Before the Hearings Panel

In the Matter of	the Resource Management Act 1991
And	
In the Matter of	the Proposed Waikato District Plan – Stage 1
And	
In the Matter of	Hearing 21a - Significant Natural Areas (SNA)

Evidence and Statement of Position
Terence Stephen Allan DENTON & Bernardina Antonia Jacoba VAN LOON

Dated: 29 October 2020

INTRODUCTION AND SUMMARY

1. My full name is Terence Stephen Allan DENTON and I have complied this document in support of the submission made on behalf of my wife Bernardina Antonia Jacoba VAN LOON and myself in regards to our property at 40 Cameron Town Road, Pukekohe (**property**: Title Identifier: NA69C/886, property number: 301366, assessment number: 03781/338.04 and legal description: Lot 3 Deposited Plan 120337).

2. We made a submission on the Proposed Waikato District Plan – Stage 1 (**plan**) on 27 September 2018. This submission was subsequently allocated Submission Number 352 (**submission**).

3. Primarily, our submission sought re-alignment of the Significant Natural Area (**SNA**) overlay to coincide with the existing covenanted area as the non-covenanted area is garden/backyard that does not meet any of the Criteria for Determining Significance of Indigenous Biodiversity as listed in Regional Policy Statement - Chapter 11A (**Appendix 2**).

4. The Council Document "Hearing 21A: Natural Environments - Indigenous Vegetation and Habitats Section 42a Report" (**Section 42a Report**), Part 3 recommended that our primary submission point (352.1: Mapping) be accepted in part, pending a "ground truthing" exercise.

5. The Section 42a Report (Part 2) accepted our submission point (352.2) on Earthworks due to general changes proposed for the plan and rejected point 352.3 on Vegetation on grounds of a lack of specifics.

6. To submission point 352.1, we firmly believe that, based on the evidence provided in our original submission and further elaborated on here, the Council already has sufficient data to realign the proposed SNA overlay without the need for further rate payer expenditure on ground truthing.

7. Further, based on the fact that the Section 42a report does not reject outright as SNA our land containing significant domestic infrastructure and garden/backyard elements, and that Appendix 2 does not specifically preclude an SNA from containing these elements, we seek that in support of our submission points 352.2 and 352.3, these elements be addressed specifically under the proposed rules pertaining to SNA.

8. It should be noted that whilst the Section 42a report states that Further Submission FS1293.102 (Department of Conservation) opposed our submission point 352.1, this is not strictly correct since FS1293.102 specifically did NOT oppose incorrectly identified SNA, which we strongly contend is the case here and clearly evident from our submission.

9. We would like to report/record an **error** in the Section 42a report: §32.10.14, point g. incorrectly refers to submission 352.1 (our submission) as pertaining to 7C Ridge Road. Consequently our property is not represented in the Recommendations (§32.10) at all and we request that this error be corrected. Our property address, per our submission, is 40 Cameron Town Road, Pukekohe.

MAPPING AND GROUND TRUTHING

10. Like many other submitters, we have notified the Council at least twice of the errors in their SNA mapping. The SNA mapping mismatch issues were raised during the consultation phase.

11. As also noted in other submissions (for example 9.1, 78.1, 494.2, 718.1), communications with the Council prior to notification indicated that erroneous SNA would not be promulgated in the notified plan. However, nothing had changed when the plan was notified.

12. On querying this with Council we were told the only remaining recourse was via a submission to oppose the SNA, but that this was merely a formality and that the Section42a reports would correct the issue. (Emails exchanged with Council are available on request).

13. Well over two years later, having gone through a drawn out and time/money consuming bureaucratic process at the rate payers' and personal expense (as have many, many other submitters with obviously miss-mapped SNA), we are right back at the start with "ground-truthing" being recommended!

14. However, the Section 42a ground-truthing recommendation is vague, without any timescales, having no defined process and with no apparent recourse to an accessible hearings/appeals process. Crucially, it effectively by-passes this hearing process as far as a property's SNA designation is concerned.

15. Faith in the recommended process going forward is low. So far it has been a waste of rate payer money and personal time from the beginning of the so called consultation process up to this point (essentially back where we started) and we are again in limbo until this new process is complete.

16. At the least, the ground-truthing process needs to be made clear immediately, with short timescales and accessible routes to appeal.

17. Simple checking before the hearing process commenced (which now has to be done anyway) could/should have prevented this fiasco. Why now waste even more rate payers' resources in ground-truthing our property when all the required information is in our original submission (and in our prior emails to Council)?

