

BEFORE THE INDEPENDENT HEARINGS PANEL
THE PROPOSED WAIKATO DISTRICT PLAN (STAGE 1)

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

IN THE MATTER OF A submission and further submission by TaTa Valley
Ltd on the Proposed Waikato District Plan
Topic 21a – Significant Natural Areas

BY **TATA VALLEY LTD**
Submitter

STATEMENT OF PRIMARY EVIDENCE OF CHRISTOPHER JAMES SCRAFTON
ON BEHALF OF TATA VALLEY LTD

Planning

Dated: 29 October 2020

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1. INTRODUCTION

- 1.1 My name is Christopher James Scrafton. I am a Technical Director – Planning in the consultancy firm of Beca. I have over 20 years' experience in town planning.
- 1.2 I have previously set out my qualifications and experience of particular relevance in my planning evidence in relation to Topic 2 and as such, I do not repeat that information here.
- 1.3 I have been engaged by the submitter TaTa Valley Ltd (**TVL**) to prepare and present this planning evidence to the Hearings Panel in relation to Hearing 21a: Significant Natural Areas (**SNA**). TVL is submitter number 574 and further submitter number 1340.
- 1.4 In preparing this evidence I have reviewed the s42A Report (Part 1 and 2) and Appendices relating to Hearing 21a: SNA.

2. CODE OF CONDUCT

- 2.1 I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note and that I agree to comply with it. I confirm that I have considered all material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.

3. TATA VALLEY'S PROPOSED APPROACH TO MANAGING INDIGENOUS BIODIVERSITY VALUES ON ITS SITE

- 3.1 In its submission¹ TVL sought to apply a bespoke approach for the management of indigenous biodiversity on the TaTa Valley site which included specific objectives, policies and rules for the proposed TaTa Valley Resort (**TVR**) Zone with respect to SNAs on its own site.
- 3.2 This approach reflected the site-wide ecological mitigation package proposed within the resource consent application(s) lodged with WDC and WRC to develop the resort. The key principle of the approach was to achieve at least a no net loss indigenous biodiversity outcome across the site in its entirety with the anticipated outcome being a net gain in indigenous biodiversity outcomes. This approach recognised that there may be localised losses (in predominantly areas of lower ecological value) to enable

¹ Submission point 574.10

development, which will be mitigated/offset/compensated elsewhere, and retention of areas of high ecological value where development is not encouraged.

3.3 Recently there have been a number of recent changes in circumstance through:

- (a) The National Policy Statement: Freshwater Management (**NPS:FM**) and National Environmental Standards for Freshwater (**NES:FW**); and
- (b) The current status of the resource consent application (which will require an element of redesign to provide for the NES:FW).

3.4 As a result, TVL is in the process of refining its development proposals for the site and will provide the Panel with an update on whether it wishes to pursue a site-specific approach to the management of any on-site SNAs as part of the upcoming rezoning hearings. The purpose of this evidence is to comment on the appropriateness of the district-wide SNA provisions to the extent they will apply to TVL's site in addition to any site-specific controls advanced via the rezoning hearings.

4. DEFINITION OF SIGNIFICANT NATURAL AREA

4.1 The Reporting Officer recommends amending the definition of SNA as follows in light of potential errors or omissions of SNA areas from the planning maps (addition underlined)²:

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

4.2 In my view mapping ecological areas within a district plan is inherently difficult given:

- (a) The dynamic nature of natural areas over the average lifespan of a district plan; and
- (b) The inherent complication (e.g. cost and access to private land) of adequately mapping such areas through a plan review process.

