

## Response to Minute from the Marlborough Environment Plan Hearings Panel in regards to SNA Mapping

From: Alan Johnson

(Responses in blue)

1. *“The Panel seek further information in relation to the hearing on Topic 6: Indigenous Biodiversity. The request is directed to Alan Johnson, Manager of the Environmental Science & Monitoring for Marlborough District Council, and the details of the request are set out below.*
2. *In submissions heard thus far by the MEP Hearings Panel on the Proposed Marlborough Environment Plan (MEP) emphasis has been placed by a number of submitters on the Environment Court decision in New Plymouth, Royal Forest and Bird Protection Society of New Zealand Inc v New Plymouth District Council [2015] NZEnvC 219.*
3. *Those submitters have stressed that the Environment Court decision concluded that a voluntary system of Significant Natural Area (SNA) identification in that case was insufficient to meet the Council’s statutory duties. They have asserted the voluntary system proposed there by the New Plymouth District Council was not too dissimilar to that utilised now in Marlborough by agreement with landowners. The Court stated inter alia:*

*Reliance primarily on community attitude (uncritically accepting the proposition that its existence has been proved) to protect SNAs does not provide the protection required by s.6(c) because it does not take account of those who might have a different attitude and the high vulnerability of at least some of the SNAs identified in the evidence of Ms Maseyk.*

*The protection of SNAs which the District Council is obliged to recognise and provide for requires the application of the full palette of methods identified in the District Plan, including the identification of SNAs in Appendix 21.2 and the application of rules to them.*

4. *On the other hand landowner submissions, supported by Federated Farmers of New Zealand, have sought to support the existing voluntary system in Marlborough as being successful and have opposed the adoption of a regulatory system of SNA mapping as protection for significant indigenous biodiversity.*
5. *The Panel wishes to be better informed on the issues underlying the current voluntary system in Marlborough and requests under s42A of the Resource Management Act 1991 that you report to it as to the following aspects:*
  - a. *What is the nature of contractual arrangements as to the voluntary SNA mapping system, and how is that documented?*
    - *Landowner participation in the Marlborough District Council’s Significant Natural Area Programme has been a voluntary since the start of the programme in 2001. Prior to the field surveys getting underway a SNA working group was established that included landowner, DOC and Council representatives. The working group established guidelines that the project would operate under (Appendix 1). These guidelines do not discuss confidentiality of the information.*

- Keeping the location of the SNA on individuals properties confidential was a general operating principal adopted by the working group. This principle was formally adopted by the Council in July 2006 when a Minute was presented to the Environment Committee (Appendix 2)
- No formal contract between the Council and the landowner are put in place when a SNA survey is undertaken. The agreement to access the land and retain the information as confidential is through a verbal agreement with the landowner.
- The only formal agreements that are put in place are when the landowner agrees to undertake some protection measures that are part funded by the Council.

*b. How is the SNA mapping carried out, what level of detail and accuracy was/is involved in the mapping, (both in the past and currently), and in what form and where are the SNA maps held?*

- Potential SNA's are initially identified through a desktop process. The landowner is then approached for permission to access the area and if permission is granted field surveys are then carried out. The final mapping is carried out by an ecologist while out on site using the most up to date aerial photography that is available. In the early part of the programme aerial photography was not available and 1:50,000 scale topographic maps were used as a base. There is a general lack of accuracy from this mapping exercise due to scale and poor definition of topographic features.
- In the future there is a need for a review of the SNA sites using digital aerial photos to ensure accuracy.
- A draft ecological assessment is produced, including the mapping, and given to the land owner for comment. Any adjustments are made and the report is finalised.
- The mapped areas are stored in the Council GIS system. The ecological reports themselves are stored in a confidential area on the property file and are not subject to access by the public or many of the MDC staff?

*c. Are any reasons documented in the contractual arrangements as to why the SNA mapping is to be kept confidential between the landowner and the Council?*

- No
- Verbal agreement between the landowner and the Council to allay fears of public being able to identify areas and have access to those areas.

*d. Do the contractual arrangements impose any resourcing cost on landowners as to mapping or other protection measures?*

- The initial ecological assessments and mapping do not impose any costs on the landowner. This is all funded through general rates.
- A landowner assistance programme contracts are drawn up between the Council and landowner when protection initiatives, such as fencing, pest control etc., are undertaken (Appendix 3). The landowner and Council share the cost of the protection initiative whether it is fencing or pest control. In the initial part of the project the Council accessed DOC's biodiversity fund which resulted in up to 75% of the funding being supplied by DOC and Council. The criteria for the biodiversity

fund have now changed and the SNA programme now no longer qualifies. As a result the funding is now typically shared 50/50 between the Council and the Landowner.

e. *What occurs on change of ownership to ensure those contractual arrangements continue?*

- The landowner assistance programme assistance contract has a clause that states “In the event of the property being sold, the Landowner, will notify the Council of the change in property ownership, to enable a new Agreement to be arranged if mutually suitable.”
- If a LIM is requested on a property that has a SNA present the following statement is placed on the LIM.

