

BEFORE THE INDEPENDENT HEARINGS PANEL FOR THE PROPOSED WAIKATO
DISTRICT PLAN

IN THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER OF Proposed Waikato District Plan, Stage 1: Hearing 21A –
Significant Natural Areas

**REBUTTAL STATEMENT OF EVIDENCE BY RICHARD
MATTHEWS**

5 November 2020

FOR GENESIS ENERGY LIMITED SUBMITTER #924

INTRODUCTION

1. My name is Richard John Matthews. I hold the qualifications of Master of Science (Hons) degree specialising in Chemistry and have been working on resource consent applications (and their former descriptions under legislation prior to the commencement of the Resource Management Act 1991) since 1979 and advising on Regional and District Plan provisions since 1991.
2. I have outlined my qualifications and experience in previous evidence for the Proposed Waikato District Plan and in my previous evidence before the Hearing Panel.
3. While not directly applicable to this hearing, I confirm that I have read the “Code of Conduct for Expert Witnesses” contained in the Environment Court Consolidated Practice Note 2014. I agree to comply with this Code of Conduct. In particular, unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

Scope of Evidence

4. I have read the statements of evidence provided by witness for Hearing 21A – Significant Natural Areas. My rebuttal evidence discusses the evidence of Ms Foley for Waikato Regional Council and Mr Scrafton for TaTa Valley Limited. This statement of rebuttal evidence addresses the mapping of SNAs and the need for practical and workable mechanisms for management of effects while protecting the values of significant indigenous biodiversity.

EVIDENCE OF MS FOLEY – WAIKATO REGIONAL COUNCIL

5. In her evidence in chief (paragraph 4.5), Ms Foley notes that the Proposed Plan is progressing through a comprehensive consultation process as per Schedule 1 of the Resource Management Act 1991 (RMA) and has provided multiple opportunities for landowners to be involved in the lead up to the notification of the plan, suggesting (paragraph 4.6) that this provides justification for retaining the mapping provided in the Proposed Plan. Ms Foley also states that mapping is a representation of reality (paragraph 4.7) and implies that backing up the mapping with a site assessment is unnecessary because “the implications of having a SNA inaccurately identified on a property are minor or could be mitigated to an extent by permitted activity standards” (paragraph 3.5).
6. I consider that Ms Foley has overstated the contribution that consultation has made in

identifying and mapping SNAs in the Proposed Plan. In particular, I note that the evidence for several parties (for example, M Bellingham for Hynds Pipe Systems Limited and Hynds Foundation; M Ter Beek; TSA Denton & BAJ Van Loon; Hill Country Farmers Group) indicate situations where ground-truthing or correction of SNA areas has not occurred to the degree those parties consider appropriate. I also note that with respect to the Genesis submission, there has been no acknowledgement of the situation where areas have been mapped as SNAs but are not “natural” and have been created by the landowner (Genesis).

7. In that regard, I do not consider that the Schedule 1 process can be relied upon to the degree Ms Foley suggests, to justify retention of all the mapped areas as shown in the notified Proposed Plan.
8. Ms Foley also understates the effect of a District Plan map identifying an SNA on a property, the effect of an inaccurate map and the value of a site assessment before confirming that an area is indeed “significant” and “natural”. The effect of incorrectly mapping an area as an SNA means that before any activity can occur in that area, an assessment by an expert ecologist must be undertaken to try to prove that the area is not significant or natural and may in fact not even be indigenous vegetation, when that situation can be addressed by a simple site assessment at the outset. The Planning Map identification has an ongoing negative effect on the property in that even with such an assessment, the Planning Map identification of an (incorrect) SNA remains and could affect such matters as future sales of a property.
9. In paragraph 4.6 of her evidence, Ms Foley notes that Mr Turner concluded that fewer than 25% of the SNA boundaries ground truthed during his survey remained as per the Planning Maps originally notified, but argues that this cannot be taken as a representative sample and does not justify his conclusion that the SNA mapping is too inaccurate to rely on. While I accept that many of the site visits were in response to concerns expressed about the mapping, the fact that at least 75% of the mapped areas were incorrect raises many doubts about the accuracy of the areas not visited and in my opinion justifies the conclusion that the present mapping cannot be relied upon.
10. Ms Foley considers that mapping is “*representative of reality*” (paragraph 4.7). Rather than representing reality, the SNA mapping currently available for many areas is far from representing reality and provides only an indication that some vegetation may exist at a particular location. To provide more certainty, accurate mapping of SNA areas is essential in my opinion.
11. Ms Foley states that “*given that these rules have been in place for more than a two year*