18. Pending any changes to the recommendation, until ground-truthing is complete it remains unclear whether the Council formally considers our garden/backyard SNA or not. The Section 42a Report defers to Appendix 2 which does not in itself preclude garden, domestic infrastructure or non-native vegetation from being within an SNA.

19. Until then (or until the SNA or the SNA Earthworks and Vegetation rules are amended) we cannot replace our water tank or septic tank, repair retaining walls, resurface our driveway, or even mow our lawn without infringing on the SNA rules.

20. To compound the issue, the Section 42a report has thrown the baby out with the bathwater and missed the point that only a portion of the SNA was incorrectly mapped. The SNA over the already covenanted portion should clearly be retained.

RULES

21. From the Section 42 Report it appears that the Appendix 2 criteria alone will be enough to establish an area as SNA, SNA being now defined as "*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***.

22. Based on the Appendix 2 criteria alone, a garden or backyard containing domestic infrastructure can be an SNA. Who polices this? At what point is the land owner held accountable for rule infringement if the area becomes an SNA over time due to, for example, the native plants in the garden reaching a "critical mass"? How often must the land owner assess his land in accordance with Appendix 2? Are professional assessors required?

23. Allowing an area to now become designated SNA based simply on Appendix 2 without any formal process and without recourse of the landowner to an appeals or vetting process (effectively by-passing this hearing process) is not acceptable.

24. In communication with the Council on the SNA overlay prior to the hearing process beginning, Council indicated that it was not the intention to apply the SNA overlay over domestic infrastructure and garden. Currently, however, nothing in the plan precludes this. Meeting just one Appendix 2 criterion now designates an area as SNA but nothing (i.e. no rules or criteria) prevents the inclusion of domestic infrastructure, garden, significant non-native plants, etc, all of which consequently need to be addressed in the plan/rules.

25. Clearly this becomes a complex rule set pretty quickly since it needs to address a wide range of non-natural or non-indigenous features or activities. The specifics are many and varied since it seems the SNA was and can still be applied over pretty much anything. The notified SNA included, for example, quarries and mines (#723 & #827), a Power Station (#924), Kiwirail corridors (#835) and NZTA motorways (#742) as well as many private properties clearly containing elements other than just SNA. Many of these have not been rejected outright as non-SNA by the Section 42a Report.

26. It is again noted that Appendix 2 on its own does not preclude the existence of many of these elements within an SNA and hence treatment of each of these elements needs to be address by the rules.

27. For this reason our submission points 352.2 and 352.3 where specifically left open ended. We are lay-persons, not rule/plan creators and the aim of our submissions was to point out the inconsistencies and ramifications of applying SNA over existing domestic infrastructure and garden etc. rather than to try and suggest specific and detailed rule changes to cover all aspects. To clarify our position, we provide detailed suggestions/examples in this document as they apply to our property but the issue remains significantly wider than that.

28. The Section42a Report recommendations pertaining to our submission point 352.1 offer no relief. Notwithstanding the ground-truthing exercise, our backyard could still potentially be deemed an SNA by virtue of the Appendix A criteria (although the Section 42a Report is silent on who or what authority applies these criteria). As such it is still unclear how the existing domestic infrastructure, garden, retaining walls, non-native vegetation etc potentially within the SNA are to be dealt with under the plan.

29. To clarify, there are two related issues: i) that SNA under the plan can include non-natural and non-indigenous elements by relying solely on Appendix 2 (or on the notified maps) and ii) that such non-natural and non-indigenous elements (other than tracks, fences or drains) are not adequately dealt with by the rules in the notified plan or by the Section 42a Report recommended changes to the plan in this regard.

30. As a hypothetical example on our submission point 352.2, using the Rule 22.2.3.1. rule amendments proposed in §403 of the Section 42a Report (Part 2, Section 20.5 Recommended amendments), earthworks required for replacing our water tank fall under RD2 since it is not a track, fence or drain.

31. Our submission point (352.2) is that it is unclear whether this is (a) an intended consequence of overlaying the SNA on residential infrastructure or if the intention was (b) not to overlay SNA on such infrastructure in the first place.

32. If the latter (b) was the intention then the recommendation of simply relying on Appendix 2 to define an SNA needs to be revised in addition to the removal of the SNA over such areas. Appendix 2 criteria to not preclude the existence of infrastructure in an SNA.

