

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

**AND**

**IN THE MATTER** of Hearing 18: Rural Zone

of the Proposed Waikato District Plan

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**STATEMENT OF EVIDENCE OF MARIE-LOUISE (MIFFY) FOLEY**

**For the Waikato Regional Council**

**DATED 8 September 2020**

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## **Introduction**

1. My name is Marie-Louise (Miffy) Foley. I am a Senior Policy Advisor in the Integration and Infrastructure Section at the Waikato Regional Council. I have been in this role since February 2019.
2. I hold the academic qualifications of a Bachelor of Sciences from the University of Waikato and a Graduate Diploma in Urban and Regional Planning from the University of New England in New South Wales (NSW), Australia. I am an intermediate Member of the New Zealand Planning Institute.
3. My role with Waikato Regional Council has been as a member of the Policy Implementation Team which involves 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 am also involved with Future Proof and a number of the Hamilton to Auckland Corridor Plan work streams. I represent Waikato Regional Council on the Future Proof Technical Implementation Group.
4. I have 15 years' experience working in the planning field. Prior to my role with Waikato Regional Council, I was employed as a policy and strategic planner in local government in NSW for over 13 years.
5. 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 evidence 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 Evidence**

6. My evidence is given on behalf of Waikato Regional Council.
7. The submission made by Waikato Regional Council addressed several aspects that relate to the Rural Zone. The submission sought amendments to improve consistency with regional policy documents. I was not involved in the preparation of Waikato Regional Council's submission, dated 18 September 2018. However, I led the preparation of the further submission, dated 15 July 2019.

8. My evidence reinforces the Waikato Regional Council submission and reflects my professional opinions as a resource management policy advisor. The focus of my evidence is on:
- afforestation in high and outstanding natural character areas;
  - support for recommended increase in the subdivision threshold to 40 hectares, and
  - submission points not included in the s42A report

#### **Afforestation in high and outstanding natural character areas**

9. WRC's submission point 81.160 requested amendment to Rule 22.1.5 D15 Discretionary Activities to include afforestation of significant natural areas as a discretionary activity. As identified by Mr Cleese in his S42A report for Hearing 18, National Environmental Standard for Plantation Forestry (NES-PF) controls need not be replicated in the district plan and that these address afforestation within an SNA. I agree with this point.
10. However, I note that similar controls do not exist in the NES-PF for afforestation in areas of high and outstanding natural character of the coastal environment. This is a matter that Rule 22.1.5 D15 of the Proposed Waikato District Plan addresses and which the S42A author recommends deletion of at paragraph 386 based on Regulation 6 of the NES-PF.
11. I believe that there is scope to include controls that are more stringent than the NES-PF when preserving natural character areas of the coastal environment. Under Clause 6(1)(b) of the NES-PF, controls can be more restrictive to implement any of the policies 11, 13, 15 and 22 of the New Zealand Coastal Policy Statement (NZCPS). This was outlined in WRC's submission (submission point 81.160) as summarised below:
- Regulation 6 provides certain circumstances in which a rule in a plan can be more stringent than the regulations. These include where a rule gives effect to NZCPS policies 11, 13, 15 and 22 and matters of national importance (Outstanding Natural Feature Landscape and SNA). Given this, it is considered that a discretionary activity status is available and appropriate to ensure that the WRPS and NZCPS are given effect to.*
12. More stringent planning provisions for forestry activities to address the NZCPS are included in the Landscape and Natural Character Section 32 Report with Rule 22.1.5 D15 forming part of the cascade of provisions. I note that Policy 13 is referenced in the S32 report as a relevant NZCPS policy, and that the NZCPS features significantly in assessing options for addressing the issue of natural character.

