

BEFORE THE CENTRAL HAWKE'S BAY DISTRICT COUNCIL  
HEARINGS PANEL

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

**AND**

**IN THE MATTER OF** Submissions on the Proposed Central Hawke's Bay  
District Plan

**AND**

**IN THE MATTER OF** Submissions and further submissions on behalf of  
Pairatahi Holdings Limited, Paul Robottom and the C&H  
Hardy Family Trust and Lime Terrace Farm

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**STATEMENT OF EVIDENCE BY ELLEN ROBOTHAM**

31 OCTOBER 2022

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## **EXECUTIVE SUMMARY**

- 1 This evidence is in support of the submissions lodged by Pairatahi Holdings Limited (submitter 92), Paul Robottom (submitter 68) and the C&H Hardy Family Trust and Lime Terrace Farm (submitter 52) regarding the identification of Significant Natural Areas (“SNA”), being:
  - S52.001 opposing SNA maps and seeking SNAs are removed from their property.
  - S68.001 opposing SNAs identified on his property and seeking that SNAs are not mapped on private land.
  - S92.001 seeking amendment to the SNA overlays.
  
- 2 The Stream 6 ‘Officer’s Report: Natural Environment – SNA Mapping’ (‘the S42A Report’) recommends that submissions S52.001, S68.001 and S92.001 are accepted in part. I agree with the recommendation and reasons in the S42A Report that the areas identified should be removed from the SNA map.
  
- 3 I consider that further areas of SNA should be removed from the SNA map on the basis it is the most effective and efficient option for the Council to remove areas of vegetation holding low or no indigenous biodiversity values from the notified SNA map in the PDP.

## **INTRODUCTION AND QUALIFICATIONS**

- 4 My full name is Ellen Frances Robotham.
- 5 I hold a Bachelor of Arts and a Post Graduate Certificate in Public Policy from Victoria University of Wellington, and am an Associate Member of the New Zealand Planning Institute. I have 5 years' experience as a practicing planner and have a certification under the Making Good Decisions programme.
- 6 I am currently employed as a Senior Planner at Mitchell Daysh Limited, where I have worked since February 2022. Prior to this, I held the position of Policy Planner at Hawke's Bay Regional Council from October 2018, and Policy Adviser and the Ministry of Transport from January 2017 to October 2018.

## **EXPERT WITNESS CODE OF CONDUCT**

- 7 I confirm I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014. My evidence has been prepared in compliance with that Code and I agree to follow it when presenting evidence to the Hearing.
- 8 I confirm that my evidence is within my area of expertise except where I state that I am relying upon the specified evidence of another person and I have not omitted to consider material facts known to me that might alter or detract from my expressed opinions.

## **SCOPE OF EVIDENCE**

- 9 In preparing this evidence, I have reviewed submissions to the Proposed Central Hawke's Bay District Plan by Pairatahi Holdings Limited, Paul Robottom and the C&H Hardy Family Trust and Lime Terrace Farm. In preparing this evidence I have reviewed the relevant portions of the S42A Report for the Stream 6 Mapping and Miscellaneous Hearing ("the S42A Report") to the aforementioned submissions.

- 10 I have also reviewed Reporting Officer Stella Morgan's Right of Reply, dated 19 August 2022, which responds to submissions raised at Hearing Stream 1 including the ECO - Ecosystems & Indigenous Biodiversity chapter.
- 11 I undertook a site visit on 23 August 2022 to the relevant properties of the submitters, being located at:
- > Pendle Hill Road,
  - > Tukituki Makaretu Road, and
  - > Hinerua Road Extension.
- 12 All of the submission points are addressed in the S42A Report, these being:
- > S52.001 opposing SNA maps and seeking SNAs are removed from their property.
  - > S68.001 opposing SNAs identified on his property and seeking that SNAs are not mapped on private land.
  - > S92.001 seeking amendment to the SNA overlays.
- 13 No further submissions were made by Pairatahi Holdings Limited, Paul Robottom and the C&H Hardy Family Trust and Lime Terrace Farm, or by other parties on their respective submissions.
- 14 Accordingly, my evidence is set out under the following topic headings:
- > Support for recommended removal of mapped SNA areas
  - > Scope of Submissions
  - > Application of Vegetation Clearance and Trimming Rules
  - > Further removal of mapped SNA areas which have low or no indigenous biodiversity issues.

**SUPPORT FOR RECOMMENDED REMOVAL OF MAPPED SNA AREAS**

- 15 Consultant Ecologist, Mr Kessels has prepared a report on behalf of the Council recording his response to matters raised in submissions.<sup>1</sup> This report is attached to the S42A Report as Appendix C.

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<sup>1</sup> Natural Environment Topic: Ecosystems & Indigenous Biodiversity- Comments on Individual Submissions, Gerry Kessels, 14 February 2022 (updated 10 May 2022 & 30 September 2022).

