

HEARINGS PRESENTATION NOTES-GR AND GJ READY-ORIGINAL SUBMISSION TO TCDC PROPOSED DISTRICT PLAN-1415-1445-10 FEBRUARY 2015

SUBJECT FOR HEARINGS	SBMSN PAGE NO/SUMM NO	ISSUE , POINTS AND REQUESTED OUTCOME
		<p>General Introductory Comment</p> <p>We are aware that the Panel would have read our Original Submission regarding the Proposed District Plan, including our assessment (Pages 3566-3580 of our Submission) of the S32 Report and its effects. We do not therefore intend to repeat those particular discussion points in any great detail. Rather, our presentation today will focus on points of regarding the Staff Reports concerning some key points from our Original Submission around S6 and S29.</p>
<p align="center">Part II S6 Biodiversity</p>	<p align="center">3545/ 799.4</p>	<p>6.1 Background</p> <p>Original Submission Issue-The significant potential additional restrictions implied in this section.</p> <p>Original Outcome requested- This section of the PDP be amended to reflect the importance of a collaborative approach being taken by Council in partnership with private property owners, as a preferred first step and that this be followed through with policy and rules to put collaboration in place.</p> <hr/> <p>Analysis of the S6 Biodiversity Staff Report Relevant to this Submission Point</p> <p>We note Point 9 of the Staff Report which includes a statement that the use of the WRC 2010 Technical Report to potentially identify SNAs in the first instance is supported. We disagree with this because of the apparent lack of a robust process to ensure accuracy when applying SNAs to ground. In particular this inaccuracy is due to:</p> <ul style="list-style-type: none"> • The desktop nature of the exercise (Pages 8, 12 and 92 of the SNA Report) • Physical surveys of only 10% of affected properties and all surveys from the