13. I also would like to bring the Panel's attention to the S42A report for Hearing 21b (Landscapes) which, at paragraph 66, highlights a broader scope of Regulation 6 of the NES-PF and includes those matters under both clause 6(1)(a) and 6 (1)(b).
14. As such, it is my opinion that Policy 13 of the NZCPS is particularly relevant in regard to Rule 22.1.5 D15 and the associated objective and policies of the Proposed Waikato District Plan as identified in Council's S32 report. Policy 13 reads as follows:
1. *To preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use, and development:*
    - a. *avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character; and*
    - b. *avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas of the coastal environment; including by:*
    - c. *assessing the natural character of the coastal environment of the region or district, by mapping or otherwise identifying at least areas of high natural character; and*
    - d. *ensuring that regional policy statements, and plans, identify areas where preserving natural character requires objectives, policies and rules, and include those provisions.*
  2. *Recognise that natural character is not the same as natural features and landscapes or amenity values and may include matters such as:*
    - e. *natural elements, processes and patterns;*
    - f. *biophysical, ecological, geological and geomorphological aspects;*
    - g. *natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs and surf breaks;*
    - h. *the natural movement of water and sediment;*
    - i. *the natural darkness of the night sky;*
    - j. *places or areas that are wild or scenic;*
    - k. *a range of natural character from pristine to modified; and*
    - l. *experiential attributes, including the sounds and smell of the sea; and their context or setting.*
15. I note that in regards to implementing Policy 13(1)(c) above, high and outstanding natural character areas of the Waikato District have been identified in the Boffa Miskell *Waikato District Landscape Study* which is informed by a report commissioned by Waikato Regional Council, also prepared by Boffa Miskell, titled *Natural Character Study of the Waikato Coastal Environment*.
16. The Waikato District Landscape Study specifically addresses biotic values of which landcover is a significant component. It is clear from the assessment of Port Waikato contained within this report that plantation forestry has considerable bearing on natural character. Further,

plantation in such areas can contribute to a reduction in natural character including the matters addressed in NZCPS policy 13(2).

17. Based on the above, in my opinion that there is scope and justification for retaining control over afforestation in natural character areas as addressed in Rule 22.1.5 D15 of the Proposed Waikato District Plan. I consider that such provisions are necessary to address the threats to identified high and outstanding natural character areas, and to implement the NZCPS and WRPS.
18. I request that Rule 22.1.5 D15 be retained as notified in the Proposed Waikato District Plan.

#### **Support for increase in the subdivision threshold to 40 hectares**

19. WRC's submission points 81.167 and 81.173 requested that the Proposed Waikato District Plan provide for a minimum 40ha balance lot for general rural subdivision and for rural hamlet subdivision. This was on the basis that a threshold set at 20 ha has the effect of increasing the area of land within the district for which subdivision may be permitted, thus increasing the potential for more fragmentation of rural land (and high class soils) than would otherwise be the case (with a 40 ha threshold). It could also lead to more diffuse rural residential development. This is inconsistent with policy 5.2.3(a) of the Proposed Waikato District Plan around minimising the fragmentation of productive rural land.
20. Ms Overwater recommends that 22.4.1.2(a)(ii) and Rule 22.4.1.5(v) be amended to provide for a minimum 40ha balance lot. This recommendation this is supported by technical reports from Dr Hill, Professor Scrimgeour and Mr Fairgray which highlight the consequences of a smaller minimum lot balance such as an increase in rural land fragmentation, loss of productive land and loss of revenue from primary productive activities.
21. I support the amendment to 22.4.1.2(a)(ii) and Rule 22.4.1.5(v) to provide for a minimum 40ha balance lot

#### **Submission points not included in the s42A report**

22. WRC had a number of submission points coded to Hearing 2: All of plan when they actually request relief in each zone rather than the plan as a whole. These submission points (81.3, 81.4 & 81.9) related to setbacks from waterways for buildings and earthworks, and revegetation of earthworks.

23. I addressed these matters in my evidence for Hearing 2 so I will not repeat it here but rather refer you to paragraphs 9 - 53 of that evidence. I also include the specific amendments requested to the rural rules in Appendix One.