16 At paragraph 4.1., in relation to submission 52, Mr Kessels states:

*“I agree with the submission that the areas shown as “primarily grazing” and “holding pads” in the submission should be removed from the SNA maps as the aerial maps show no obvious biodiversity values.”*

17 At paragraph 28.2, in relation to submission 68, Mr Kessels states:

*“I agree with the submitter that the SNA boundaries should be reviewed and adjusted to remove exotic pastureland, exotic tree land and plantation forest from the relevant SNAs, as there are no records of at risk or threatened indigenous fauna species regularly using these areas.”*

18 At paragraph 38.1, in relation to submission 92, Mr Kessels states:

*“I agree that boundary changes for the SNAs relating to this submission are required...”*

19 The S42A analyses submissions 52, 68 and 92 at paragraphs 5.3.29-30, 5.3.42-48, 5.3.51-52 respectively, and adopts the recommendations of Mr Kessels. I agree and support the recommendations of the S42A Report insofar as the following SNAs are recommended to be removed in whole or in part:

- > SNA-1
- > SNA-31
- > SNA-34
- > SNA-118
- > SNA-123
- > SNA-199.

### **SCOPE OF SUBMISSIONS**

20 While submissions 52, 68 and 92 raise specific concerns with the SNA mapping and have been logged under “MAPS”, Mr Leslie, Mr Hardy and Mr Robottom consider their submissions also relate to SNA provisions more generally.

21 Mr Robottom’s submission, for example, stated that SNAs “take away property rights without consent”. Mr Hardy’s submission talked about guardianship and

management of the land. Mr Leslie stated that the SNAs “adversely effects the rights of the landowner to responsibly continue to farm, plant or otherwise manage and utilise the land.”

- 22 These excerpts indicate that the submitters also have concerns about the way that proposed provisions associated with SNAs will affect their ability to manage their land. Therefore, I consider that their submissions provide scope to raise concerns with the objectives, policies and rules associated with the identification of SNAs, and to lessen the effect of regulation in the PDP on those SNAs.

### **APPLICATION OF VEGETATION CLEARANCE AND TRIMMING RULES**

- 23 I consider there is potential for confusion regarding the application of ECO-R1 and ECO-R1A which relate to all indigenous vegetation, and ECO-R3 which relates specifically to indigenous vegetation within SNAs. In particular, I consider it unclear which rule takes precedence, for example, if domestic or ornamental plantings are identified within an SNA, is the clearance and trimming permitted under ECO-R1 or only if the conditions of ECO-R3 are met? I found the rule framework flow diagram provided as Appendix 4 to Ms Morgan’s Right of Reply dated 19 August 2022 very helpful in understanding the application of rules to SNAs. Based on the flow diagram, I understand ECO-R1 and ECO-R1A take precedence and apply to all indigenous biodiversity in the District, regardless of whether the area is identified as an SNA or not.
- 24 ECO-R1 provides for the trimming or clearing of indigenous vegetation as a permitted activity if it is planted for one of four specified purposes. I consider it would provide greatest clarity to plan users if all potential SNA areas meeting these criteria are removed from SNA map layers. This would make it clearer to plan users which rule applies to trimming or clearance activities if the area of indigenous vegetation meets these four criteria.
- 25 I also noted that the notified rules relate only to the clearance or trimming of indigenous vegetation species, however the ECO objectives and policies are broader in that they seek the protection of significant habitats of indigenous fauna as well. Some of the notified SNA areas have a high proportion of non-

indigenous vegetation which appears to be intentionally included in the SNA layer.

- 26 For example, the Tukituki River bed has been identified as SNA-118. It is described in ECO-SCHED5 as:

*“Braided channels are known and potential habitat for threatened biodiversity throughout CHDC [sic]. Mixed exotic and native vegetation dominate riparian margins. Braided rivers are a rare ecosystem type in the North Island.”*

- 27 It is noted that SNA-118 is a large SNA and little information has been provided regarding the extent to which areas of exotic vegetation within this SNA provide significant habitat for indigenous fauna.

- 28 As demonstrated by Figures 2-4 below, in some places mapped SNA-118 contains a high proportion of exotic vegetation which appears to hold low or no indigenous biodiversity values. Landowners may wish to clear such exotic vegetation for a variety of reasons, unavoidably reducing the mapped extent of the SNA. It is unclear how such clearance would be monitored or what compliance action would be taken against landowners in such circumstances.

- 29 If such areas of exotic vegetation are not intended to be captured by the proposed ECO rules, I consider it inefficient that these areas are included in mapped SNAs. It would provide greater clarity to plan users regarding the controls on clearing or trimming vegetation within SNAs.

- 30 If the rules are amended in future there is potential for areas of exotic vegetation that do not provide significant habitat for indigenous fauna to be subject to that regulation.

- 31 I consider that where possible, it is the most effective and efficient option for the Council to remove areas of vegetation holding low or no indigenous biodiversity values from the notified SNA map through in the PDP. This would provide greater clarity to plan users regarding the application of ECO provisions, and avoid unnecessary and potentially costly and lengthy resource consent or compliance processes in the future.