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		<p>roadside only (Page 12 of the SNA report).</p> <ul style="list-style-type: none"> • The extent and nature of the 11 criteria (Pages 17-24 of the Part IVA Appendix of the S32 Report) that are used to assess possible SNAs. We believe that it would be extraordinary for anyone to assess these criteria for a given area anywhere in a District off a map. Even the credibility of assessing such criteria from the roadside on the 10% that were looked at has to be suspect. • Advice from WRC, in their SNA Technical Report of 2010 (Page 95). This stated:” <i>The Waikato Regional Council strongly advise that the data be used only in conjunction with <u>subsequent field surveys</u>, especially if the data will be used to help with decisions on resource consents, <u>the development of district plans</u> and regional plan schedules, or funding priorities.</i>” • The statement (Page 6 –Part 1-Appendix-S32 Report) that “SNAs have not been ground truthed. This will occur through resource consents” • Our belief that WRC’s concern about how their data was used and the parameters it set down for such use is reinforced by this statement-“.....<i>Since this was primarily a desk-top exercise, most of the sites have not been surveyed in the field and little is known of their composition other than that derived from limited and often outdated data and interpretation of aerial photography (Kessels et al 2009).</i>” (Page 37 of Part IV A- Appendix-S32 Report) • How such a process was considered to be necessary when the following statement appeared in the S32 Report:- <i>“Indigenous biodiversity in the District is improving, but largely because of the goodwill of landowners and community groups who replant and let regenerate, remove pests from land and help indigenous flora and fauna to thrive.”</i> (Page 5-Part IV–Section 6-Biodiversity-Paragraph 2.1) <p>We also note in Point 12 of the Staff Report the statement that “....<i>the Section 32 evaluation provides a robust analysis of costs, benefits and the alternatives considered, and is appropriate for this Plan.</i>” We disagree with that statement because of the apparent lack of a vigorous investigation around the consideration of Alternatives and Proposed Approaches in Section 6-Biodiversity (Pages 6-14-Part IV-S32 Report). In particular, our concerns are due to:</p> <ul style="list-style-type: none"> • The fact that there is only one page that addresses the Provisions of the Operative District Plan. It is, in our view, very light. A sample is as follows: <ul style="list-style-type: none"> ○ <i>“Because indigenous vegetation removal rules apply to the whole District,</i>
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		<p>they are both too specific and too general. Too specific, in that they stop a farmer from removing areas of regenerating bush or long-dead weed-infested areas of indigenous vegetation from the farm. Or (technically), a gardener may not be able to remove shelter belt trees or landscape trees that s/he planted because they happen to be indigenous species. Too general, in that the exemptions that allow vegetation clearance have a number of loopholes that allow wide-scale clearance of indigenous vegetation, such as to form a hypothetical track or placement of fences to allow clearing of vegetation around it." (Part IVA of the S32 Report -Section 6-Biodiversity-Page 5) We can reasonably ask just who in their right mind would form a track hypothetically or indeed go to the considerable expense of constructing a fence simply for the purpose of clearing vegetation. We would also contend that if these sorts of transgressions have occurred they were surely manageable within the provisions of the Operative Plan? Such content in a S32 Report, in our view, is not an analysis (defined in the Oxford Dictionary as being-"a detailed examination or study"). We consider this apparent lack of detailed examination therefore to be contrary to S32 (1) (c) of the RMA which states:</p> <ul style="list-style-type: none"> ▪ "Contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal." <ul style="list-style-type: none"> • The fact that in Part IVA of the S32 Report (Section 6-Biodiversity-Pages 6-10): <ul style="list-style-type: none"> ○ Five of the six alternatives discussed were variations of the single theme of the use of SNAs. None of those five alternatives, under either "costs" or the "evaluation and effectiveness" sections of the alternatives discusses the effects on the people of this District in detail. There are general statements in places (e.g. "certainty for landowners;" "community has expressed strong antipathy against mapping biodiversity ;" "High potential for community resistance and subsequent litigation costs;" These general statements do not, in our view meet the standards contained within S32 (2) (a) of the RMA which states that an assessment under subsection (1)(b)(ii) must: <ul style="list-style-type: none"> ▪ (a) identify and assess the benefits and costs of the environmental,
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		<p>economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—</p> <ul style="list-style-type: none"> (i) economic growth that are anticipated to be provided or reduced; and (ii) employment that are anticipated to be provided or reduced.” <ul style="list-style-type: none"> ○ Of the five Proposed Approaches (Pages 10-14-Part IV-S32 Report discussed, only one has a mention of potential effects on owners and this is only around the economic consequences related to effects around LIMs. We consider that this lack of wide-ranging assessment of the effects of these Proposed Approaches on the District’s people is also contrary to S32 (2) (a) of the RMA. <p>We also note the Staff Report statement in the second sentence of Point 12. Which states –<i>“Inevitably the Plan does impinge on people’s ability to do whatever they wish with their land and in some situations constrains the ‘rights’ of private landowners to advance the greater good of the community and the environment”</i>.</p> <p>We disagree with this statement because:</p> <ul style="list-style-type: none"> • The phrase <i>“people’s ability to do whatever they wish with their land”</i> is not the issue. For us, and we believe for many other owners, it has always been about reasonable use of our property and its resources according to S85 (6) of the RMA. So, confusing “reasonable use” with “doing whatever one likes” as the Staff Report has done in Point 12, is difficult to comprehend. • The phrase <i>“in some situations constrains the ‘rights’ of private landowners to advance the greater good of the community and the environment”</i> is also unfortunate because: <ul style="list-style-type: none"> ○ Private land or property owners are also part of the community. So which part of the community is the Staff Report referring to when it is stating “the greater good of the community?” S5 (2) of the RMA allows for the social, economic and cultural wellbeing of people and communities as well as their health and safety. Objective 6 and Policy 6 (2) (a) NZCPS recognises issues regarding social, economic and cultural well-being of people and
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		<p>communities and the balanced approach that is required.</p> <ul style="list-style-type: none"> ○ Private land or property owners, both as people and members of communities are also part of the environment; this is clear from the RMA which includes people and communities within its definition of the environment. So which part of the RMA environment definition is the Staff Report referring to when it makes the statement “greater good of thethe environment?” ○ The term “constrains” is severe. The Oxford dictionary defines it as being “to force or compel.” It is an unfortunate term for a Staff Report to use regarding its intent relating to the eventual finalisation of this Proposed District Plan. It lacks balance and reasonableness, in our considered view. <ul style="list-style-type: none"> ● In this regard, we have searched the RMA and the NZCPS and to the best of our knowledge there is no legislation supporting the statement in the Staff Report regarding landowners. The statement therefore creates the impression, in our view, that it is potentially philosophically or doctrinally based opinion rather than founded on any legislative requirement. It therefore should not be in the Staff Report. <p>We therefore have drawn the conclusion from all this, that collaboration or any other possible alternatives to variations on the use of SNA, appears not to have been given serious consideration in S6-Biodiversity of the S32 Report.</p> <p>However, we note that the Staff Report at R6.1 c. indicates that our submission point 799.4 has been “accepted in part.” We cannot see any reference to a collaborative approach being adopted either in part or as a whole in the tracked changes appendix.</p> <p>We also note that sub-paragraph c. states “<i>Amendments have been made via submissions where they improve the clarity, intent, efficiency and effectiveness of the Plan.</i>” We are unsure just how that relates to the “accepted in part” statement.</p> <p>We do not consider that the existing text in S6.1 of the Tracked Changes –“<i>Outside of the Plan, the Council’s Biodiversity Strategy includes non-regulatory methods to maintain and enhance biodiversity</i>” meets the “accepted in part” clause either as it is intended to “sit</p>
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		<p><i>outside the Plan</i>" it will therefore have no prescriptive or regulatory weight. Nor is there any detail of what these measures might be.</p> <p>However, we do appreciate that we may have missed explanatory/clarifying text somewhere.</p> <p>New Outcome Requested</p> <p>We therefore recommend that Council, in consultation with property owners either individually or as a representative group, craft and implement a biodiversity policy that will effectively obtain mutual Council and owner buy in and thus provide a collaborative model that works for all, not only recognising the balance between things natural/physical and the needs of people but turning it into a reality. We have an opportunity here to work together and we should grasp it.</p>
	<p>3546/ 799.7</p>	<p>Policy 1d Original Submission Issue- The statement "<i>Sustainable use of indigenous vegetation shall be provided for on private land where indigenous biodiversity is maintained or enhanced (this may be through remediation or mitigation on the site or off the site).</i>"</p> <p>Original Outcome requested-That the text in Policy 1d, in its entirety, be deleted or amended to reflect the concerns that we outlined.</p> <hr/> <p>Analysis of the S6 Biodiversity Staff Report Relevant to this Submission Point</p> <p>We note the last sentence of Point 12 of the Staff Report which states that "<i>The draft RPS consent order on biodiversity includes a new method enabling the Plan to provide for permitted activities where they will have minor adverse effects in relation to the maintenance or protection of indigenous biodiversity. The consent order lists examples of infrastructure, lawfully established land uses, activities for the maintenance or enhancement of biodiversity, the collection of material for traditional Māori cultural practices and actions to avoid loss of life, injury or serious damage to property.</i>" We can reasonably conclude that the above extract from the Staff Report indicates that "Reasonable Use" by owners of resources on their land, consistent with S85 (6) of the RMA, has not in fact been allowed for. Further, we would not accept the potential argument</p>