### **Significant Natural Feature**

Council has a program identifying areas having significant ecological importance (Significant Natural Areas). In some instances there have been private agreements for the on going protection of such features. Enquiries as to the possible presence of such an Area on the property should be directed to the land owner in the first instance. Anyone intending to take an interest must make their own independent assessment. Further queries may be addressed to Council's Land Resources Officer.

# Appendix 1 – SNA Project Guidelines

# Marlborough Ecological Project Guidelines

## INTRODUCTION

The Council recognises that South Marlborough has a special ecological heritage, which is not only of significance to all Marlburians, but is nationally important and in some cases also of international significance. The Council has a duty to maintain and enhance (improve) this resource for the benefit and enjoyment of present and future generations.

Section 6(c) of the Resource Management Act requires every council to recognize and provide protection for areas of significant indigenous (native) vegetation and significant habitats of indigenous fauna (native animals) as a **Matter of National Importance**. This is the reason why the Marlborough District Council is currently beginning to carry out a **Significant Natural Areas** (SNA) Project for Marlborough.

As the Council looks at beginning a project to find out what's out there and how to protect it, it is very aware of private property rights, since quite a significant proportion of land in Southern Marlborough is in private ownership. Because of this the Council sees that the success of this project hinges on a positive and continuing partnership between it and the rural community.

In its role of assisting with the protection of "Significant Natural Areas" the Council states, at the outset, its **firm commitment to ongoing and meaningful consultation at all phases of the project**. The Council sees its role as **managing information about Significant Natural Area sites and, where necessary, working in conjunction with landowners to protect or improve important areas**. On the matter of how sites might be protected, it is the Council's preference that the general regulation in the Plan continues, without the need to introduce site specific rules for Significant Natural Areas. In other words, the emphasis will be on **voluntary protection**.

The Council decision resulting from submissions on the relevant parts of the Proposed Wairau/Awatere Resource Management Plan (the Plan), stated that:

**"Council intends to undertake a study in consultation with relevant interest groups to identify significant natural areas and ecosystems, and to implement practical strategies to promote the protection and enhancement of these areas. A variation to the Plan will be undertaken if necessary at a later date to incorporate any relevant changes".**

As a result the Council has formed a Working Group to shape a study, and associated procedures, that will enable the identification of Significant Natural Areas. The Council's Working Group is made up of representatives from the core stakeholder groups involving: Councillors, the Council's Regulatory Committee iwi representative, Council officers, Federated Farmer's Executive Officer and farmer's representatives (representing land owners in general) and Department of Conservation staff.

As the Council begins this project on Significant Natural Areas, the Department of Conservation (DoC) is also undertaking a Protected Natural Areas Programme (PNAP) Survey, which will cover part the Wairau/Awatere Plan area. Because information from this survey will be of considerable value to the Significant Natural Areas project, the Council and DoC will work together in areas common to both projects.

While certain Resource Management Act processes must be followed, the Council is committed to making any mechanisms in its Plan, for the protection of Significant Natural Areas, as least regulatory as practically possible. This is because the Council views this project as an opportunity to confirm its confidence in the rural sector as being responsible stewards of Marlborough's land and water resources. The Council and DoC also acknowledge that landowners will continue to play the major role if on going recognition and protection is to be achieved.

First and foremost the Council and DoC acknowledge that a lot of good work has been and is being done by people on the land to conserve natural values. The Significant Natural Areas that remain in Marlborough today are only there because someone cared.

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### **How will the information gathered on Significant Natural Areas be used?**

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The information can be used in four ways:

1. To support voluntary protection and enhancement (improvement) activities;
2. To guide the Council's own operational activities (e.g. management of roading, reserves, rivers & drainage);
3. To guide the general regulation framework in the Council's Plan ; and,
4. To provide a baseline for the ongoing monitoring of the ecological state (natural environmental health) of South Marlborough.

