

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of a hearing for the Proposed Plan Change 3 –  
Significant Natural Areas to the Rotorua Lakes  
District Plan

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**STATEMENT OF POSITION OF LUIS ALEJANDRO CIFUENTES**  
**For the Waikato Regional Council**  
**DATED 17 FEBRUARY 2020**

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## **Introduction**

1. My name is Luis Alejandro Cifuentes. I am a Policy Advisor in the Integration and Infrastructure Section at the Waikato Regional Council (WRC). I have been in this role since October 2017.
2. I hold the Bachelor of Social Sciences from the University of Waikato. I have over 5 years of experience in central and local government, the areas of public policy, official information, central government advocacy and resource management.
3. As a member of the Policy Implementation team for the WRC I am involved in working with the territorial authorities of the Waikato Region and with neighbouring regional councils to assist in the development of consistent integrated regional policy. I also participate in the coordination and preparation of submissions to central government, to advocate for the appropriate articulation between regional priorities and proposed changes to legislation, policies and strategies in different portfolios. I represent WRC on the Regional Heritage Forum and on the Hamilton-Waikato Metro Spatial Plan Technical Project Team.
4. I confirm that I am familiar with the Code of Conduct for Expert Witnesses as set out in the Environment Court Practice Note 2014. I have read and agree to comply with the Code. Except where I state that I am relying upon the specified evidence or advice of another person, my statement is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

## **Scope of statement**

5. My statement is given on behalf of the WRC. The WRC has particular interest in the proposed change to the Rotorua Lakes District Plan as territorial authorities and regional councils have different but often overlapping functions in regard to biodiversity. It is only by working closely together on our respective resource management documents that we will be able to achieve integrated management and promote the purpose of the Resource Management Act.

6. The Waikato Regional Policy Statement (WRPS) intends to address a number of drivers of change affecting sustainable resource management in the Waikato region including:
  - i. The growth and intensification in the primary production sector;
  - ii. The increasing popularity of the Waikato as a tourist and lifestyle destination with increasing demand for urban and leisure development opportunities;
  - iii. Changes in legislation and the expectation from central government that regional policy statements should provide increased regional guidance; and
  - iv. Adverse environmental trends that have been identified through monitoring highlighting that existing policy is not adequately addressing some issues, including the ongoing decline of indigenous biodiversity.
  
7. The submission made by WRC addressed issues with Rotorua Lakes District Council's (RLDC) approach to biodiversity protection in their district plan. The submission sought amendments to improve consistency with regional policy documents.
  
8. WRC's submission highlighted the following issues with the proposed plan change:
  - i. Removing SNA status from sites due to alternate protection from covenants is inconsistent with the application of the significance criteria in the WRPS.
  - ii. Areas of geothermal vegetation have not been mapped using the appropriate WRPS criteria.
  
9. In relation to these issues WRC noted:
  - i. Covenanting agreements are limited in meeting the obligations of protection contained in Section 6(c) of the Resource Management Act (RMA). Protection via covenant does not preclude the possibility of people to apply for a resource consent for activities that would adversely affect the SNA. Furthermore, the flexibility of the terms of a covenant means these might not always meet what WRC considers important for biodiversity. In some cases, certain activities provided for in a covenant might meet the threshold for more stringent controls under the resource management framework, e.g. a covenant allowing an activity that might otherwise be classed as non-compliant.
  - ii. Criteria for determining significance are outlined in Table 11-1 of the WRPS. Criterion 1 identifies indigenous vegetation or habitat of indigenous fauna that is currently or recommended to be set aside by statute or covenant as an SNA as long as it also meets at least one of criteria 3-11. In the case of geothermal vegetation or habitat in all cases it will also meet criterion 5 (as a minimum).
  - iii. Removing SNA status from sites that have other protection via covenant fails to give effect to criteria in the WRPS.
  - iv. Removing SNA status means sites are not subject to policies or rules of the district plan.
  - v. Removing SNA status can also remove potential for landowners to access funding to improve management of those sites.

10. My statement reinforces the WRC submission and reflects my professional opinions as a resource management policy advisor. The focus of my statement is on the management of activities that have adverse effects on indigenous biodiversity.
11. Where I agree with the S42A officer's recommendation, I have not provided additional comment.

#### **Mapping and scheduling of areas that meet Waikato Regional Policy Statement criteria**

12. WRC's submission requested that all areas be assessed against Significant Natural Areas (SNA) criteria in the table 11-1 of the WRPS. Given RLDC has chosen to use the criteria to map and schedule certain areas as SNAs, WRC requested the maps and schedules be complete by expanding them to include all areas that meet the criteria. I consider this approach to be most suitable in giving effect to WRPS Policy 11.2.
13. Assessment, identification and protection under the WRPS direction addresses the requirements of section 6(c) of the Resource Management Act 1991 (RMA) to protect areas of significant indigenous vegetation and significant habitat of indigenous fauna in terrestrial, freshwater, coastal and marine environments. Identification should be carried out in a consistent manner across the region. Consistency is key to overcome knowledge gaps in the condition of ecosystems. and that protection will be achieved through both regulatory and non-regulatory methods. Protection of significant sites need not prevent their use where activities will not materially compromise the characteristics or values which deemed the site significant.
14. WRC's submission requested to identify SNAs irrespective of tenure. This is because conservation estate can change hands, particularly as a result of Treaty settlements. This approach is also recognised as best practice by the draft National Policy Statement for Indigenous Biodiversity (NPS-IB). Whilst RLDC is not required to have regard to the proposed NPS-IB as it is yet to become operative, I suggest that the stance with regards to its use (as outlined in section 5 of the S42A report) be reconsidered. The Biodiversity Collaborative Group – following considerable technical input and advice in preparation of the draft NPS-IB – recommended a “neutral tenure” approach to identifying and mapping SNAs as the most suitable approach to fulfil the direction in section 6(c) of the RMA.
15. Furthermore, I wish to highlight the alignment of WRC's position on identification and mapping of SNAs with the submissions from the Bay of Plenty Regional Council (BOPRC) and the Department of Conservation (DOC).

