 3.2.4.

## 12 Policy 3.2.6 - Providing for vegetation clearance

### 12.1 Analysis

107. Mr Wood on behalf of Waka Kotahi's (NZ Transport) original submission sought to amend Policy 3.2.6 by adding two new clauses:
- (v) *operating maintaining or upgrading existing infrastructure , and*
  - (vi) *the construction and operation of new regionally significant infrastructure where there is a need for that infrastructure to be located within the Significant natural Area.*
108. The s42A report recommended accepting in part where clause (v) is recommended to be included in Policy 3.2.6, and rejecting the additional clause (vi). In the evidence provided in response to the s42A report, Waka Kotahi has supported this recommendation and acknowledges the reasoning for not accepting clause (vi) in the Policy.
109. Ms Butler on behalf of KiwiRail has also supported the s42A report in respect of Policy 3.2.6. and my recommendation for an additional clause (v) as above.
110. Mr Scrafton on behalf of TaTa Valley Ltd has suggested that additional clause (v) should be located under 3.2.6 (a) and not under 3.2.6 (b). I agree with the relocating of clause (v), as 3.2.6 (a) is in relation to vegetation clearance in general and not 3.2.6 (b), which relates to vegetation clearance for aspects relating to building development.
111. Mr Riddell on behalf of Department of Conservation's evidence does not agree that there is sufficient need to provide for indigenous clearance for the construction of building platforms and associated access and services, to justify compromising the protection and enhancement of SNAs. I disagree with Mr Riddell for the reasons discussed in the s42A report, namely that the Proposed Plan needs to provide the ability for people to develop their land in a sustainable manner. Policy 3.2.6 (b) recognises this, especially in relation to land that is entirely bush-clad and the policy only supports the clearance if there is no other alternative. Mr Riddell's evidence has not caused me to change my recommendation.
112. Ms Foley on behalf of Waikato Regional Council has requested in her evidence that Policy 3.2.6 be amended to recognise that only clearance with minor adverse effects on indigenous biodiversity will be enabled. Policy 3.2.6 as written is generic in its approach, in that it simply relates to what type of activities are provided for, and in my view, this is an appropriate approach. There are other policies that establish a hierarchy of effects. I do not agree, however, that the policy could be relocated under section 3.1, as the relocating of the policy will have the consequential effect of limiting the clearance of vegetation that is not significant, for example gardening.
113. The evidence provided has not changed my recommendation to amended and relocate Policy 3.26.

## 13 New policy

### 13.1 Analysis

114. Mr Scrafton on behalf of TaTa Valley Ltd in his evidence has suggested a new Policy as follows to address the gap in the proposed plan and give effect to the RPS Policy 11.2.2(g):

*Policy 3.2.XX - Recognise that activities may have a locational, operational or functional requirement to traverse or locate within a Significant Natural Area.*

115. Mr Scrafton explains that the policy does not exempt plan users from other provisions that apply to SNAs, and further integrates with the proposed amendments to Policy 3.2.3 Management Hierarchy. RPS Policy 11.2.2(g) has posed some interesting discussion. Policy 11.2.2 (g) reads as follows:

*'...have regard to the functional necessity of activities being located in or near areas of significant indigenous vegetation and significant habitats of indigenous fauna where no reasonably practicable alternative location exists.'*

116. My interpretation of the policy was to recognise that there is a necessity to recognise activities that have a functional need to be located in or near areas of SNA and to provide for them. Mr Blomfield (Dilworth Trust) raised similar issues in his evidence. I was interested to read in Ms Foley's evidence on behalf of Waikato Regional Council, that interpretation was required for this policy, and she is of the view that this clause should be considered in the same way as that of the NZCPS, and only applies to activities that have a functional need to be in an SNA.
117. I agree with Mr Scrafton that the policies in Chapter 3 of the Proposed District Plan do not explicitly address this aspect of the RPS, and there is somewhat of a gap. I therefore recommend the inclusion of the following policy:

*Policy 3.2.XX Functional Requirement*  
*Recognise that activities may have a functional requirement to traverse or locate within a Significant Natural Area where no reasonably-practicable alternative location exists.*

### 13.2 Section 32AA evaluation

118. The recommended additional policy is to recognise that activities may need to be located in a significant natural area.

#### *Other reasonably-practicable options*

119. One option is to not provide for any activities within an SNA. Another option is to include the policy to recognise that activities may need to locate within a significant natural area.

#### *Effectiveness and efficiency*

120. The recommended new policy will give effect to section 11 of the Waikato Regional Policy Statement and provides an appropriate consideration for such activities to assist in decision-making. The amendments improve the effectiveness of the policy in implementing Objective 3.1.1 and provide suitable guidance to plan users for the assessment of activities that affect indigenous biodiversity.

