

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

Summary of evidence (planning) by Dharmesh Chhima on behalf of Hynds Pipe Systems Limited and the Hynds Foundation

Dated: November 2020

INTRODUCTION

This is a summary of evidence on behalf of Hynds Pipe Systems Limited and Hynds Foundation (**Hynds**) in relation to the Significant Natural Area (**SNA**) proposed to be applied to the site at 62 Bluff Road, Pokeno. Hynds Foundation own the land at 62 Bluff Road which is to the south of the Hynds factory site.

PROPOSED SNA MAPPING

The notified version of the Proposed Waikato District Plan Maps identifies two SNA's on the property as shown below:

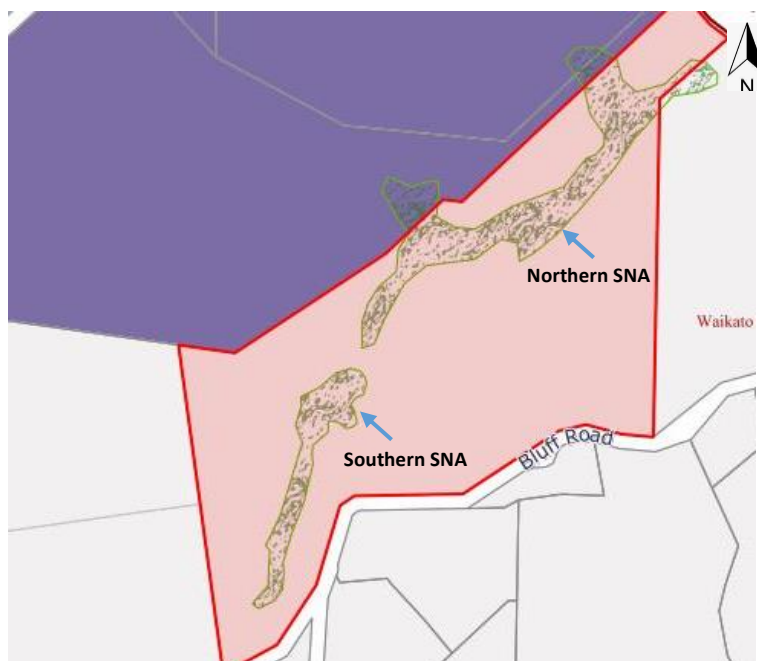


Figure 1: The two SNA's mapped at 62 Bluff Road.

COMMENTS ON COUNCIL REBUTTAL EVIDENCE PREPARED BY SUSAN CHIBNALL

The rebuttal evidence by Ms Chibnall recommends that the northern SNA on the property is removed from the planning maps. I support this recommendation as the evidence of Dr Mark Bellingham on behalf of Hynds has confirmed (by ground truthing) that this area does not meet the criteria for significant indigenous biodiversity in the Proposed Waikato District Plan.

Notwithstanding my support for removing the SNA from the planning maps, I do not support Ms Chibnall's recommended amendment to the definition of SNA as set out below (Black text is the rule as notified. Red text is the recommended 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.

I consider that the above amendment will create uncertainty for landowners seeking to use or develop land that has indigenous vegetation. This is because neither the landowner nor a Council planner will be able to determine if the SNA rules apply to a property or not. Instead, an ecological assessment will be required to determine if an area qualifies as an SNA. Furthermore, even when such an assessment is carried out there could be debate or disagreement amongst ecologists as to whether or not an area meets the criteria in Appendix 2 of the Proposed Waikato District Plan.

If there is on-going disagreement between ecologists it is not unforeseeable that either the Council or a landowner may have to seek a determination from the Environment Court as to if the SNA rules apply to a site or not.

While the above comments relate to the impact of the amended SNA definition in general, I also consider that the proposed amendment has the potential to impact on the Hynds site specifically. This is because any works on the northern portion of the site in the future will have to demonstrate that this area does not contain a SNA and while the Council has accepted the evidence of Dr Bellingham in this instance there is no guarantee that they will in the future. In essence, the amended definition will allow Council to exercise further discretion over this matter at a later date which creates uncertainty for Hynds in utilising the site.

In my opinion, it is important for all parties (Council, landowners and other plan users) to have a clear understanding on whether an activity is permitted or not. This should be achieved by avoiding rules that reserve discretion or create uncertainty around compliance. Furthermore, as noted by the

Environment Court 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.

Overall, I agree with the removal of the SNA from the planning maps. However, I do have a concern that the amendment to the definition of SNA will create uncertainty for landowners and the Council.

Dharmesh Chhima
16 November 2020