33. If the former (a) was the intention then the recommended rule changes now make it clearer that ANY and ALL earthworks in an SNA not related to existing tracks, fences or drains are restricted discretionary (RD) activities.

34. In the case of existing domestic infrastructure such as water tanks, retaining walls, septic tanks, driveways, etc., this now makes maintenance of these items substantially more onerous and expensive for the land owner as technically, resource consent is required. These activities should by rights be permitted activities.

35. The above example applies to any maintenance of existing infrastructure in the SNA but additionally the RD2 rule would be triggered by other residential activities since there are now no quantitative limits on earthworks within an SNA under this rule (based on the Section 42a recommendations).

36. Technically, by the recommended definition of earthworks in the Hearing 5 Section 42a Report, burying a dead pet in our SNA backyard or digging post holes for a small shed foundation or child's swing are now potentially restricted discretionary activities requiring resource consent. Note that these activities are not excluded from being in an SNA by the Appendix 2 criteria or by any other rules in the plan.

37. By the original earthworks definition in the proposed plan, even basic gardening would require resource consent and our submission was that if this was not the intent of the rules (as we would hope) then the rules needed to be amended. The change of the earthworks definition recommended in the Hearing 5 Section 42a report has gone some way to improving the situation but the rules are still inadequate in respect of limiting resource consents to material activities.

38. With regards to our submission point 352.3 on Rule 22.2.7 Vegetation Clearance inside a Significant Natural Area the logic of our argument is similar.

39. The rule only allows vegetation clearance if it endangers human life or buildings, pertains to fencing, drains or tracks or is in accordance with Mãori customs and values.

40. As Appendix 2 criteria do not consider the presence (or absence) of existing structures in defining an SNA, an SNA could potentially contain existing structures other than fences, tracks or drains.

41. Vegetation clearance required to maintain these structures (e.g. water tank, driveway, retaining walls, etc) is then considered a discretionary activity (D2) by Rule 22.2.7 in the notified plan as well as in the Section 42a Report (Part 2). This places substantial new compliance costs on the land owner and these should by rights be permitted activities for existing structures.

42. It is unclear if these activities could potentially be permitted as P3 under Rule 22.2.7 per the Section 42a Report (Part 2) since, by point (a)(i), the intention of this Rule seems to be to address new development rather than existing infrastructure. Additionally the scope of P3 is limited to building, access, parking and maneuverings and would not technically apply to other infrastructure elements.

43. The Rule (22.2.7) needs to be expanded to address other (existing) infrastructure within an SNA and increase the scope of permitted activities. Under the proposed plan, clearance of $0.1m^3$ of indigenous vegetation to access an existing 1m retaining wall (that is not endangered by the vegetation) is a discretionary activity!

44. As with the earthworks, there are no quantitative measures for vegetation clearance. Per the definition of indigenous vegetation in the Notified Plan (unmodified by the Hearing 5 Section 42a Report recommendations), indigenous seedlings growing naturally (i.e. not planted) in our lawn constitute indigenous vegetation. Is mowing over them seen as trimming (permitted under the Section42a Report recommendations) or discretionary (i.e. clearance since the seedling invariably die back)?

45. Note that lawn is not excluded from being in an SNA by Appendix 2. Ostensibly, a lawn surrounded by a few large native trees and adjacent to a QEII SNA could meet criterion 11 and thus be SNA by the recommended definition of the Section 42a Report.

46. Although not part of our original submission, we note the rules for Vegetation Clearance outside of an SNA are similarly flawed; our vegetation clearance examples above would also be discretionary activities under these rules.

47. What prevents Council from taking action for past earthworks and vegetation clearance that are now non-permitted activities? How do landowners prove that those activities predate the SNA designation unless they have tabled a comprehensive submission as part of this hearing process or otherwise documented these elements with dated evidence?

48. We note again that nothing in Appendix 2 precludes prior earthworks or vegetation clearance from being part of an SNA. Appendix 2, under the Section 42a Report recommendations, can now be a sole determinant of whether an area is defined an SNA.

49. Will the newly recommended ground-truthing exercise document and record these existing elements? Details and outcomes of this process need to be made clear.