#### *Costs and benefits*

121. There may be additional costs to an SNA as activities may establish within these areas. However, these activities will need to have a functional requirement and only establish if there is no reasonably practical alternative. There are benefits to the environment with the revised policy, as it is clearer about how the effects will be managed. Other benefits are clearer guidance to plan users regarding the effects of activities on indigenous biodiversity.

*Risk of acting or not acting*

122. The risks in not acting are that activities that have a functional need will be required to undergo a consenting process. The policy will provide for an activity only if it has a functional need. There is sufficient information on the costs to the environment, and benefits to people and communities, to justify the new policy.

*Decision about most appropriate option*

123. The amendment gives effect to the Waikato Regional Policy Statement and it is considered to be more appropriate in achieving the purpose of the RMA and Objective 3.1.1 than the notified version of the proposed plan.

## 14 Definitions

### 14.1 Significant Natural Area

124. Several submitters have provided evidence regarding the recommended amendment to the definition for an SNA. The recommended amendment was to address the removal of SNA mapping from those sites that have not been ground-truthed, and to rely on the Appendix 2 Criteria for Determining the Significance of Indigenous Biodiversity. The consequence of deleting much of the mapping is that property owners who considered that they did not have a SNA, now potentially do. The evidence provided has indicated that the amendment to the definition has created uncertainty for property owners in terms of when and where the provisions apply. I agree, and can see how this may create confusion.
125. I note in the Waikato Operative Plan that the Council will meet the cost of an ecological assessment for up to 10 hectares, where such an assessment is required by the Operative Plan rules. I consider this to be a reasonable approach, and recommend a similar approach in the Proposed Plan to clarify whether an area of indigenous vegetation qualifies as an SNA or not. I recommend that this approach be embedded in a policy in Chapter 3 Natural Environment, and I note a similar approach in the Hauraki District Plan. In my view, this approach would alleviate the concerns raised.
126. When considering the rule framework, there is a two-tier approach in the Proposed District Plan - one being rules applying to a SNA, and two, indigenous vegetation in general. The rules as proposed allow for a permitted level of vegetation clearance within an SNA, with no limit imposed for activities such as conservation fencing, maintenance of existing tracks, drains and gathering of plants in accordance with Maaori customs and values. There is a permitted level of clearance for activities for building development and pasture maintenance or for the development of Maaori Freehold/Customary Land where a limit on area and volume has been imposed. In an area that is outside an SNA the rules are the same, except for a higher threshold for building development, which is set at 500m<sup>2</sup>.
127. In respect of earthworks in an SNA, there are no limits imposed for existing track and drainage maintenance, and conservation fencing.
128. In my view these activities can still occur, regardless of whether the area meets one or more of the criteria in Appendix 2, and it is not until the activity exceeds the permitted standards that the consenting process, inclusive of an ecological assessment, would be required. The submitters' uncertainty clearly stems from which rule framework applies - SNA or General.
129. Although the evidence provided has not changed my opinion on how the definition reads, I have recommended inclusion of a policy to provide assistance to landowners as to when an ecological assessment may be required. I recommend an additional non-regulatory policy relating to Council covering the cost of an ecological assessment to determine if the indigenous

vegetation does meet one or more of the criteria in Appendix 2. I recommend that this reads as follows:

[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](#)