4.3 As such, in my view it is likely that areas that have values for indigenous biodiversity either now or in the future will not be mapped through this plan review process. Notwithstanding this, I do not agree with the reporting officer's recommendation regarding the expanded definition of SNAs as in my view:

² Paragraph 69 of the s42A Report (Part 1)

- (a) The proposed definition results in a high level of uncertainty as to whether a particular area is in fact an SNA. Without an assessment by an appropriately qualified ecologist to assess whether a piece of land meets the Appendix 2 Criteria a landowner or prospective landowner will not know whether their land contains a SNA and therefore will not know whether rules relating to SNA apply or not. This creates real difficulty in terms of the workability and implementation of the related provisions for landowners and regulators alike;
- (b) Given some areas are mapped and shown on planning maps it is likely that some, perhaps even many, landowners and prospective landowners will conclude that there are no other SNAs identified on their land and subsequently that no associated development restrictions apply to the land. It is likely in my opinion that ordinary landowners will not know to check the definition in the Proposed Waikato District Plan (**PWDP**) to identify if they have an SNA on their land. 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;
- (c) Implementation method 11.2.1 of the Waikato Regional Policy Statement (**RPS**) states that Waikato Regional Council will identify significant natural areas and make this information available to territorial authorities. As such 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 understand from the s42A Report that WRC has undertaken this work and provided this information to WDC³. In my view any further work required should be led by WRC using the RPS criteria, and any mapping in a district plan follows from that work rather than require landowners to work this out on a site by site basis
- (d) In any event, as notified, the PWDP includes objectives, policies and methods for protecting areas of indigenous biodiversity outside of SNAs such as:
- (i) Chapter 3.1 of the PWDP which sets out objectives and policies with respect to maintaining and enhancing indigenous biodiversity in which a similar effects management hierarchy framework as Chapter 3.2 is recommended by the Reporting Officer (which I support subject to some refinement);

³ Refer to para 55 of the s42A Report (Part 1)

- (ii) Rule 22.2.8 which sets out rules relating to the clearance of indigenous vegetation outside of SNAs.
 - (e) In my view, these provisions are the more appropriate planning approach to manage unmapped indigenous biodiversity outside SNAs. If a rule in the district plan requires a landowner to obtain a resource consent then that consent process can identify whether a site meets the Appendix 2 criteria and that can be assessed on a site by site basis.
- 4.4 Having regard to the above, I do not support the expanded definition of SNAs as proposed by the Reporting Officer and propose the following amendments:

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

5. CHAPTER 3.2: SIGNIFICANT NATURAL AREAS

- 5.1 From my review, I consider that the notified/recommended provisions of Chapter 3.2 generally seek to adopt an appropriate “effects management hierarchy” approach to SNAs, i.e.:
- (a) First avoid effects where possible;
 - (b) Secondly remedy and/or mitigate effects; and
 - (c) Thirdly offset or compensate effects.
- 5.2 For comparison a similar example of the effects management hierarchy is Policy 3.21 of the NPS: FM relating to wetlands.
- 5.3 Whilst I generally support the application of an effects management hierarchy, I consider that amendments are necessary to the objectives and policies of Chapter 3.2 to:
- (a) Appropriately give effect to the RPS;
 - (b) Better provide for the transition through the effects management hierarchy;

- (c) Recognise that in some instances that avoidance of effects is not always possible and there may be no other practicable option or that there is a functional or operational need to locate in an SNA; and
- (d) Manage effects on the values of an SNA as opposed to an area mapped as an SNA.

Objective 3.2.1 – Significant Natural Areas

- 5.4 In my opinion a minor change to Objective 3.2.1 is required to better reflect Policy 11.1 of the RPS (*to maintain or enhance indigenous biodiversity*) and to clarify that indigenous biodiversity in SNAs do not need to be both protected and enhanced, being:

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

Policy 3.2.3 – Management Hierarchy

- 5.5 Policy 3.2.3 sets out the effects management hierarchy with respect to recognising and protecting indigenous biodiversity within SNAs. In my view:

- (a) The policy as drafted is overly restrictive because whilst avoidance is generally preferred as a first response, it is not always practicable in all circumstances and as drafted the policy does not acknowledge that;
- (b) The policy does not sufficiently give effect to Policy 11.2.2(b) the RPS which requires activities avoid the loss or degradation of areas of significant indigenous vegetation and significant habitats of indigenous fauna in preference to remediation or mitigation; This is more clearly reflected in proposed Policy 3.1.2A(a) which directs avoidance of effects on indigenous biodiversity outside SNAs in the first instance.
- (c) RPS Policy 11.2.2(d), which I discuss in more detail below with respect to Policy 3.2.4, requires that more than minor residual adverse effects shall be offset. Some amendment is therefore required to Policy 3.2.3 to give effect to this policy.
- (d) Similarly, RPS Policy 11.2.2(g), which I discuss in more detail below, also requires that district plans have regard to functional and locational requirements of activities. Some amendment is therefore required to Policy 3.2.3 to implement this policy