period, I would assume that council would have considered resource consent applications and made determinations on the proposed SNA rules". While the Council may have considered some applications involving the proposed SNA rules, in my opinion those applications could not be considered representative of all the potential activities involving SNA areas and do not consider the effect on potential future activity and the uncertainty the inaccurate mapping creates.

12. In paragraph 3.9 Ms Foley comments that *"should the Panel retain the SNA mapping as requested, I request that they also provide a mechanism to manage areas that meet the [Waikato Regional Policy Statement] WRPS 11A criteria and have not been identified and mapped in the Proposed Plan as per WRC submission point 81.20"*. I note that it is unclear from Ms Foley's evidence or the Regional Council submission what that mechanism should be. While Ms Foley clarifies in her paragraph 4.28 that she agrees with the Section 42A Report ("**s42A Report**") recommendation with respect to assessing areas that meet the WRPS 11A criteria and have not been identified and mapped in the Proposed Plan, in my opinion the proposed approach will lead to extensive and unnecessary work and will not necessarily identify areas of "significance" or that are "natural", as set out in my evidence-in-chief.
13. In paragraph 7.3 Ms Foley states that *"if an activity cannot avoid, remedy, mitigate and offsetting is not feasible then the activity should not be consented"*. I disagree with this as there will be situations where 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 or affect an area of indigenous biodiversity and offsetting is not practicable. I note that the WRPS envisages that *"no net loss of indigenous biodiversity is to be achieved at a regional scale and does not create a no adverse effects regime. Some activities may result in a loss of indigenous biodiversity"*¹ and that *"this will be countered by other regulatory and non-regulatory methods that result in positive indigenous biodiversity outcomes"*. The WRPS includes methods providing a flexible approach to managing effects on biodiversity that involve both offsetting and environmental compensation.
14. In her conclusion, Ms Foley requests an approach which retains the SNA map overlay in the proposed district plan, amendments to the rule framework to refer to SNAs more generally and "a small number of other changes to better implement regional direction". In my opinion, the changes sought by Ms Foley lack any clarity or certainty and the implications of those changes cannot be assessed with any certainty.
15. I consider that the biodiversity provisions in the District Plan need to recognise that

¹ WRPS Explanation for Policy 11.1 and Implementation Methods 11.1.1 – 11.1.11.

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 or affect an area of indigenous biodiversity. In my opinion, there needs to be a practical and workable mechanism for management of effects while protecting the values of significant indigenous biodiversity and that does not automatically assume that any indigenous vegetation is significant or natural.

EVIDENCE OF MR SCRAFTON – TATA VALLEY LIMITED

16. I generally agree with Mr Scrafton (evidence for TaTa Valley Limited, paragraph 5.3) that in some instances 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 therefore that there needs to be a mechanism for management of effects while providing for the values of a significant natural area rather than simply protecting an area mapped as a significant natural area. I also agree that Policy 3.2.3 as drafted (both in the Proposed Plan and in the s42A Report) is overly restrictive and does not acknowledge that it is not always practicable in all circumstances to avoid effects.
17. However, the wording proposed by Mr Scrafton for Policy 3.2.3 (paragraph 5.6) also does not recognise that there may be no other practicable option or that there is a functional or operational need to locate in an SNA in my opinion, although his proposed Policy 3.2.XX (paragraph 5.12) goes some way toward achieving this. The wording of Policy 3.2.3 must provide for activities to occur where there is no other practicable option or that there is a functional or operational need to locate in an SNA.
18. I also do not agree with the changes to Policy 3.1.2A that Mr Scrafton proposes (paragraph 5.16). For the reasons outlined in my evidence-in-chief, I consider that the options for managing effects on indigenous biodiversity outside of mapped SNAs should provide for offsetting or compensation equally.