130. Evidence provided by Hill Country Farmers Group has provided a discussion on the definition for farming. I believe this definition was addressed in the Rural Zone Hearing.
131. Mr Chhima on behalf of Hynds, Ms Nairn on behalf of the Surveying Company, Mr Matthews on behalf of Genesis Energy, and Mr Scrafton on behalf of TaTa Valley Ltd, have submitted evidence expressing similar concerns with the recommendation to amend the definition of SNA. The evidence from Ms Walker on behalf of Federated Farmers, Mr Pilcher on behalf of Bathurst Resources Limited and BT Mining and Ms Foley on behalf of Waikato Regional Council has not specifically opposed the amendment to the definition, but has expressed concerns as to the use of Appendix 2 Criteria for Determining the Significance of Indigenous Biodiversity. Ms Whitney (on behalf of Transpower) emphasised the challenges for infrastructure providers associated with this approach to not map SNAs, particularly those that have linear networks.
132. The evidence provided generally considers that the recommended amendment to the definition will create uncertainty for landowners seeking to use or develop land that has indigenous vegetation. The evidence considers that landowners would need to obtain input from an ecologist to determine whether an area is an SNA or not in order to determine whether earthworks or vegetation clearance can be undertaken as a permitted activity. I agree that this may seem onerous, however due to the errors in the spatial data, it seems more reasonable to remove the mapping until ground-truthing occurs. I agree with Mr Scrafton that mapping is a much simpler and effective tool to provide the necessary certainty for plan users and regulators alike as to the application of the relevant plan rules. However, the degree of inaccuracy and errors in the mapping means that this is not a realistic option at this time and in this process. As discussed above, I am recommending including a non-regulatory policy that will provide for the costs of an ecological assessment to be covered by Council. I agree with Mr Scrafton that there is an onus on the Regional Council to lead the identification of SNAs (which is demonstrated in Section 11B of the RPS Significant indigenous biodiversity roles and responsibilities). I too would support this work being led by Waikato Regional Council using the RPS criteria.
133. Mr Matthews (Genesis Energy) considers that non-natural areas should be excluded from consideration as an SNA. It would be useful to understand why Mr Matthews considers that a landscape area should be excluded from being captured by the definition when it may have similar or more value than a naturally-occurring SNA. The area of concern to Mr Matthews is the riparian plantings undertaken by Genesis, as required by its consents. As this is presumably a condition of consent, any riparian planting will need to remain in place and be maintained. I suggest that if these areas meet the criteria and are captured as an SNA, this would create no additional problems for Genesis Energy. I note that the application of the Appendix 2 criteria to determine an SNA is only an interim measure until a comprehensive ground-truthing and mapping exercise is undertaken, and the results notified as a plan change.
134. The evidence from Mr Scrafton (TaTa Valley) goes on to suggest that the definition should refer to the 'values' of the indigenous biodiversity, and retains the emphasis on sites being mapped. I am not sure whether I understand the consequence of Mr Scrafton's amendments, and ask that he further clarifies this at the hearing.
135. Mr Riddle, on behalf of Department of Conservation, has supported the recommended amendment to the definition for SNA.

## 14.2 Vegetation Clearance

136. The proposed definition of vegetation clearance is as follows:

*Includes the modification, burning, cutting, crushing, spraying and removal by physical, mechanical, chemical or other means of indigenous vegetation, of all forms of vegetation, including indigenous, and may include exotic plants. It does not include vegetation clearance relating to routine cultivation or grazing.*

137. The evidence provided by Lynette Wharfe on behalf of HortNZ's original submission sought to amend the definition to include reference to biosecurity issues. I recommended rejecting this approach in the s42A report, as I consider that the additional permitted activity clause for conservation activities sufficiently allows for biosecurity works to occur within an SNA, meaning that there is no need to change the definition of vegetation clearance. I have not been persuaded by the evidence provided to change my view.

## 14.3 Indigenous vegetation

138. The proposed definition of Indigenous vegetation is as follows (including recommended amendments version):

*Means vegetation that occurs naturally in New Zealand or arrived in New Zealand without human assistance. For the purposes of this plan, domestic or ornamental ~~Landscaping~~ landscape planting or planted shelter belts comprising indigenous species are not included*

139. Mr Riddell on behalf of Department of Conservation has suggested an amendment that includes the additional wording "unless within a long-tailed bat Significant Natural Area". I can appreciate the intent of the additional wording, however in the absence of mapping of areas significant for long-tailed bat populations, the additional wording will add little value to the definition. Mr Riddell's evidence has not changed my mind.

## 14.2 Recommendations

138. My recommendations remain as set out in Section 29.2 of my s42A report regarding the recommended amendment to Chapter 13: Definitions. However, I am persuaded by the evidence and recommend that an additional non-regulatory policy be added to Chapter 3: Natural Environment that provides for Council to assist with the cost of an ecological assessment in the event that an activity triggers an SNA rule if the area is deemed to meet the criteria in Appendix 2 and therefore be classified as an SNA.

## 14.3 Recommended amendments

139. I therefore make the following amendment to my initial recommendation:

Recommended Non-Regulatory Policy 3.1.2 D

### 3.1.2 D Significant Natural Area Assessment Funding Policy

(1) 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

## 14.4 Section 32AA evaluation

140. The recommended amendment to include a non-regulatory policy assists landowners and the Council to work together to help manage indigenous biodiversity.

*Other reasonably-practicable options*

141. One option is to have no non-regulatory policy and another option is to include a policy that enables collaboration between property owners and the Council.

*Effectiveness and efficiency*

142. The recommended additional policy will encourage property owners and the Council to work together to achieve good management of indigenous biodiversity. This will improve the effectiveness by implementing Objective 3.1 in the Natural Environment chapter.

*Costs and benefits*

143. There will be additional costs to Council but increased certainty for landowners as to whether a consent is required or not. There are benefits for the environment and to the local and regional community with the additional policy, as it will encourage collaboration on the management of indigenous biodiversity.