#### **Position on S42A officer report recommendations**

16. I consider that neither the S32 or S42A officer's report provided sufficient evidence to support the alternative of omitting covenanted land and conservation estate from the SNA schedule and maps. The following information was not provided in any of the documents supporting the proposed plan change:

- RLDC's complete register and maps of all covenanted areas and conservation estate that meet the SNA criteria;
- Data to demonstrate that the same or higher level of protection is provided for each and every covenanted area under the terms of their respective covenants as would be provided by the district plan SNA provisions.
- Evidence to demonstrate that all covenants apply for the likely duration of the district plan.
- Evidence to demonstrate that RLDC has a system in place to obtain information about new covenants as they are established, to assess their level of protection and the period of the covenant.
- Evidence to demonstrate that RLDC has a system in place to obtain information about change in ownership of conservation estate in a timely fashion.
- Information to indicate if RLDC will instigate a plan change when ownership of areas of conservation estate changes, mapping and scheduling those parts of the land parcels that meet the SNA criteria.
- Evidence to demonstrate in their Section 32 report that the proposed approach is the most efficient and effective method of providing for areas that meet the SNA criteria.

17. An alternative solution that could satisfy our submission's requests is a combination of complete SNA mapping and scheduling and alternative legal protection. RLDC could provide for rules in covenants and areas under other legal protection as permitted activities. In such cases where the land is no longer a conservation estate or the covenant ceases to exist, the land will control of SNA rules will operate. The Western BoP district plan already contain a similar provision (rule 5.4.1).

#### **Sites with alternative legal protection**

18. Further to the position outlined above, I wish to bring to the attention of the hearing panel and RLDC what I consider to be an inconsistent application of the criteria used by RLDC to determine what constitutes alternative legal protection. The criteria are outlined in section 5.45 of the S42A officer's report.

19. Recommendations 5.03, 5.310 and 5.324 of the S42A officer's report – regarding sites 700, 701, 703 – rely on intent to develop a management plan providing equal or greater protection that SNA policy and rules require. However, the proposed management plan may not meet scope of what in RLDC's own assessment constitutes an alternate legal mechanism. A similar situation applies to other mechanisms, e.g. Site 579 (Tahunātura Stream Gorge)<sup>1</sup>.

#### **Areas of geothermal vegetation have not been mapped using the appropriate WRPS criteria**

20. WRC submitted that all SNAs to be identified irrespective of legal protection. This is because conservation and open space covenants can be for fixed, limited periods and may end before the district plan is review cycle. In addition, WRC noted in their submission that the terms and conditions of the covenant can vary according to the requirements of the landowner or

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<sup>1</sup> DOC submission 8.39 – rejected in S42A 5.214

lease holder – there is no guarantee that the terms and conditions afford the same level of protection via controls on activities as the SNA provisions in the district plan.

21. WRC submission focussed our specific site requests on geothermal ecosystems for two reasons. First is that geothermal ecosystems are an internationally rare ecosystem, naturally uncommon in New Zealand and composed mainly of threatened species. The vast majority of New Zealand's geothermal ecosystems are found in the Taupo Volcanic Zone, many of these within Rotorua Lakes District. The second reason is that we have very detailed maps and surveys of geothermal ecosystems and are able to provide complete and accurate information to Rotorua Lakes District Council. This information is part of the report referred to in our submission and further submissions and provided to the hearing panel as part of our expert evidence. We wish to note that our focus on geothermal areas should not be interpreted to mean that these are necessarily of higher biodiversity value or significance than other omitted areas for which we have not provided detailed information.

Position on S42A officer report recommendations

22. Technical evidence that will be presented to you by Katherine Luketina, WRC geothermal scientist. WRC's Technical Report 2015/07 – Geothermal Vegetation of the Waikato Region, 2014 – prepared by Wildlands Consultants Ltd was provided as part of the evidence. WRC's submission and further submission requests were based on information from this report.

**Conclusion**

23. The purpose of the proposed PC3 is to give effect to the RPS in both the Waikato and Bay of Plenty regions requirements and Part 2 of the RMA relating to district plans identifying and protecting SNAs. WRC's position remains, to give effect to the WRPS the full extent of the SNAs should be mapped across the district, to ensure there is a robust and consistent repository of all SNAs allowing for the completeness of the layer. Excluding sites from the SNAs maps and schedule because of land tenure, existing private protection mechanisms, or the existence of other SNAs in the vicinity, does not give effect to the WRPS. Nor does it recognise and provide for these areas as a matter of national importance under section 6(c) of the RMA.



Alejandro Cifuentes

**Policy Advisor**

**Waikato Regional Council**

