BEFORE THE INDEPENDENT HEARINGS PANEL

PROPOSED WAIKATO DISTRICT PLAN (STAGE 1)

Under	the Resource Management Act 1991 (**RMA**)
In the matter of	hearing submissions and further submissions on the Proposed Waikato District Plan (Stage 1) – **Hearing 21a Significant Natural Areas**
By	the Surveying Company (Submitter)

Statement of evidence by Sarah Nairn
The Surveying Company
(Planning)
Dated: 29 October 2020

INTRODUCTION

1. This is a planning statement of evidence on behalf of The Surveying Company in relation to the Significant Natural Area (**SNA**) provisions in the Proposed Waikato District Plan (**PWDP**).

2. I support the removal of the SNA's which have not been ground truthed. I consider that the removal of these areas is essential for avoiding unnecessary consent costs and maintaining the integrity of the PWDP.

3. I do not support the proposed amendment to the definition of SNA's as, in my view, it is not the most appropriate or effective and efficient approach for the following reasons:

    - The amendment lacks transparency as people cannot see if a SNA applies to their site as they are not identified on the planning maps. Rather, they will need an ecologist to do an assessment. Many will consider this lack of transparency as 'planning by stealth' especially as it precludes submissions from the public and as it effectively expands the application of SNA to almost the whole district instead of being limited to 698 identified sites;

    - The requirement for an ecological report to confirm if an area is an SNA will result in time and cost effects for the applicant;

    - The normal process for including provisions (such as SNA's) in a district plan would require a plan change or plan review. As part of developing the plan change or plan review there would be opportunity for the planner to balance the ecological outcomes of applying a SNA to a site against other planning outcomes such as enabling reasonable development or facilitating the establishment of a regionally significant activity. The proposed amendment to the definition precludes that planning input from occurring. This means that ecology is given primacy over other important and legitimate matters;

- The proposed amendment does not meet best practice for plan drafting as the amendment requires input from a specialist ecologist to evaluate if all activity is permitted or not.

4. Whilst I recognise that it is onerous in terms of time and cost, I consider the only reasonable and defendable option is to do the job properly and survey the potential SNA's.

EXPERIENCE AND QUALIFICATIONS

5. My full name is Sarah Nairn. I am a Senior Planner at TSC in Pukekohe. I hold a Bachelor of Science and a Masters of Planning Practice (Hons) from the University of Auckland.

6. My relevant professional experience spans 20 years in both the private and public sectors in New Zealand and the United Kingdom. In the public sector, I have worked in the policy team at Auckland Council undertaking a wide variety of plan changes to the Auckland City Isthmus District Plan. I was also part of the team who undertook a review of the review of the Hauraki Gulf Islands District Plan and also had input into the preliminary stages of the Auckland Unitary Plan.

7. Within the private sector, I have worked for a range of clients to obtain resource consents for large scale residential subdivisions and other development projects. I have also undertaken private plan changes to rezone land such as Three Kings Quarry in Auckland. I also presented evidence at the Auckland Unitary Plan hearings on a range of issues. These roles have provided me broad spectrum of both policy and resource consent experience in the Auckland and Waikato regions and New Zealand generally.

CODE OF CONDUCT

8. I confirm that, in preparing this statement of evidence, I have read the Environment Court's Code of Conduct for Expert Witnesses contained in Practice Note 2014 and agree to comply with it in giving this evidence. I also confirm that I have not omitted to consider any material facts known to

me that might alter or detract from the opinions expressed in my evidence. The opinions I express are based on my qualifications and experience, and are within my area of expertise, except where relying on the opinion or evidence of another person.

SCOPE OF EVIDENCE

9. In my evidence I will address:

   (a) The mapping of SNA;
   (b) The recommended changes to the definition of SNA.

MAPPING OF SNA'S

10. The notified version of the PWDP identified 698 SNA's of which 37,000ha relates to private land[1]. Given this size and extent, it is fair to conclude that the SNA provisions are not limited to a handful of sites or activities, rather they are impactful on a wide range of landowners and/or activities across the region.

11. Whilst all provisions of the PWDP should be 'the most appropriate' and 'effective and efficient' in terms of Section 32 of the RMA, the wide application of the SNA provisions places an even greater emphasis on the necessity to ensure that this is the case.

12. The Section 42a report prepared by Ms Susan Chibnall has raised some concerns about the identification of the SNA's, in particular the report identifies that there are mapped areas of SNA which do not meet the criteria in Appendix 2. This calls into question if the mapped SNA's in the notified PWDP are indeed the 'most appropriate' and 'effective and efficient'.

13. As a result of these mapping inaccuracies, the report by Ms Chibnall recommends that only the 40 SNA's which have been 'ground truthed' and which meet the criteria for significant biodiversity should remain identified on the planning maps. I strongly agree with this aspect of the approach

[1] Evidence of Susan Chibnall paragraph 16

recommended by Ms Chibnall as retaining the inaccurate mapping with the associated provisions will result in two negative consequences:

(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.