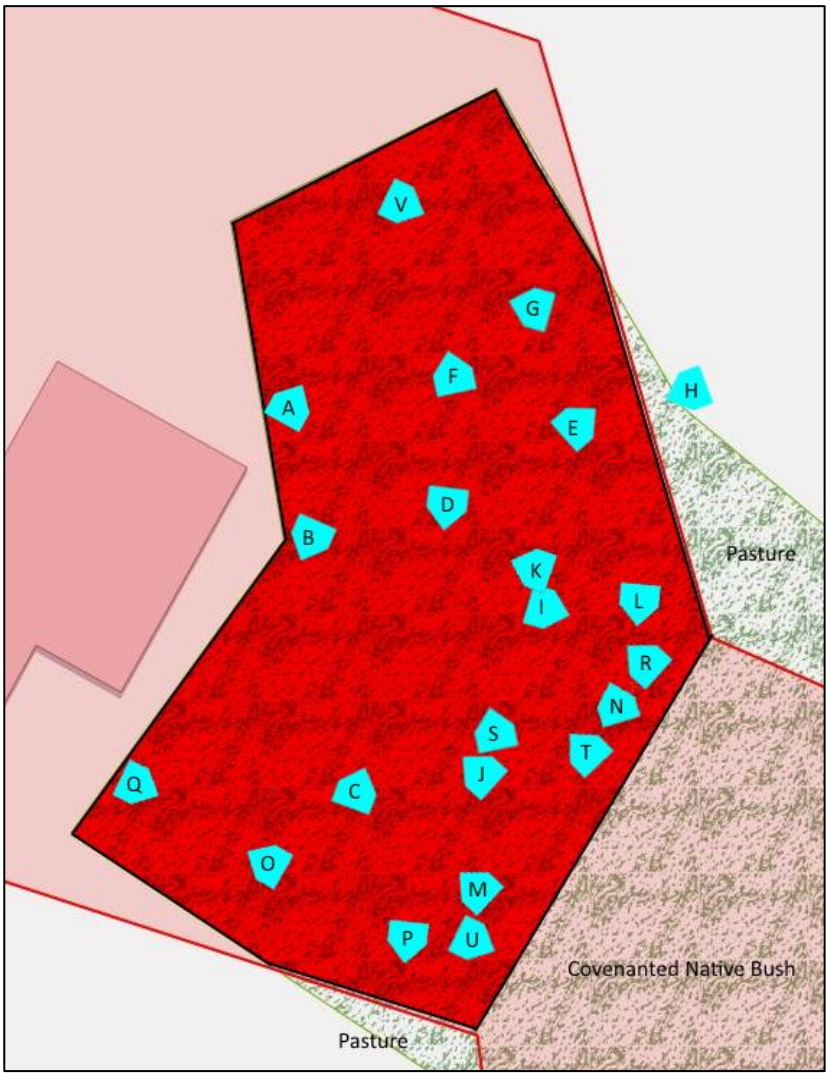
50. As an observation (not part of our original submission), the rules do not seem to prevent planting of non-native plants within an SNA, which seems counterproductive to the preservation of indigenous areas. If planting non-natives is allowed then it presents a means of reversing an SNA to a non-SNA since it may over time result in an area no longer meeting Appendix 2 criteria.

51. Similarly, the plan seems to allow addition of new structures and other non-natural elements to an SNA as long as there is no vegetation clearance or earthworks. This again seems at odds with the bulk of the Appendix 2 criteria.

PROPERTY

52. The following evidence provides detail primarily in support of our submission point 352.1 but illustrates the types of elements now potentially with an SNA that are not adequately addressed by the proposed rules (including the Section 42A Report recommendations), per our submission point 352.2 and 352.3.

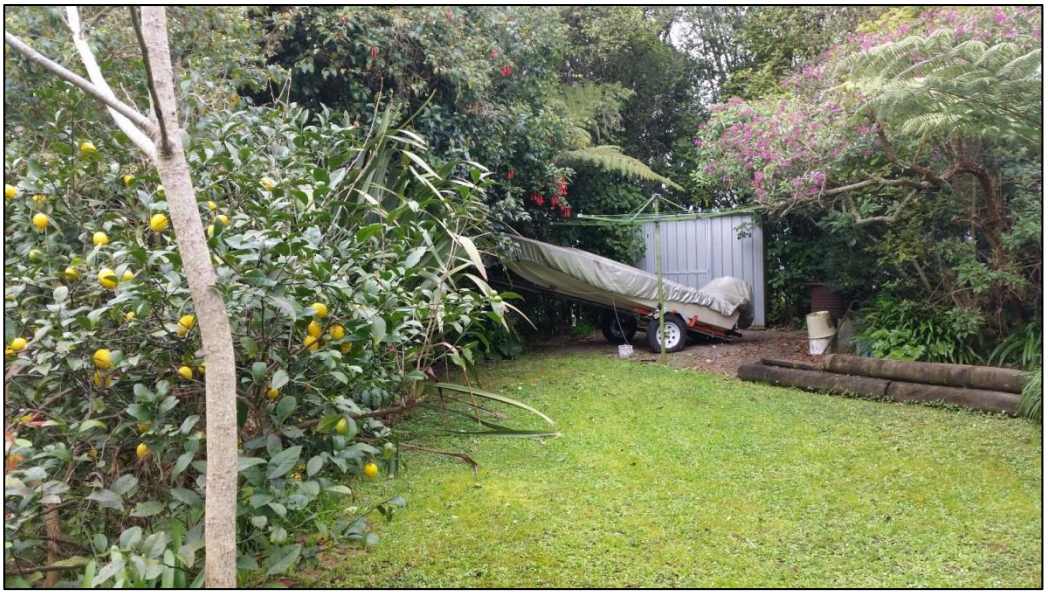
53. The following figure indicates the positions from which photographs were taken throughout the disputed potion of the notified SNA (shaded in dark red). The letter in each blue flag corresponds to a labelled photo in the paragraphs following and the flag points in the direction that each photo was taken.