*Risk of acting or not acting*

144. There are no additional risks in not acting. There is sufficient information on the costs to the environment, and benefits to people and communities, to justify the additional policy.

*Decision about most appropriate option*

145. The amendment gives effect to Objective 3.1.1 Biodiversity and Habitats. It is considered to be more appropriate in achieving the purpose of the RMA than the notified version, where no non-regulatory policy was included.

## 15 Land use - Rules

### 15.1 Analysis

#### **Rule 22.3.2.1 Earthworks General**

146. The evidence from Hill Country Farmers Group has raised concerns regarding Rule 22.3.2.1 Earthworks General where they have identified conflicts between P1 and P2. I refer to Mr Clease's s42A report for the Rural Zone Hearing where this was discussed comprehensively, and culminated in a recommendation to amend Rule P1 and P2 to assist with readability and usability of the proposed plan. Mr Clease's recommendation was to delete the words "Earthworks for" in Rule P1 and add to Rule P2 "with the exception...." This issue is also alluded to in evidence from Federated Farmers. I believe the above amendment will alleviate the submitters concerns regarding Rule P1 and P2 as per the Rural Zone Hearing:



P1	<p>(a) <del>Except as otherwise specified in Rule 22.2.3.2, Rule 22.2.3.3 or Rule 22.2.3.4 Earthworks for:</del></p> <ul style="list-style-type: none"> <li>(i) Ancillary rural earthworks;</li> <li>(ii) <del>A farm</del> quarry where the volume of aggregate <u>extracted</u> does not exceed 1000m<sup>3</sup> <u>per in any</u> single consecutive 12 month period;</li> <li><del>(iii) Construction and/or maintenance of tracks, fences or drains;</del></li> <li>(iv) <u>Earthworks required to form a A-building platform that will be subject to a building consent for a residential activity, including accessory buildings, where undertaken in accordance with NZS 4431:1989 Code of Practice for Earth Fill for Residential Development</u></li> </ul> <p><u>(b) Earthworks ancillary to a conservation activity must meet the following conditions:</u></p> <ul style="list-style-type: none"> <li><u>(i) Sediment resulting from the earthworks is retained on the site through implementation and maintenance of erosion and sediment controls.</u></li> </ul>
P2	<p><u>With the exception of earthworks for the activities listed in Rule 22.2.3.1 P1</u></p> <p>(a) Earthworks within a site must meet all of the following conditions:</p> <ul style="list-style-type: none"> <li>(i) Do not exceed a volume of more than 1000m<sup>3</sup> and an area of more than 2000m<sup>2</sup> <del>over</del> <u>in</u> any single consecutive 12 month period;</li> <li>(ii) The total <u>combined</u> depth of any excavation (<u>excluding drilling</u>) or filling does not exceed 3m above or below <u>natural</u> ground level;</li> <li>(iii) <u>Take place on land</u> with a maximum slope of 1:2 (1 vertical to 2 horizontal);</li> <li>(iv) Earthworks are setback a <u>minimum of</u> 1.5m from all boundaries;</li> <li>(v) Areas exposed by earthworks are <u>stabilised on completion and</u> re-vegetated to achieve 80% ground cover within 6 months of the commencement of the earthworks;</li> <li>(vi) Sediment resulting from the earthworks is retained on the site through implementation and maintenance of erosion and sediment controls;</li> <li><del>(viii) Do not divert or change the nature of natural water flows, water bodies or established drainage paths.</del></li> </ul>

147. Point 17 of Hill Country Farmers Group's evidence discusses the relevance of the general earthworks rule in relation the maintenance of existing tracks in a SNA. The submitter considers the rule to be somewhat redundant. I disagree with this, as the rule's purpose is to specifically allow for earthworks for the 'maintenance' of existing tracks through an SNA. As addressed in the s42A report for the Rural Zone, the recommendation above is to delete P1 (iii) which relates to the construction/ maintenance of tracks/ fences etc., as this is covered by the definition for Ancillary rural earthworks and will therefore become a permitted activity. I do not agree with the construction of 'new' tracks within an SNA being appropriate as a permitted activity, as this would not be giving effect to section 11 of the Regional Policy Statement. I do however consider 'maintenance' of existing tracks within an SNA to be appropriate, as maintenance of such would likely have minor effects on an SNA, considering the already existing farm infrastructure..