14. Overall, I support the approach of removing the SNA's that have not been ground truthed.

SNA DEFINITION

15. Notwithstanding my support for removal of the SNA's from the planning maps, I do hold significant concerns in relation to the proposed s42A Report amendment to the definition of SNA. The proposed amendment is set out below (red text is the proposed amendment):

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

16. I consider that the above amendment creates the following significant issues:

(a) <u>Lack of transparency</u>

To be effective and efficient, planning provisions need to be clear as to when and where they apply. The identification of SNA's on planning maps achieves this clarity as all parties (being Council,

landowners and any interested parties) can see where SNA's are located.

The proposed amendment to the definition of SNA's removes that clarity as it does not require SNA's to be shown on the planning maps. Rather, it allows SNA's to be identified through an ecology assessment. This means that parties may have an SNA on their property and not know it.

A practical example of this lack of clarity is that a person may wish to purchase a property and, as such, they would go into the Council and review the LIM and the planning maps and go ahead and purchase the property on the basis that there are no ecological areas or other overlays. A little while later they may go to do some earthworks or vegetation clearance and be asked by the Council for an ecology report to confirm that the works are not in a SNA. If the ecology report identifies that the works are in a SNA by virtue of meeting the criteria in Appendix 2, this could well have a significant effect on a person's ability to use the land in the manner that they 'legitimately' thought that they could.

Many will see this lack of clarity and transparency as 'planning by stealth' - especially as what seems a relatively innocuous amendment to a definition has the effect of enlarging the application of the SNA provisions from 698 sites to almost the whole Waikato district (given that the SNA rules are contained in almost all zones).

(b) Time/Cost/Uncertainty

In order to understand if the SNA provisions apply to a proposal for earthworks or vegetation clearance, an applicant will need to employ an ecologist to determine if the works are located in an area which meets one of the criteria in Appendix 2. Inevitably, this will have a time and cost effect for the applicant which is difficult to accept when wanting to undertake day to day activities such as earthworks and vegetation clearance.

(c) Removes planning input

The normal process for including provisions (such as SNA's) in a district plan would require a plan change or plan review. As part of developing the plan change or plan review there would be opportunity for the planner to balance the ecological outcomes of applying a SNA to a site against other planning outcomes such as enabling reasonable development or facilitating the establishment of a regionally significant activity. The lack of planning input means that ecology is given primacy over other important and legitimate matters;

I consider that all matters in Section 6 of the RMA are of National Importance (not just ecology) and this needs to be factored into the application of SNA's to a site or sites.

(d) Best practice plan drafting for permitted activities

As I identified in (a) above, the most effective and efficient planning provisions are those which are very clear as to when and where they will apply. This is particularly important for permitted activities because it needs to be very clear if an activity requires a resource consent or not.

In my view, the proposed amendment does not meet best practice for plan drafting as the amendment requires input from a specialist ecologist to evaluate if the activity is permitted or not. This was addressed in *Friends of Pelorus Estuary Incorporated v Marlborough District Council* [2008] Decision C004/08 at [101]:

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

17. Overall, I consider that the proposed amendment to the definition of SNA is not the 'most appropriate' or 'effective and efficient' for the reasons outlined above. In my view, the only realistic and defendable option available to the Council is Option 4 which retains the SNA's that have been ground truthed and then progressively adds others through a series of plan changes.

18. While such a process may seem onerous it is not dissimilar to the work undertaken by other Council's. In this regard, I attached the evidence of Abigail Salmond to the Independent Hearings Panel on the Auckland Unitary Plan. Ms Salmond's evidence outlines the process for identifying the Significant Ecological Areas in the Auckland Unitary Plan. In summary, this process included a review of existing significant sites (from operative plans), the identification of new sites through spatial assessment and manual site visits (2000) and two rounds of consultation and amendments with landowners (firstly through the draft Unitary Plan proposed and secondly through the notified Unitary Plan process).

19. The key differences between the Auckland Unitary Plan process and the current PWDP process is that new sites were subject to manual site visits and also two rounds of consultation. This process served to refine inaccuracies ensure that identified areas were genuine and should be protected.

SUBDIVISION PROVISIONS

20. Notwithstanding the comments set out above, I do recognise that the proposed amendment to the definition of SNA's would have value when applied in the context of the subdivision provisions. This is because it will enable conservation lot subdivisions on the basis of indigenous vegetation which is not identified as SNA but is still significant and worthy of protection.

21. However, this amendment should be made within the <u>subdivision provisions only</u> as opposed to be included in a definition that applies throughout the plan.

RELIEF SOUGHT

22. I support the removal of the SNA's which have not been ground truthed. The removal of these areas is essential for avoiding unnecessary consent costs and maintaining the integrity of the PWDP.

23. I do not support the proposed amendment to the definition of SNA's as, in my view, it is not the most appropriate or effective and efficient approach. The exception to this is subdivision provisions where such an amendment is useful as it will enable conservation lot subdivision on the basis of indigenous vegetation that is not identified as SNA but yet still has significant value.

24. Whilst I recognise that it is onerous in terms of time and cost, I consider the only reasonable and defendable option is to do the job properly and survey the potential SNA's areas.

Sarah Nairn
October 2020