## EXPLANATION

### 1. Voluntary protection and enhancement - This is the Council's preferred method of protection.

In consultation with landowners and occupiers, the Council will be looking for practical ways to promote and support voluntary protection and enhancement (improvement) of identified Significant Natural Areas and ecosystems. Accurate information will enable the targeting of work in priority areas.

Methods used by the Council to promote and support voluntary protection and enhancement of identified natural areas could include:

- ❖ Acting in an educational, promotional and information sharing role;
- ❖ Ensuring continuity of communication between land owners and the Council;
- ❖ Actively supporting management of sites;
- ❖ Providing or arranging financial assistance through waiving of consent fees, rates relief, funding, or grants for covenanting, fencing or similar. (Provision would be made through the Council's Annual Plan.);
- ❖ Practical assistance, e.g. with pest control, labour, etc;
- ❖ Assisting with covenanting of sites by other agencies, if appropriate, e.g., Nga Whenua Rahui, Queen Elizabeth II Trust, Department of Conservation, etc.
- ❖ Exploring the option of purchase with the landowner for sites with outstanding values, where land purchase is the most appropriate and practical means of protection. This may also be done in association with other agencies such as the Nature Heritage Fund.

### 2. Council's own operations - The Council must commit to leading by example.

In its various operational activities like roading, river control, drainage, and other works, the Council has the potential to adversely affect ecological values (the natural environment). Information gathered will be used in the planning of these activities to ensure adverse effects are managed.

The Council's reserves activities can be used to actively promote the enhancement of identified ecological values as well. The Council's pest management skills and related work programme can assist in the protection and enhancement of ecological values.

### 3. Regulation - The Council's preference is to avoid regulation that applies directly to Significant Natural Area sites.

Because information on sites gathered may be scheduled in the Plan there are two possible levels of regulatory effect:

Firstly, information scheduled in the Plan can have regulatory effect when activities that require a consent in any case affect identified Significant Natural Areas. This relates to the existing and GENERAL regulatory framework.

For example, in certain circumstances the Plan's general rule framework requires consents for the following activities:

- ❖ The taking, using, damming and diversion of water
- ❖ Discharges to land, air or water
- ❖ Activities in riverbeds
- ❖ Construction of utilities
- ❖ New road and rail construction
- ❖ Subdivision
- ❖ Building, and
- ❖ Land disturbance.

However, most of the above activities are permitted, subject to conditions, and only require consent when the conditions are not met.

Secondly, as the Plan currently stands, there is one specific indirect control where a consent could be apply to activities in significant natural areas, i.e., as notified, the Plan requires a consent for the clearance of more than 0.1ha of indigenous forest in any one year. Otherwise, there are no specific rules in the Plan that might directly apply to Significant Natural Areas. This rule is currently subject to references to the Environment Court and may change.

The Council's preference is for the general regulation in the Plan to continue, without introducing site specific rules for Significant Natural Areas. This approach relies on the following circumstances:

- ❖ Meaningful voluntary partnerships;
- ❖ The availability of accurate location and area characteristic information;
- ❖ Mutually agreed site management arrangements;
- ❖ Appropriate monitoring that confirms desired outcomes;

[It is important to understand that whilst the Council is committed to minimising regulation and will work actively in that direction, the matter of providing for the protection of Significant Natural Areas in its Resource Management Plans is required, by law, to proceed through a democratic public process.

*It has to be acknowledged that, at a technical level, the regulatory framework that applies to Southern Marlborough is in a state of flux. Accordingly, it is not possible, nor is it appropriate, for the Council to signal a final outcome. As a regulatory organisation the Council cannot be seen to pre-empt the result of statutory processes which have yet to run their course.]*

It is important to recognise that, under the Resource Management Act, **existing use rights apply in certain circumstances**. For instance, *the Plan cannot require a change in land use to protect terrestrial natural areas*. Any change in use can only be voluntary. Existing practices may continue as of right. However, in circumstances involving the maintenance or improvement of water quality or quantity, soil conservation, natural hazards or hazardous substances, a change in land use can be required.

## 4. Monitoring

Information gathered on Significant Natural Areas and associated ecosystems will provide a basis for future monitoring of the state of ecological values. Monitoring information will help landowners, the Council and members of the Marlborough community to assess the effectiveness of the protection and enhancement activities that have been put in place. It will also help identify where new efforts for protection and enhancement should be made.

Appropriate on-going site monitoring by committed partners is one of the keys to enabling and defending the co-operative voluntary method of managing Significant Natural Area sites.