148. Ms Walker on behalf of FFNZ has suggested including a permitted activity clause for conservation activities within the earthworks rule. This clause has been included in the vegetation clearance rule. Her reasoning is that the earthworks rules are too restrictive. The recommended proposed Rule P5 allows for maintenance of existing tracks, fences and drains within a, SNA, and has no limitations to it. I can see merit in what FFNZ are seeking where they have suggested amending P5 as follows:

*Earthworks for conservation activities, water reticulation or the maintenance of existing tracks, fences or drains within a Significant Natural Area*

149. Given that I have recommended conservation activities to be included as a permitted activity in the vegetation clearance rules, it seems reasonable to allow earthworks for this activity also. I am mindful that the definition for conservation activities only includes new tracks for public walking or cycle tracks, which somewhat alleviates my concern that such a rule could be used to enable creation of a new farm tracks through SNAs. I am cautious when earthworks are

involved to establish new tracks, as in my view these have potential for adverse effects. I agree that fencing that will exclude stock would ultimately benefit the SNA. I am persuaded by FFNZ's evidence to provide for conservation activities and water reticulation within the rule framework, and my recommendation is as follows;

*Earthworks for conservation activities, water reticulation or the maintenance of existing tracks, fences or drains within a Significant Natural Area*

## **15.2 Kauri dieback**

150. The evidence provided by Mr Riddell and Antony Beauchamp on behalf of Department of Conservation includes further suggestions for the provisions for earthworks to address the risk of kauri dieback. There is no doubt that kauri dieback is a serious issue for this species, and I rely on my technical expert John Turner to provide his opinion on the matter.
151. Nevertheless, I do not doubt the evidence provided by the Department of Conservation, and it is reassuring that professionals with such in-depth knowledge are seeking ways to manage this issue. Mr Beauchamp considers that the extent of kauri root zones needs to be registered on a LIM, but I consider this would simply be impractical.
152. The evidence provided by FFNZ also considers that it is not appropriate for council to implement a planning response over and above what is being undertaken at a national and regional level, and I agree with this. However, I am cognisant of the Thames Coromandel District Council decision which concluded that addressing the management of kauri dieback disease in a district plan was within the functions set out in section 31 of the Act.
153. I agree with Ms Walker, who stated in her rebuttal evidence that a voluntary approach is a more efficient and effective territorial response to biosecurity and pest management-related issues. In my view, this comes down to education on the nature of the disease and the associated risks of earthworks in and around kauri trees. I further agree with Ms Walker's rebuttal evidence (for the reason discussed below) that risk management in relation to kauri dieback disease is best left with the experts at a regional and national level, as district councils simply do not have that resource.
154. Mr Riddell's evidence considers that my recommended approach to managing kauri dieback is insufficient and is based on an incomplete understanding of the kauri dieback disease. It is not the lack of understanding of the disease that has led to the approach in the s42A report, it is my knowledge of implementation of a rule framework in reality. I am guided somewhat by my experience in enforcement of district plan rules. My rationale for keeping a very basic approach to the management of this disease is simply because I have serious doubts that a complex rule framework in a District Plan will have any effect towards the management of this disease. Compliance tends mostly to be managed on a complaints basis. Therefore, a call (complaint) would have to be received or a random observation made of an earthworks activity in the vicinity of a kauri tree for firstly Council to be aware of the presence of a kauri tree, and secondly for any enforcement action to occur. In the event that the earthworks have occurred, then the damage has already been done and no amount of enforcement would be able to correct the issue. From a consenting perspective, the Department of Conservation is relying on a property owner reading the district plan before undertaking earthworks activities (inclusive of gardening activities), so it would be unlikely that a consent application would ever be received (other than perhaps where an infrastructure provider is involved). In my view, this is not a very effective or efficient mechanism for managing this disease. Further below a similar discussion has evolved around the management of bats, and I apply similar thinking to kauri dieback. Territorial authorities do not have the resources or the expertise to manage this serious issue. I believe that education first and foremost is paramount, and in my view the management of this disease goes far beyond a rule in a District Plan, and should remain as a national and regional issue to manage where resources are available.

155. In conclusion, the evidence on kauri dieback has not changed my recommended approach.

### 15.3 General

156. Mr Riddell's evidence disagrees with a permitted activity approach to the clearance of significant indigenous vegetation on the basis of the overarching policy directive in regard to these areas. Mr Riddell refers to Policy 11.2 of the RPS and considers that a very restrictive approach should be imposed. I acknowledge Mr Riddell's concerns, however in my view a restricted approach has already been imposed, in that only certain activities are provided for as a permitted activity. In regard to building development, this has been discussed in paragraph 111. Some of these activities will greatly benefit an SNA - for example conservation activities and maintenance of tracks and including fencing. In my view the most effective mechanism for protecting an SNA is to stock-proof it by fencing. As discussed in the s42A report, the maintenance of tracks will enable more efficient stock movement when moving them through an SNA, and I am mindful that farm infrastructure already exists. To not provide for these will unreasonably limit a farming operation. My view of the vegetation clearance rules is that they are appropriate and allow for good management of these areas, which in the long term will benefit SNAs.
157. Mr Riddell considers that new conservation fencing should not be permitted. I accept that ideally a fenceline would be located just outside an SNA, however topography has a large influence on where a fenceline can be practically placed and maintained. In any event, the effects of construction of a fence are temporary.

