

BEFORE THE COMMISSIONERS ON BEHALF OF ROTORUA LAKES COUNCIL

IN THE MATTER OF

The Resource Management Act
1991

AND

IN THE MATTER OF

a submission by the Director
General of Conservation on
Rotorua Lakes Council Proposed
Plan Change 3 Significant
Natural Areas

STATEMENT OF EVIDENCE OF THOMAS CHRISTIE ON BEHALF OF THE
DIRECTOR-GENERAL OF CONSERVATION

Department of Conservation
Solicitor acting: Michelle Hooper
Private Bag 3072
HAMILTON 3240
Telephone: +64 27 324 6314
Email: mhooper@doc.govt.nz

Introduction

1. My full name is Thomas Russell Christie.

Qualifications and experience

2. I am employed by the Department of Conservation (DOC), in Tauranga as a Resource Management Act Planner. I have worked for DOC since November 2019. Before this I worked for Tauranga City Council as an Environmental Planner processing a wide variety of land-use and subdivision consents, I held this position for two and a half years.
3. I gained a Bachelor's degree in Environmental Planning from the University of Waikato in 2014.
4. I have been asked by the Director-General (DG), to provide planning evidence on the notified Rotorua Lakes Council (RLC) Proposed Plan Change 3 (PC3).

Code of Conduct

5. I confirm that I have read the code of conduct for expert witnesses as contained in the Environment Court's Practice Note 2014 ("the Code"). While this is not an Environment Court hearing, I have prepared this evidence in accordance with, and I agree to comply with, the Code for this hearing.
6. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed. I confirm that the issues addressed in this brief of evidence are within my area of expertise.

Scope of evidence

7. I have been asked to provide evidence in relation to the notified provisions contained in the Proposed Plan Change 3 (Significant Natural Areas). This evidence relates to the Director-General's submission (submission 7) and further submission (further submission 5).

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8. PC3 has a limited scope, considering only the scheduling and mapping of SNAs. The scope does not extend to the objectives, policies or rules as they relate to SNAs.
9. As outlined at paragraph 7 of Paul Cashmore – Technical Advisor Ecology’s evidence, 17 additional sites have been identified as satisfying the criteria of SNA classification within the respective RPSs. Consideration of these 17 additional sites has not been included within the s 32 report and as such persons directly affected by the inclusion of these sites within PC3 have not been adequately informed or provided opportunity to submit. These sites are therefore outside of scope for PC3. It is considered appropriate for these sites to be included at the next opportunity.
10. In preparing this evidence I have read, and where necessary will refer to:
 - Initial Plan Change Proposal and Evaluation (Section 32 Report);
 - The Hearings Report (section 42A report);
 - Waikato Regional Council Regional Policy Statement (WRPS);
 - Bay of Plenty Regional Council Regional Policy Statement (BoPRPS);
 - Rotorua Lakes District Plan;
 - Royal Forest and Bird Protection Society of New Zealand Inc v New Plymouth District Council [2015] NZEnvC 219 &
 - Draft National Policy Statement for Indigenous Biodiversity 2019.
11. Where I agree with the officer’s recommendations, I have not provided additional evidence on that matter.
12. Submission points relating to the review of the Lakes A Zone and the changes in land tenure within the RLC GIS not being up to date are raised to bring attention to the fact but are recognised as being out of scope of the matters being considered.
13. My evidence will deal with the following:

- Relevant planning provisions;
- Relevant resource management guidance;
- Defining Significant Natural Areas &;
- Submission Points – Removal of SNAs in areas that are legally protected by other means.

Relevant Planning Provisions

14. Section 75 of the RMA requires that District Plans give effect to the regional policy statements that apply in the District.
15. The relevant provisions of the WRPS and BoPRPS are identified within Appendix Two of the 42A Planners Report which I will not reiterate within my evidence.

Relevant resource management guidance

16. Section 6 Matters of national importance reads ‘In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance.’
...
(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.
17. It is my understanding that the areas in which s 6(c) seeks to protect as a matter of national importance include those of regional and district significance.
18. Section 31 Functions of territorial authorities requires;
(1) Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:
...

(b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of—

...

(iii) the maintenance of indigenous biological diversity.

19. It is the combination of ss 6 and 31(1)(b)(iii) which I contend gives rise to the duties to identify and impose protections.

Defining Significant Natural Areas

20. RLC District Plan Part 17 – Definitions defines SNAs as ‘significant indigenous vegetation and significant habitats of indigenous fauna.’
21. There is no definition in the RMA as to what constitutes significant natural areas and habitats.
22. The draft National Policy Statement on Indigenous Biodiversity (NPSIB) although not operative and does not carry statutory weight is useful in providing context, supplying both a definition and specifically requiring these areas to be identified and managed as SNAs through policy 6.
23. The NPSIB states an SNA or significant natural area, means –
- a) an area identified as an SNA in a district plan or proposed district plan in accordance with clause 3.8;
 - b) an area identified, before the commencement date, in a policy statement or plan or proposed policy statement or plan, as an area of significant indigenous vegetation or significant habitat of indigenous fauna, regardless of whether the area is referred to as a SNA or in any other way; or
 - c) an area identified as an area of significant indigenous vegetation or significant habitat of indigenous fauna as part of an assessment of environmental effects
24. The NPSIB does include criteria for identifying SNAs within clause 3.8 and also provides for regional policy statements to include their own criteria which will be reflected in regional and district plans.

25. The WRPS defines 'Significant indigenous vegetation and significant habitat of indigenous fauna' as 'any area that meets one or more of the criteria in Section 11A.'
26. The BoPRPS defines indigenous vegetation but leaves the definition of significance open on the extent to which an area is consistent with criteria in Appendix F set 3.