54. These photographs supplement the evidence of significant infrastructure, non-indigenous and non-natural elements supplied in our original submission to support our view that this portion of property should not be classified as SNA. It further supports our view that this decision does not require ground-truthing and should be made on the basis of our submission alone. (Frankly, it should never have gotten to this stage at all).

55. **Photo A:** Paved driveway (with drainage into the "SNA") and exotic plants. The large tree to right of shot is a Walnut Tree.

56. **Photo B:** Upper lawn area, exotic trees and shrubs, washing line, paved area and garden shed. The septic tank is underfoot from where photo was taken, the house just to the right.



57. **Photo C:** Lower lawn area looking up (which includes the septic tank drainage field) showing exotic plants.

58. **Photo D:** Lower lawn looking down showing fruit trees and exotic plants (in addition to the lawn).

59. **Photo E:** Compost heap and garden off-cut pile.

60. **Photo F:** Water tank and rubble pile.

Photo G: Water tank and retained “cut” into bank (retains driveway above).

61. **Photo H:** Compost heap and exotics.

62. **Photo I:** Paving and exotics with the top of a retaining wall at the back, steps on the right.

63. **Photo J:** Exotics with a retaining wall in background on right and lawn beyond.

64. **Photo K:** Exotics (foreground is usually lawn) with lower lawn in background.

65. **Photo L:** Paving and concrete retaining wall (the ground area to far right is fully paved to the gate but is covered with leaf litter).

66. **Photo M:** Exotics and minimal ground cover.

67. **Photo N:** Concrete retaining wall and paving.

68. **Photo O:** Garden landscaping and exotic plants, garden shed and house in the background.

69. **Photo P:** Exotics and lack of ground cover with pasture beyond.

70. **Photo Q:** Paved area, garden shed and upper lawn area (washing line just visible at top left).

71. **Photo R:** Concrete retaining walls and exotic plants.

72. **Photo S:** Exotics and lack of ground cover with retaining wall in top left (pet cemetery and lawn beyond).

73. **Photo T:** Garden landscaping – stairs and retaining walls.

74. **Photo U:** Exotic plants.

75. **Photo V:** Paved driveway, water tank and exotic plants.

CONCLUSION

76. In the first instance we contend that we have presented sufficient evidence that our backyard is not an SNA and request that a clear and binding ruling be made by the hearing panel to this effect and that the SNA extents over our property are amended per our submission point 352.1 to include only the existing covenanted area.

77. If the intention is to proceed with the ground-truthing and/or Appendix 2 options for determining the SNA extents on our property then, since the outcome of this process is unknown and no future recourse has been provided for, we request that our submission points 352.2 and 352.3 (as expanded on in this evidence document) be accepted in terms of rule changes required to address earthworks and vegetation clearance for maintenance of existing infrastructure within an SNA that are not tracks, fences or drains.

78. The vegetation clearance rules must also address maintenance and access of **existing** building and non-building structures whether endangered by indigenous vegetation or not, with practical clearance limits under a permitted activity.

79. We are not the only land owners affected in this way and there will potentially be such infrastructure within numerous Significant Natural Areas, especially those defined solely by Appendix 2 criteria. In the interests of these parties we urge that, irrespective of the points above as applied to our property, consideration be given to our submission points 352.2 and 352.3 generally.

Terence Denton

29 October 2020