### 15.4 Rule 22.2.7 PI Indigenous Vegetation Clearance inside a SNA (Rural Zone)

158. Lynette Wharfe on behalf of HortNZ sought inclusion of a new permitted activity to provide for pest management and biosecurity works. I recommended rejecting this request in the s42A report, recommending instead an additional clause for conservation activities which includes plant or animal pest management. Ms Wharfe considers that as this clause is specific to indigenous biodiversity, it will not address the concerns that biosecurity issues may be encountered in the horticultural industry if unwanted organisms establish in an SNA. Ms Wharfe considers that such organisms could pose a threat to the production of fruit and vegetables for human consumption. I acknowledge Ms Wharfe's concerns, however the clause does not restrict the industry's need to manage any biosecurity risk. I consider that if an unwanted organism established in the SNA, then this can be managed under the conservation activities term. Whether the reasons for removing any risk are for the benefit of the SNA or the Horticultural Industry is not really relevant, as it would still be a permitted activity regardless of the reason. It seems to be that the SNA would ultimately be benefitting. It would be helpful if Ms Wharfe could provide examples at the hearing so that I can have a better understanding of the concerns.
159. Evidence submitted by Kim Robinson on behalf of Lochiel Farmlands Limited sought an amendment to Rule 22.2.7 PI (iv) as follows; (iv) *Maintaining, repairing or reinstating existing tracks and fences*. I recommended rejecting this request in the s42A report as I viewed the inclusion unnecessary, as the rule already allows for maintenance and this would allow for any repairs on an existing track. I also considered in the s42A that 'reinstating' could result in works that are outside the realm of maintenance, and that a track that had not been used for 30 years would be quite different to a track that had been recently disused. I believe that this is a matter of how one views 'maintenance' in terms of implementation of the rule, which in my view means maintaining the track to keep it functioning.
160. The evidence discusses situations where a track may be damaged through slips or flooding and it could potentially be a health and safety issue. In my view, if areas of a track are destroyed by unforeseen circumstances, then the rule as proposed allows for the maintenance of existing tracks and would therefore allow for any damage to be corrected (as the track is being maintained).

161. However, if reinstating is applied to a track that has clearly not been in use for some time, where vegetation would have had the opportunity to re-establish, then in my view this requires a different approach. It is this scenario of 'reinstating' that I am referring to in my analysis, and a track that has not been utilised for some time should undergo consideration through a consenting process. I do not consider any further amendments to be necessary.
162. Ms Walker on behalf of Federated Farmers in section 21 of her evidence, has indicated support for inclusion of an additional clause regarding conservation activities. Ms Walker seeks clarification that non-indigenous species in an SNA can be cleared. My response to this is yes, and I consider that the clearance of non-indigenous species such as woolley nightshade and other pest species can only benefit the SNA. However, I note that Mr Riddell (DOC) considers that there need to be restrictions on the clearance of potential long-tailed bat roost trees, which may or may not be indigenous species. In this regard I have left this for Mr Turner to discuss in his reply.
163. Mr Scrafton (Tata Valley) has recommended deleting Rule 22.2.7 D2, as he notes that the rule would require any indigenous vegetation clearance within an SNA to seek consent, and notes that Rule 22.2.7 D1 provides for any other vegetation clearance if not provided for by the permitted activity rules. Rule D1 applies to activities that are specified in Rules P1-P9 that do not comply with their associated standards. Rule D2 is intended to capture the clearance of indigenous vegetation for any other reason. I accept that this is not what Rule D2 says, and recommend that it be amended accordingly.