- (e) In some instances, it may not be appropriate or practicable to avoid adverse effects and as such the ability to ‘move down’ the effects management hierarchy within Policy 3.2.3 needs to be provided for. To provide for this, I consider the policy should be amended to recognise that, while preferable, in some instances, avoidance is not always practicable. I note that similar policies can be found in the Auckland Unitary Plan in respect to Significant Ecological Areas, including Policy D9.3(1) and D9.3(6). The policy framework is still sufficiently robust since it requires an applicant to show why it is not practicable to avoid locating within an SNA or having some effects. The expectation is that a proposal would still be required to satisfy the rest of the effects management hierarchy i.e. mitigate, remedy or offset effects;
- (f) The policy should be amended to refocus the policy on the management of adverse effects on the values that contribute to the area being deemed a “SNA” as opposed to the area mapped as SNA. In my view such amendment is required to appropriately give effect to RPS in particular Policy 11.2 (in which the explanation to the policy notes *significant indigenous vegetation and the significant habitats of indigenous fauna shall be protected by ensuring the characteristics that contribute to its significance are not adversely affected to the extent that the significance of the vegetation or habitat is reduced*). Examples where policies reference the ‘values’ of indigenous biodiversity (or similar) include:
- (i) The Auckland Unitary Plan - provisions D9.2(1), D9.2(2), D9.3(1) - (3) in respect to Significant Ecological Areas; and
 - (ii) Bay of Plenty Regional Coastal Plan – provisions NH 5, NH6, NH8 with respect to Indigenous Biological Diversity Areas.

5.6 Having regard to the above, I recommend the following amendments to the S42A Reports version of Policy 3.2.3:

Recognise and protect the values of indigenous biodiversity within Significant Natural Areas by:

(i) avoiding the adverse effects of vegetation clearance and the disturbance of habitats on the values that contribute to Significant Natural Areas as far as practicable

(ii) remedying and/or mitigating as far as practicable 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 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. are not feasible then economic compensation may be considered.

Policy 3.2.4 – Biodiversity Offsetting

- 5.7 The Reporting Officer recommends amending Policy 3.2.4 in respect to offsetting residual adverse effects by deleting ‘significant’⁴ (as well as other amendments within Policy 3.2.4) in order to be consistent with Policy 11.2.2 of the RPS.
- 5.8 I disagree with this recommendation, as in my view 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.
- 5.9 To give effect to Policy 11.2.2 of the RPS and to provide certainty and guidance for users, I suggest the words ‘more than minor’ to be included in the policy as set out below (amendments to the s42A reporting officer recommendation):

Policy 3.2.4. (a) Allow biodiversity offset where an activity will result in more than minor residual adverse effects on a Significant Natural Area...

Policy 3.2.6 – Providing for Vegetation Clearance

- 5.10 Policy 3.2.6 sets out where vegetation clearance is generally considered appropriate within SNAs. The Reporting Officer recommends adding where operating, maintaining or upgrading existing infrastructure)⁵ to the areas considered appropriate. I note that this amendment should be under Policy 3.2.6(a) (and not 3.2.6(b) as included in the s42A Report), so that the policy would therefore read:

Policy 3.2.6

(a) Provide for the clearance of indigenous vegetation in Significant Natural Areas when: ...

(v) Operating, maintaining or upgrading existing infrastructure

⁴ Refer to para 222 of the s42A Report (Part 1)

⁵ Refer to para 258 of the s42A Report (Part 1)

Proposed new policy regarding functional requirements

- 5.11 I consider there is a gap in the PWDP that fails to give effect to Policy 11.2.2(g) of the RPS as follows:

“Regional and district plans shall ... (g) 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.”