	<p>that <i>"lawfully established land uses"</i> would meet the requirement either because that implies that some sort application must be made and some sort of permission in the form of certificate, letter, email, or other type of formal consent would have to be given. This, in our view would negate automatic land use being lawful simply because it was a permitted activity in the past. We therefore disagree with the Staff Report statement.</p> <p>Further, we note that despite Point 13 of the Staff Report stating <i>"...suggest inclusion of a specific policy addressing reasonable use..."</i>, and despite this statement in Point 25 of the Staff Report- <i>"Use and removal of indigenous vegetation will be provided for through Section 29 with thresholds set to ensure that the activity is sustainable and adverse effects on biodiversity are no more than minor.....The new policy is considered appropriate as it reflects the requirements of the RMA to provide for reasonable use of land and will improve the efficiency and effectiveness of the Plan,"</i> no such policy has been included for private owners in terms of "reasonable use" of their resources. This is because Policy 1d in Appendix 2 (Tracked Changes) is restricted to just this statement: <i>"Reasonable use and enjoyment of land with minor adverse effects on biodiversity shall be provided for. This may include:</i></p> <ul style="list-style-type: none"> <i>a) The maintenance, operation and upgrading of lawfully established infrastructure and network utilities;</i> <i>b) The collection of material for traditional Maori cultural practices; and</i> <i>c) Actions necessary to avoid loss of life, injury or serious damage to property."</i> <p>Thus, we are concerned that:</p> <ul style="list-style-type: none"> • The new statement in Policy 1d will prevent private owners from having reasonable use of resources that they own; or • The new statement in Policy 1d will create a potential conflict situation between the "policy" of Policy 1d and the list of permitted activities that are outlined in the Tracked Changes Rules for S29. <p>New Outcome Requested</p> <p>We therefore recommend that the existing tracked change text for Policy 1d in Appendix 2 to the Staff Report for Biodiversity be altered to read:</p>
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		<p><i>"Reasonable use and enjoyment of land with minor adverse effects on biodiversity shall be provided for. The parameters and rules regarding such reasonable use are contained within S29 Biodiversity of this Proposed District Plan."</i></p>
<p>Part VI S29 Biodiversity</p>	<p>3554/ 799.31</p>	<p>29.4 Controlled Activities Rule 4 Sustainable Use Original Submission Issue 1- The meaning of the term "Sustainable Use" in the Proposed District Plan as being- <i>"the removal of indigenous vegetation while retaining the biodiversity resilience of an indigenous ecosystem on the site over the long term (e.g. Ministry of Primary Industries harvesting permit, tea tree oil, manuka/kanuka firewood, tree fern harvesting)."</i> Original Outcome requested-That the old permitted rule of allowing owners to cut up to 5 m³ of kanuka/manuka firewood for cooking and heating, be reinstated as a permitted activity.</p> <p>Original Submission Issue 2-We accept that there may well be a case for a graduated allowance to be considered against a number of factors pertaining to a particular block of land whose owner's circumstances may be different to ours.</p> <p>Outcome requested-That consideration be given to a graduated permitted activity kanuka/manuka firewood allowance based on number of dwellings or accommodations areas, cultural needs, dependency for all cooking and heating as a result of not been connected to electricity, size of the block and percentage of block covered in manuka/kanuka etc.</p> <p>Original Submission Issue 3-We are aware that a number of other previous permitted activities under Indigenous Vegetation rules in the old operative District Plan have been removed out of the Proposed District Plan. These include (not exhaustive):</p> <ul style="list-style-type: none"> • The provision of a farm track 50m long and 2m wide • The provision of a 2m wide track either side of a fence line <p>These sorts of rule changes affect an owner's ability to actively farm and maintain their</p>