### **15.5 Rule 22.2.8 P1 Indigenous vegetation clearance outside a SNA - Rural Area**

164. Ms Wharfe has requested the same outcome for managing biosecurity issues within indigenous vegetation. I note that the recommended clause for conservation activities has not been included in the vegetation clearance rules when outside an SNA, and I consider this was an error. In my view, if added, it would potentially help indigenous vegetation and the horticultural industry (as discussed above), and I recommend that the clause be added to P1 22.2.8 as follows:

(xx) Conservation activities

165. Mr Blomfield on behalf of the Dilworth Trust has sought indigenous vegetation clearance outside the SNA in the Rural Zone for the purposes of remediation or stabilisation of the banks of a stream, river, or other waterbody as a permitted activity. Mr Blomfield considers that this would be consistent with Policy 11.1.4, in particular clause e), which refers to actions necessary to avoid loss of life, injury or serious damage to property. He considers that the removal of the vegetation will protect people and property from the effects of natural hazards. In my view, the removal of vegetation in the vicinity of any waterbody for the purposes of stabilisation is questionable. Mr Blomfield has provided copies of consents granted for earthworks for the purpose of stabilising the banks of the Mangatawhiri Stream. The purpose of the earthworks is to provide a stable landscape for the establishment or replacement, as well additional plantings that will improve the character and amenity values of the stream and adjoining properties. Although I cannot see a planting plan on the plans submitted as evidence, I would suggest that the planting be required to remain in place, as the establishment of such is a requirement of the consent. Considering this, I am of the view that even if the additional clause were included in the plan, the Dilworth Trust would not be able to implement it due to the requirement of the consent in respect to establishment of plantings in accordance with clause ii of the consent.
166. The evidence provided by Tertia Thurley on behalf of Department of Conservation is in regard to the long-tailed bats in the Waikato District. In my s42A report I rejected the inclusion of provisions to manage bats on the grounds that council does not have any spatial data for bat habitats inside or outside an SNA. Ms Thurley has provided an explanation and insight into the habitat of this species. The original submission sought to include provisions in the proposed

plan to manage this species. Ms Thurley has provided in Appendix I of her evidence maps of the known distribution of bats in the district. Further to this is the information from DOC's national database which attempts to collate all known bat records. The evidence points out that the map which does not show bats does not necessarily mean that bats are not present, just that no one has surveyed for bats in those areas. My understanding from the evidence is that the loss of roost trees is the main concern. I rely on Mr Turner, who is my technical expert in this regard.

167. Further to above, Ms Foley (Waikato Regional Council) has indicated in paragraph 5.5 of her evidence that the Regional Council submission to the draft National Policy Statement for Indigenous Biodiversity has acknowledged that although resource management plans may have a role in managing highly mobile fauna through habitat protection, the surveying, sourcing and disseminating data or protection of species should not be undertaken by local authorities, as this would present a transfer of roles from DOC to councils and therefore rely on the RMA framework. I agree with Ms Foley where she says that Councils do not have expertise, information, or capacity to undertake this role. In my experience, when councils have similar rules in plans, this leads to an expensive RMA process for people, as this can require management plans to be produced for conditions that appear in a District Plan consent and a Regional Plan consent addressing the same matters.

### **15.6 Manuka and kanuka**

168. The classification of manuka and kanuka as either threatened or at risk (as discussed in my s42A report) caused concern for the farming industry. Ms Foley discusses this in her evidence in respect of the deletion of manuka and kanuka scrub from within the Whaanga Coast. I found it interesting to note that DOC has ranked part of this area as a Threatened Species Management Unit. The evidence further says that the extension of the DOC SNA into private land has ecological and functional importance as a buffer or barrier to external influences from the environment. I was surprised to learn this, and I am presuming that these property owners have also been informed of their properties being a Threatened Species Management Unit. It would be useful to understand what works are being undertaken in these areas.
169. However, in respect of manuka and kanuka, my understanding is that these species are classified as either at risk or threatened, as a precautionary approach to the potential threat of myrtle rust, not because of any ecological benefit. I do not doubt the ecological benefits of these species, but on the properties on the Whaanga Coast that Mr Turner and I visited, the species was not necessarily part of a mature ecosystem. Much of the indigenous vegetation was completely devoid of an understory due to grazing of cattle. I rely on the response provided by my technical expert Mr Turner.
170. Ms Walker also mentions the new permitted activity rule for the removal of manuka and kanuka in her evidence, and considers that this should also apply to Rule 22.2.8 in regard to outside of a SNA. The new rule has been relocated from Rule 22.2.8 to Rule 22.2.7 in response to the recent classification of manuka and kanuka as being either at risk or threatened, and therefore instantly meets the criteria for a SNA. In regard to the 10m setback for a water body, this is not supported in the context of maintaining productive pasture, and is inconsistent with the reasoning in the s42A report, which states that it would be impractical to impose a setback which applies to the maintenance of existing infrastructure. I am not sure if I understand, and ask that Ms Walker further clarify this at the hearing.
171. Further to the manuka and kanuka discussion, Ms Walker does not support the recommendations for the management of this species, and is unsure as to why the approach in the Draft National Policy Statement for Indigenous Biodiversity cannot be followed. I agree with Ms Walker - it is unfortunate that the classification of this species as being at risk or threatened has caused this inclusion of it in Appendix 2 criteria, and the application of Policy 11 of the New Zealand Coastal Policy Statement. However, as the National Policy Statement

for Indigenous Biodiversity is only a draft, it has no statutory weight, and until such time as it does, other planning instruments prevail.