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**Appendix 2 – Council minute re confidential reports**

**That the Council endorse an ongoing commitment to work positively with landowners to achieve biodiversity gains in the Marlborough region. This includes a commitment to continue a policy of not releasing property specific information collected through the Significant Natural Areas ecological surveys without the permission of the landowner concerned.**

Order Paper item

## **16. Public Excluded**

### **Significant Natural Areas (SNA) Project - Information Management (E225-W02)**

(Report prepared by Nicky Eade)

#### **Background**

The Marlborough Significant Natural Areas Project was established in 2000 to meet the requirements of Section 6(c) of the Resource Management Act 1991, which requires that, as a “Matter of National Importance”, councils recognise and provide protection for areas of significant indigenous vegetation and significant habitats of indigenous fauna.

At this time, a number of councils around the country had run into serious conflict with landowners over this issue, usually because of the adoption of a regulatory approach where sites were identified and scheduled into district plans so that rules could be applied to “protect” these areas. In applying a regulatory approach, a collision between private property rights and “public good” was immediately created and conflict and debate around the issue was common.

Through decisions resulting from submissions on the Wairau/Awatere Resource Management Plan, the Marlborough District Council undertook to take a consultative approach to the issue and to implement practical strategies to promote protection of these significant natural areas.

In order to do this, a working group was formed comprising representatives from Council, the Department of Conservation, Federated Farmers and landowners. The role of this group was to assist the Council in developing a project that would achieve the objectives of Section 6(c) of the Resource Management Act 1991 in a way that was relevant and effective in the Marlborough context. The group also provided a link with landowners in the district through its federated farmers and landowners representatives.

Project guidelines setting out the Council’s approach to the issue were developed and endorsed by the Working Group and the Council. These guidelines set out the Councils commitment to ongoing and meaningful consultation with landowners. They also set out the Councils preference to develop a voluntary partnership approach with landowners to promote the protection of significant natural areas in the Marlborough district.

#### **Present Situation**

6. Since 2000, the Significant Natural Areas Project has developed into an extensive field survey, using ecologists to visit properties and produce reports which identify ecologically important sites and possible ways to promote their protection. These reports are provided to the landowners (who often contribute information themselves) and the information is also stored in a Council database.
7. The reports provide a basis for future protection work and, since 2003, the Council has been developing a programme to assist landowners with site protection, where this is desirable.

Working with the QEII National Trust and the Central Government Biodiversity Fund, about 25 sites have been protected so far and an ongoing "Landowner Assistance Programme" has been established to continue protection work into the future.

### Ongoing Information Management Issues

8. In carrying out the above work, the Council and its team have worked closely with landowners and have collected a large amount of information in the form of the ecologist's property reports. The understanding has always been that the detail of this information will not be made public unless the landowner agrees, although it will be used for building a general understanding of the ecology of the district.
9. An example of the use of the information is the summary report for South Marlborough, which was printed and made publicly available in 2005, providing an overview of the ecological survey over the South Marlborough part of the district. It is envisaged that a similar report be prepared for the Marlborough Sounds area when the survey work is completed.
10. At a recent meeting of the Project Working Group, a landowner representative member raised concerns about the potential for information collected on private properties to be made public, either through changes to the provisions in the district plans (there are still outstanding appeals around these matters in relation to the Wairau/Awatere Plan), or through a request by an organisation or individual under the provisions of the Local Government Official Information and Meetings Act. There was concern that landowners were not being warned of this potential and that they were taking a risk in allowing the Council to collect property specific information if its security could not be guaranteed.
11. While there is no immediate suggestion that either of these scenarios are likely to come about, the fact that the potential is there was of concern to the Working Group. The Working Group confirmed that their strong preference and recommendation to the Council was to maintain a confidential and voluntary partnership approach between the Council and landowners.
12. Where information has been collected by a public organisation using public funds, there is an expectation that, generally, that information would be made publicly available. In the context of the Significant Natural Areas Project, if property specific information was made available to the general public, without the agreement of the landowner concerned, this could undermine the Council's relationship with landowners, and consequently the project as a whole.

### RECOMMENDED

**That the Council endorse an ongoing commitment to work positively with landowners to achieve biodiversity gains in the Marlborough region. This includes a commitment to continue a policy of not releasing property specific information collected through the Significant Natural Areas ecological surveys without the permission of the landowner concerned.**

# Appendix – Example of Landowner assistance Programme Agreement

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# Marlborough Significant Natural Areas Project

## Landowner Assistance Programme - Agreement

### The Partners:

**BETWEEN:** The Marlborough District Council (the Council)

**AND:** Rob and Sally Peter (The Landowners)

### Purpose of this Agreement:

This agreement sets out the terms for the Council to provide support to the Landowner, including scientific and land management advice, financial assistance for the completion of site protection and re vegetation work, and ongoing monitoring and maintenance of a significant natural site located on the Landowner's property.