properties. Specifically, it denies tractor access when such a machine is required to get heavy equipment and maintenance materials to where it is reasonably needed.

Outcome requested-That these two provisions be re-instated as permitted activities in Section 29 of the Proposed District Plan.

Analysis of the S29 Biodiversity Staff Report Relevant to this Submission Point

In general, we welcome the positive changes that have been made to the rules and parameters in the tracked changes (appendix 2) of the S29 Biodiversity Staff Report. They have restored a balance, in our view, between reasonable use by people and the need to maintain the natural and physical environment.

We note the statement in Point 35 of the Staff Report that “...*there is a need to have some sort of parameter that makes clear the 5m3 volume threshold only relates to timber.*” Whilst we consider that the error in this is unintentional, the term “timber” (as defined in the Oxford Dictionary) means “*wood prepared for use in building or carpentry.*” This definition would preclude any other reasonable use e.g. firewood. We would disagree with such a restrictive term being applied. In this regard, we note that the new Rule 1. in the Tracked Changes for S29 (Appendix 2.) states: “*It is no more than 5m3 of wood from trees or 50m2 of other vegetation per site, per year;.....*” This appears to correct the use of the word “*timber*” in Point 35 of the Staff Report but we consider it appropriate to retain this comment in this presentation to ensure that the term is not accidentally carried through into the Plan later in this process.

We note the statement in Para 45 of the Staff Report that “*it is considered appropriate to make some minor changes to ensure that clearing exotic vegetation is captured within Rule 3 (and consequentially Rule 2) so that any clearance beyond what is considered permissible for reasonable use would be treated in the same way as if it were indigenous vegetation.*” We have assumed that this has led to the term “wood” being used in the tracked change at Appendix 2. We would have some concerns with this because it is our experience that indigenous biodiversity thrives under indigenous vegetation cover whilst it does not do as well under exotic vegetation cover; presumably due to the acidic nature of many exotics. In this regard, we have been actively removing young pines and macrocarpa that, through spread of seeds, have encroached into our indigenous

		<p>vegetation. We have also dealt to large “woolly nightshade or tobacco weed” and other “pest trees” which had spread onto the property. We doubt, therefore, that it was the intent to include all these within the 5m3 per site allowance. We therefore believe that there needs to be consideration of exceptions or a better definition of what “wood” really encompasses in the context of S29. We note too that the recommended “5m3 per site per year” <i>permitted activity</i> does not seem to take account of those situation where there may be more than one occupied household on a site (i.e. large farming or tourist operations). Consistent with our Original Submission, we would recommend that this issue be considered.</p> <p>New Outcome Requested</p> <p>We therefore recommend that:</p> <ul style="list-style-type: none"> • That the restrictive term “timber” (“<i>wood prepared for use in building or carpentry.</i>”) not be carried through into the Plan later in this process in relation to “<i>the 5m3 of wood per site per year</i>” rule. • That the term “wood” be clarified or further defined so that Plan Users and Planners clearly understand what it includes and excludes. • That weed trees, isolated rogue pines and macrocarpa trees be excluded from the term “wood.” • That the new Rule 1. and 2. in the Tracked Changes for S29 (Appendix 2) which states: “<i>It is no more than 5m3 of wood from trees or 50m2 of other vegetation per site, per year;.....</i>” be amended as follows: <ul style="list-style-type: none"> ○ “<i>It is no more than 5m3 of wood from trees per occupied household or 50m2 of other vegetation per site, per year;.....</i>”
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