- 5.12 I consider a new policy is necessary to give effect to this policy (which will recognise such activities like infrastructure and conservation activities) and suggest the following drafting:

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

- 5.13 Whilst this does not exempt the user from other provisions that apply to the SNA I consider it is a suitable policy to give effect to the RPS and provides an appropriate consideration for such activities to assist in decision making. I note a similar policy is included in the Auckland Unitary Plan with respect to Significant Ecological Areas (D9.3(8)). While I acknowledge that the AUP policy equivalent is for infrastructure in SEAs (which reflects the AUP RPS). The policy I have recommended aligns with the Waikato RPS.
- 5.14 This policy integrates with the proposed amendments to Policy 3.2.3 to introduce "as far as practicable" and provides guidance about when it may not be practicable to avoid having effects on a SNA.

New Policy 3.1.2A – Management Hierarchy

- 5.15 The Reporting Officer recommends a new policy be introduced (Policy 3.1.2A) that sets out the effects management hierarchy for indigenous biodiversity outside of SNAs. From my review, the proposed wording largely mirrors that of Policy 3.2.3. Therefore, the amendments that I have suggested in respect to policy 3.2.3 also apply in respect to policy 3.1.2A (except that Policy 11.1.3(a)(ii) of RPS requires significant residual adverse effects to be offset for non-significant indigenous biodiversity).
- 5.16 I also note that whilst the Reporting Officer suggests including reference to compensation (in Policy 3.2.3) to address effects that cannot be offset, this has not been brought over, and I suggest for consistency that this be added to Policy 3.1.2A.

Therefore, I suggest Policy 3.1.2A (as proposed by the Reporting Officer) be amended as follows:

3.1.2 A Policy -Management hierarchy

(a) Recognise and protect the values of indigenous biodiversity outside Significant Natural Areas using the following hierarchy by

(i) avoiding the significant adverse effects of vegetation clearance and the disturbance of habitats on the values of indigenous biodiversity as far as practicable in the first instance;

(ii) remedying and/or mitigating any effects that cannot be avoided as far as practicable; then

(iii) mitigating any effects that cannot be remedied; and

(iv) after remediation or mitigation has been undertaken, offset any significant residual adverse effects in accordance with Policy 3.1.2B;

(v) If offsetting of any significant residual adverse effects in accordance with Policy 3.1.2B are not feasible then economic compensation may be considered.

Recommended Permitted Activity 22.2.7 (P1)(vi)

5.17 TVL supported submission 747.8 (as further submission FS1340.142) and also submission 697.124 with respect to adding a permitted activity for vegetation clearance in respect to ecosystem protection, rehabilitation or restoration works. The Reporting Officer has generally agreed with the submissions and recommends that 'Conservation Activities' are provided for as a permitted activity in rule 22.2.7 (P1)⁶.

5.18 I agree with the Reporting Officer that the inclusion of this activity will "help to enhance biodiversity as set out in the WRPS"⁷, and support the inclusion of this permitted activity in the PWDP.

Proposed Discretionary Activity 22.2.7(D2)

5.19 The Reporting Officer recommends a new discretionary activity rule 22.2.7(D2) - *Indigenous vegetation clearance in a Significant Natural Area*⁸. As written, I note the rule would require any indigenous vegetation clearance within a SNA to seek a resource consent, when certain levels of clearance are provided for in the permitted activity rules. I also note that Rule 22.2.7(D1) provides for 'any other' vegetation clearance if not provided for by the permitted activity rules.

⁶ Refer to para 444 and 452 of the s42A Report (Part 2)

⁷ Refer to para 444 of the s42A Report (Part 2)

⁸ Refer to para 464 of the s42A Report (Part 2)

5.20 As such, I consider D2 as recommended by the Reporting Officer should be deleted.

6. FURTHER EVIDENCE OF RELEVANCE TO SNAS

6.1 As the Panel will be aware, evidence is being developed by TVL's expert representatives with respect to the Rezoning Hearing, due in late November 2020.

6.2 I note that the matters discussed in this primary statement of evidence will be reflected in this subsequent evidence and additional information to be provided in the Rezoning Hearing evidence. This includes updating rules in respect to proposed activities and development standards for indigenous biodiversity within the proposed TVR Zone, which were not discussed as part of this s42A Report and will be discussed as part of the Rezoning Hearing in respect to the full suite of provisions for the TVR Zone.

Christopher James Scrafton

29 October 2020