**FURTHER REMOVAL OF MAPPED SNA AREAS WHICH HAVE LOW  
INDIGENOUS BIODIVERSITY VALUES**

- 32 Submissions 52, 68 and 92 sought that all areas of SNA be removed from their properties, or from private property generally. The S42A Report recommends accepting these submissions in part as it recommends removing some or part of SNAs identified on these properties, but not all.
- 33 I consider there are further areas on each of the relevant properties that warrant removal from the SNA map layer. The follow paragraphs identify these areas and provide reasons for their removal.
- 34 I am not an ecologist, however, from a lay perspective and based on the site visit I undertook at the submitter's properties, there are some areas of proposed SNA which appear to have low or no indigenous biodiversity values. I have not undertaken an assessment of these areas against SNA identification criteria and guidance set out in ECO-APP1, because that would be beyond the scope of my expertise.
- 35 These areas are:
- > Part of SNA 119
  - > Part of SNA 118
  - > Part of SNA 141.
- 36 Part of SNA-119 is shown in Figure 1 below. It demonstrates that this portion of SNA-119 has been sprayed such that much of the vegetation on the hillside appears dead. This was the result of accidental spray activity and was not captured in the aerial photography used for the desktop analysis.
- 37 The removal of this area of SNA is likely to be a permitted activity under ECO-R1A.



*Figure 1: Part of SNA-119 (sprayed hill in middle of image) and part of SNA-1 (sparsely vegetated rise to the right). (Source: Ellen Robotham, 24 August 2022).*

38 Figures 2-4 show parts of SNA-118. As discussed above, SNA-118 identifies the Tukituki River as braided river habitat. These images indicate that much of the area classified as SNA consists of exotic vegetation, such as plantation pine forest, blackberry, willows, poplars, broom and gorse.

39 The area of pine shown in Figure 2 is second generation plantation forest. It is noted that removal of this vegetation would be a permitted activity under ECO-R1.



*Figure 2: Part of SNA-118 Tukituki River viewed from Lookout Road. (Source: Ellen Robotham, 24 August 2022).*



*Figure 3: Part of SNA-118 Tukituki River viewed from Pendle Hill Road. (Source: Ellen Robotham, 24 August 2022).*



*Figure 4: Part of SNA-118 Tukituki River near Tukituki-Makaretu Road, looking up-river.  
(Source: Ellen Robotham, 24 August 2022).*

- 40 Figure 5 shows part of SNA-141. This part of SNA is not fenced, actively grazed and considered to have indigenous biodiversity values similar to SNA-199, which Mr Kessels recommends removing from the SNA layer.
- 41 Mr Hardy has indicated that he has not cleared these clusters of tōtara as they provide ornamental amenity value and shade for stock. The clearance or trimming of this part of SNA-141 would be a permitted activity under ECO-R1.



Figure 5: Part of SNA-141 near Tukituki Road. (Source: Ellen Robotham, 24 August 2022).

- 42 I consider, from a lay perspective, that the images above indicate that low or no indigenous biodiversity values are present in the associated SNAs and that these areas should be removed in whole or in part from the SNA map layer.
- 43 It is also noted that the clearance of each of these areas is likely to be permitted activity under the proposed rule framework and therefore it is inefficient to include them in the SNA map layer.
- 44 I consider the submissions provide scope for this change and note that at paragraph 5.3.48, the S42A Report states that *“given there are submissions seeking removal of SNAs altogether, there is scope for any amendments to SNAs that reduce their mapped area.”*

## **SECTION 32AA EVALUATION**

45 The changes I recommend to the SNA map layer are not considered a significant departure from the Proposed District Plan, and do not affect the objectives, policies or rules as notified. Consequently, I adopt the approach to s32AA re-evaluation as set out in section 5.6. of the s42A Report:

*“The amendments recommended correctly avoids the application of the rules to areas that do not have significant biodiversity values and therefore avoids the potential costs associated with compliance and potential consenting. This reduces the potential costs of administering the PDP and therefore improves efficiency.*

*The above recommendations are do not change the policy approach, therefore S32AA re-evaluation is not warranted.”*

## **SUMMARY AND CONCLUSION**

46 This evidence is in support of three submissions, these being:

- S52.001 opposing SNA maps and seeking SNAs are removed from their property.
- S68.001 opposing SNAs identified on his property and seeking that SNAs are not mapped on private land.
- S92.001 seeking amendment to the SNA overlays.

47 The S42A Report recommends accepting these submissions in part. I support that recommendation insofar as it recommends removing or reducing SNAs 1, 31, 34, 118, 123, and 199.

48 I however, consider that further reductions should be made to SNAs 118, 119 and 141 on the basis that these areas hold low or no indigenous biodiversity values, and including them in the SNA map layer creates confusion for plan users.



E F Robotham

31 October 2022