### Explanation:

1. The Council has established the Marlborough Significant Natural Areas (SNA) Project to identify sites and record information about natural ecology on private land in the region, and has developed the Landowner Assistance Programme to support and assist landowners with the voluntary protection (by fencing) and enhancement (by weed control and re vegetation planting) of significant natural sites, where practical.
2. The Council has undertaken a property survey and consulted with the Landowner about the voluntary protection of the sites identified on the Landowners property and about practical options for protection and enhancement work for these sites.
3. The Council has agreed to provide scientific and land management advice, and financial assistance to support this protection and enhancement work being undertaken by the Landowner.
4. The Landowner has voluntarily agreed to participate in this programme and to undertake the protection and enhancement work for the SNA site located on the landowner's property that is described in the SNA Works programme and shown on the map attached to this agreement.

NEA

FILE No.:	
OFFICER:	
DATE RECV'D	13 JUN 2006
MARLBOROUGH DISTRICT COUNCIL	

## Partnership Agreement

1. The Landowner agrees to undertake the SNA Works programme set out in this agreement.
2. The Landowner and the Marlborough District Council will each contribute 50% of the cost of the agreed works as set out in the Works programme.
3. On the completion of the Works programme to the satisfaction of both parties, the Council will pay to the Landowner the agreed financial contribution as shown in the Plan.
4. The Landowner is responsible for the maintenance of any protection fencing around the site and the ongoing maintenance of any planting within the site that is completed under the Works programme.
5. Access permission will be granted to the site, for the purpose of annual monitoring, to Council staff or its agents. The Council accepts full responsibility for these persons while on site.
6. General public access to the site is neither permitted nor implied by this agreement.
7. The Council confirms its availability for joint consultation with the Landowner, in relation to any event or work to be undertaken within or adjacent to the site that may affect the protection of the site (eg, erosion, fire, spraying).
8. The Council and the Landowner agree that this Agreement is solely between the Council and the Landowner, and that this Agreement can be reviewed at any time to the mutual satisfaction of both the Council and the Landowner.
9. In the event of the property being sold, the Landowner, will notify the Council of the change in property ownership, to enable a new Agreement to be arranged if mutually suitable.

**Signed on behalf of the Marlborough District Council**

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*Nicky Eade*

1/06/06

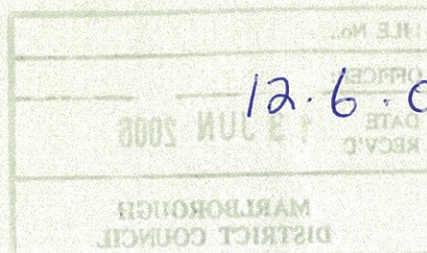
**Date**

**Signed by the Landowner**

.....  
*Sally Roberts*

12.6.06

**Date**



# Marlborough Significant Natural Areas Project

## Site Protection and Enhancement Works Programme

### Property Details

Name: Rob and Sally Peter

Location and address: Cape Campbell, Needles Road, Ward

Ecological District: Kekerengu

Property number: 180814 & 180830

Legal description: Pt lot 5 DP 564

### Site Details

Number: 1 & 2

Area (ha): 24 hectares

Grid reference: GR Q29/122416 (E2512200 N5941600) and GR Q29/114401 (E2511400 N5940100)

Description: SNA 1 Mussel Point and SNA 2 Bush gully

Map or Aerial photo attached (see SNA report)

### SNA Works Programme and Costs

#### Re vegetation

A total of 500 native plants are to be established at each site.

These will be planted with locally sourced native plants that have been grown by Morgan's Road Nursery except Karakas that have been grown by Kaikoura Nursery.

The Landowner is responsible for pre plant spraying, planting, fertilising and maintenance costs.

## Summary of Site Protection and Enhancement Works Programme Costs and Funding

Work Programme Item	Estimated Cost	Funding proposed	
		Landowner (50%)	Council (50%)
Planting and maintaining 1000 natives	\$4,000	\$2,000	\$2,000
Total Estimated Costs	\$4000	\$2000	\$2000

**Notes:**

1. All cost estimates are inclusive GST.
2. Payment of MDC 50% financial contribution will be made on submission of a tax invoice to the Marlborough District Council by the Landowner based on the actual costs incurred and following satisfactory completion of the site protection and enhancement works by the landowner.