172. Evidence from Lochiel Farmlands has raised concerns in respect of Rule 22.2.8 and sought that all controls be removed for pasture maintenance when outside an SNA. Similar evidence in this regard has been received from Hill Country Farming Group. I can appreciate that it appears that I have recommended removing the permitted activity rule for the maintenance of pasture, and can confirm that the rule has been removed from Rule 22.2.8. However, I bring to the submitter's attention that there is a permitted rule for pasture maintenance within Rule 22.2.7 inside an SNA. Kanuka and manuka being recently classified as either at risk or threatened has meant that they instantly meet the criteria for being deemed an SNA. This meant that it was more appropriate for the rule to be relocated to Rule 22.2.7 inside an SNA. However, in recognition of these species being considered a pasture weed by the farming industry, there is a permitted rule allowing for up to 2000m<sup>2</sup> of clearance per year of manuka or kanuka that are less than 4m in height within an SNA. In my view this will allow for pasture maintenance to continue at a sustainable rate.

### 15.7 Recommendations

173. Correct an error where a clause for providing for conservation activities was omitted from Rule 22.2.8.
174. I am persuaded by the evidence received from Ms Wharfe on behalf of HortNZ to provide for new fencing and water reticulation.
175. I am persuaded by the evidence from Mr Scrafton on behalf of TaTa Valley Ltd to re-word Rule D2 to clarify which activities it applies to.

### 15.8 Recommended amendments

176. I therefore make the following amendment to my initial recommendation:
177. Rules 22.2.3.1 Earthworks - General Indigenous vegetation clearance inside a Significant Natural Area

<i>P5</i>	<i><u>Earthworks for conservation activities, water reticulation or the maintenance of existing tracks, fences or drains within a Significant Natural Area</u></i>
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#### Rules 22.2.7 Indigenous vegetation clearance inside a Significant Natural Area

D2	<u>Indigenous vegetation clearance in a Significant Natural Area other than for purposes listed in P1-P9</u>
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Rule 22.2.8 indigenous vegetation clearance – outside a Significant Natural Area

<u>P1</u>	(a) Indigenous vegetation clearance outside a Significant Natural Area <del>identified on the planning maps or in Schedule 30.5 (Urban Allotment Significant Natural Areas)</del> must be for the following purposes:  ...  (i) <u>Conservation activities</u>
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### 15.9 Section 32AA evaluation

178. The recommended change to the rule will better provide for the management of farming within an SNA area.

*Other reasonably-practicable options*

179. An option would be to retain the proposed earthworks rule as notified or to recognise that there are circumstances where earthworks can be undertaken that may benefit an SNA.

*Effectiveness and efficiency*

180. The recommended amendments to the earthworks rule will still give effect to the Regional Policy Statement 11.1. 4 clause (c) which relates to activities undertaken for the purpose of maintenance or enhancement of indigenous biodiversity, as the earthworks will provide for the ability undertake conservation activities such as stock exclusion or track infrastructure for pest management access that will benefit SNAs. The amendments improve the effectiveness of the policy in implementing Objective 3.1.1 and provide suitable guidance to plan users for the assessment of activities that affect the natural values and management of SNAs.

*Costs and benefits*

181. There will be interim additional cost to the SNA until vegetation recovers, however long term the exclusion of stock and pest management will greatly benefit the SNA. There are benefits for the environment and to the local and regional community with the additional clause as conservation works will be enabled.

*Risk of acting or not acting*

182. There are no additional risks in not acting. There is sufficient information on the costs to the environment, and benefits to people and communities, to justify the amendment to the policy.

*Decision about most appropriate option*

183. The amendment gives effect to the WRPS. It is considered to be more appropriate in achieving the purpose of the RMA than the notified version of the rule.

## 16 Conclusion

184. In conclusion, I consider that the submissions on significant natural areas provisions should be accepted, accepted in part or rejected, as set out in Appendix 1, for the reasons set out in this report.
185. I recommend that provisions in Chapter 3 and Chapter 22 be amended as set out in Appendix 2 Recommended amendments.
186. I consider that the amended provisions will be efficient and effective in achieving the purpose of the RMA (especially changes to the objectives), the relevant objectives of the Proposed Plan and other relevant statutory documents, for the reasons set out in the Section 32AA evaluations undertaken and included in this report.