EVIDENCE OF MR RIDDELL AND MS CORKERY – DIRECTOR GENERAL OF CONSERVATION

19. In paragraph 106 of his evidence, Mr Riddell states that if only the ground truthed SNAs are retained as mapped SNAs in the Proposed Plan maps then those sites currently mapped in the Proposed Plan should be retained as an information layer. I disagree with this suggestion in that as identified above, if at least 75% of those areas contain inaccuracies then they are of little benefit in determining whether an area is or should be an SNA, while still retaining the negative implications of such mapping. I have no difficulty retaining that information as a guideline for those who ask for it, but it should

not be presented in the District Plan in a manner that suggests it has statutory weight.

20. In paragraph 213, Mr Riddell notes that he considers “*that it is inconsistent with the Regional Policy Statement to qualify the avoidance statement in the policy with an exception to that avoidance for specific activities that need to be enabled*”.

21. I note that Method 11.2.2 “Protect areas of significant indigenous vegetation and significant habitats of indigenous fauna” in the WRPS states:

Regional and District Plans (excluding activities pursuant to 11.1.4):

a....

f...

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.

22. Similarly, Method 11.1.4 “Recognition of activities having minor adverse effects on indigenous biodiversity” states:

Regional and district plans should include permitted activities where they will have minor adverse effects in relation to the maintenance or protection of indigenous biodiversity. They may include:

- a. the maintenance, operation and upgrading of lawfully established infrastructure, regionally significant infrastructure and lawfully established activities using natural and physical resources of regional or national importance;*
- b. existing lawfully established uses of land where the effects of such land use remain the same or similar in character, intensity and scale;*
- c. activities undertaken for the purpose of maintenance or enhancement of indigenous biodiversity;*
- d. the collection of material for maintaining traditional Māori cultural practices; and*
- e. actions necessary to avoid loss of life, injury or serious damage to property.*

23. In my opinion, these WRPS directions clearly provide for (and direct) that the District Plan includes provisions for exceptions of the sort that Mr Riddell considers are inconsistent with the WRPS.

24. In paragraphs 218 – 223, Mr Riddell discusses environmental and economic compensation meanings and implications. While I agree with Mr Riddell that “economic” compensation is not the appropriate definition and that “environmental compensation” should be referred to, I disagree with some of his other statements.
25. In paragraph 222, Mr Riddell states that “*environmental compensation' intrinsically results in a reduction in the values and attributes that make an area 'significant'*”. I do not agree that environmental compensation necessarily results in a reduction in the values. I am aware, for example, of the Genesis Whio (Blue Duck) National Recovery Project where significant advances have been made in protecting whio even though effects on whio associated with the Tongariro Power Scheme remain in some places. This is not strictly an “offset” arrangement but fits within the definition of “environmental compensation” and clearly results in biodiversity gains beyond the effects originally identified.
26. In my opinion, environmental compensation can achieve the same, and often better, biodiversity outcomes than strict adherence to a biodiversity offset approach.
27. In paragraph 223, Mr Riddell states 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*”. I note that if an area falls outside the significance criteria in Appendix 2 then the policies would not apply in any event. In my opinion, the policies for managing effects on biodiversity should include provision for both offsetting and environmental compensation.
28. In her evidence, Ms Corkery discusses the limits to offsetting (Section 8), the characteristics of environmental compensation (Section 9) and the differences between the two (Section 10). In my opinion, her evidence reinforces the fact that activities need to be considered on their merits and that an appropriate range of measures should be available for managing effects on biodiversity. In that regard, as I have noted above, environmental compensation can achieve the same, and often better, biodiversity outcomes than strict adherence to a biodiversity offset approach. Which is appropriate can be tested in an individual case.
29. Ms Corkery also comments (paragraph 10.2) that “*It is this rigorous process and the objective, quantified evaluation associated with biodiversity offsetting which make it a preferable option to environmental compensation*”. In my opinion, it is the rigorous process and the objective, quantified evaluation associated with biodiversity offsetting that makes offsetting difficult (and sometimes impossible) to achieve in practice and which reinforces the need to have environmental compensation options available for

managing biodiversity effects in actual situations.

30. As I have noted above and for the reasons outlined in my evidence-in-chief, I consider that the options for managing effects on indigenous biodiversity should provide for offsetting or compensation equally.

Richard Matthews

5 November 2020