Submission Points – Removal of SNAs in areas that are protected by alternative means

27. The removal and exclusion of SNA mapping, either in full or in part, over areas provided protections through other means is considered inappropriate and inconsistent with the functions and duties of the territorial authority.
28. Although I acknowledge some sites have been afforded alternative legal protections and some through non-statutory side agreements, I have not distinguished between the two as in my opinion, the method of protection is irrelevant in the matter and it does not negate the requirement for SNAs to be scheduled and mapped as outlined below.
29. Section 75(3)(c) of the RMA requires that District Plans give effect to the regional policy statements that apply in the District, requiring Council to amend its District Plan if it does not give effect to a regional policy statement (s 73(4)). The regional policy statements for both the Bay of Plenty Region and Waikato Region are relevant because the sites being considered are located in both regions.
30. Regional and district plans must "give effect to" regional policy statements. The phrase "give effect to" means "implement". It is a strong directive that creates a firm obligation on the part of those subject to it. *Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd* [2014] NZKS 38 at [77].
31. Waikato Regional Policy Statement (WRPS) became operative in 2016, it has completed the Schedule 1 RMA process and is deemed to give effect to Part 2 matters. Particularly regarding relevant s 6(c) obligations.

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32. Section 11A Criteria for determining significance of indigenous biodiversity within the WRPS reads “To be identified as significant an area needs to meet one or more of the criteria identified in the table below.’ This is in reference to table 11-1.
33. Sites identified as SNAs 559, 566, 570, 579, 700, 701 and 716 are all located within Waikato Regional Council boundaries.
34. It is confirmed by my colleague Paul Cashmore that each of these sites identified to be excluded, either in full or in part, from SNA mapping due to alternative protection qualifies in at least one criteria of table 11-1 points 1-11.
35. It is my professional opinion that the intent of s 11A of the WRPS is to aid the relevant District Councils in forming their decisions over areas of land qualifying as ‘areas of significant indigenous biodiversity’. I am of the opinion that every site within the region that qualifies a single point 1 – 11 as listed within the table is necessary to be considered an SNA as confirmed within the glossary within the WRPS.
36. In saying, I do not believe the significance of the aforementioned sites is the area of debate, and that it is accepted fact that these areas are indeed to be considered areas of significant indigenous biodiversity.
37. Point 1 of Table 11-1 states ‘It is indigenous vegetation or habitat for indigenous fauna that is currently, or is recommended to be, set aside by statute or covenant or by the Nature Heritage Fund, or Ngā Whenua Rāhui committees, or the Queen Elizabeth the Second National Trust Board of Directors, specifically for the protection of biodiversity, and meets at least one of criteria 3-11.’ This point applies to previously assessed sites which have been afforded legal protection specifically for the protection of biodiversity, while also requiring an additional criteria from points 3-11 to be satisfied.
38. It is my opinion that this reads as an overarching provision and is intended to qualify all significant areas of indigenous biodiversity which meet this higher standard.

39. It is also my opinion that this provision clearly demonstrates intent for both the existing protection of these areas and SNA overlay rules within the District Plan to be applied alongside each other to strengthen protection.
40. This is consistent with *Royal Forest and Bird Protection Society of New Zealand Inc v New Plymouth District Council* [2015] NZEnvC 219 at [86] – [96] which states ‘Any single measure on its own might be insufficient to provide the appropriate level of protection. It is the combination of such measures which is important.’
41. Sites identified as SNAs 1, 142, 664 and 681 are located within Bay of Plenty Regional Council (BoPRC) boundaries.
42. The Bay of Plenty Regional Policy Statement (BoPRPS) Policy MN 3B: Using criteria to assess values and relationships in regard to section 6 of the Act, point c) Whether areas of indigenous vegetation and habitats of indigenous fauna are significant, in relation to section 6(c) of the Act, on the extent to which criteria consistent with those in Appendix F set 3: Indigenous vegetation and habitats of indigenous fauna are met.
43. I consider this policy to be subjective due to the assessment of consistency with the criteria of Appendix F set 3.
44. I am of the opinion, based on evidence provided by expert Paul Cashmore that sites within BoPRC boundaries are consistent with these criteria, primarily those relating to rarity or distinctive features and diversity and pattern.
45. Being that the sites identified as SNAs 1, 142, 664 and 681, either fully or in part, qualify as significant areas of indigenous vegetation and habitats of indigenous fauna, and with consideration of the definitions contained within RLC District Plan it is appropriate for these sites to be recognised as SNAs.
46. I refer to the comments made at paragraph 40 regarding the appropriateness of SNA provisions over sites which also have additional protections afforded to them.

47. WRPS is prescriptive in acknowledging that sites with alternative legal protection for the purposes of biodiversity are to be considered as significant indigenous biodiversity areas, SNAs under RLC District Plan.
48. BoPRPS is silent in regard to alternative protections simply requiring areas consistent with Appendix F set 3 be recognised as areas of indigenous vegetation and habitats of indigenous fauna, again, SNAs under RLC District Plan.

Conclusion

49. It is considered appropriate for all SNAs to be listed with the RLC District Plan. The sites proposed for removal are all considered to qualify under the criteria set within BoPRPS and WRPS.
50. Granting the Director-General of Conservations submission will result in an inclusive, user friendly SNA mapping layer within the RLC District Plan. encouraging clarity and enabling a consistent approach to SNA management throughout the district. Including SNAs within scope now will make transiting to the NPSIB easier if the NPSIB comes into effect.
51. It is my opinion it would be more appropriate, if RLC seeks to provide varying levels of protection over SNAs within the district, to undergo a further plan change to include Part 2 and Appendix A9 Section 6 matters as they relate to the objectives, policies and rule provisions for determining activities within SNAs.



Thomas Christie

DATED this 5th day of February 2020

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