24. Submission point 81.176 also related to the rural zone rules, specifically the Lakeside Te Kauwhata Precinct and Rule 22.8.3 Restricted Discretionary Activities. It requested that an additional assessment criteria be included as follows:

*(vi) Stormwater management and the mitigation of potential adverse effects*

25. As per WRC's submission, the effects of stormwater should be included as a matter of discretion to encourage an assessment of effects on the environment from stormwater infrastructure.

**Other submission points**

26. WRC made a number of other submission points in relation to the Rural Zone which are address in the Section 42A report. I support a number of the recommendations made in the Section 42A Report – see Appendix Two.

**Conclusion**

27. WRC is supportive of a number of the recommendations made in the Residential Zone Section 42A report but requests a small number of changes to better implement regional direction as outlined in this evidence.

Miffy Foley

8 September 2020

## APPENDIX ONE

Proposed amendments to the rules in Chapter 22: Rural Zone

Rule	Proposed amendment
22.2.3.1	Include in P2: <u>(vii) Earthworks are setback 5m horizontally from any waterway, open drain or overland flow path</u>
22.2.3.1	Amend P2 (iv) as follows: Areas exposed by earthworks are re-vegetated to achieve 80% ground cover within <del>6</del> <u>2</u> months of the <del>commencement</del> <u>completion</u> of the earthworks;
22.3.7.5	Include in P1: <u>(vi) 10m from a perennial or intermittent stream.</u>

## APPENDIX TWO

The table below outlines the WRC submission points and further submission points where the s42A recommendations are supported.

Submission Point	Recommendation
81.166	Accept in part Retain Rule 22.4.1.1 Prohibited Subdivision
81.167	Accepted WRC requested amendment to Rule 22.4.1.2(a)(ii) General subdivision to increase the subdivision threshold to 40ha.
81.168	Accepted WRC requested amendment to Rule 22.4.1.2(a)(v) General subdivision to clarify that a property scale/site specific Land Use Capability Assessment is required
81.170	Accepted WRC requested addition to 22.4.1.2(b) General subdivision the matters of discretion to include the availability of water supply, wastewater services and stormwater management.
81.171	Accepted WRC requested addition to Add to Rule 22.4.1.5 (b) Rural Hamlet Subdivision the matters of discretion to include the availability of water supply, wastewater services and stormwater management.
81.173	Accepted WRC requested amendment to Amend Rule 22.4.1.5(v) Rural Hamlet Subdivision to provide for a minimum 40ha balance lot.
81.174	Accept in part WRC requested retention of Rule 22.4.1.6 Conservation lot subdivision.
81.192	Accepted in part Amend the definition of "ancillary rural earthworks" in Chapter 13: Definitions to provide for flood protection and drainage schemes managed by the Waikato Regional Council.
81.214	Accepted WRC requested retention of Policy 5.2.2 High class soils
81.217	Rejected WRC requested retention of Retain Policy 5.3.8 Effects on rural character and amenity from rural subdivision. S42A report recommendation to delete and replace with new clause which I consider supports the framework better.
FS1277.70	Accepted

	Opposed submission requesting minimum lot size in Matangi of 2500m <sup>2</sup>
FS1277.75	Accepted
FS1277.101	Accepted WRC opposed rezoning request at 116 Swan Road, Te Kowhai
FS1277.131	Accepted WRC opposed new Rule 22.4.10 Subdivision - Country Living Hamlet,
FS1277.132	Accepted WRC opposes new rule to Section 22.4 Subdivision for farm park subdivision,
FS1277.133	Accepted Oppose request to reduce minimum lot size to 4ha
FS1277.134	Accepted Opposed request to amend Rule 22.4.1 Subdivision - General to be less restrictive for areas that have already been allowed to subdivide.
FS1277.135	Accepted WRC opposes request for provisions for transferable development right for designations like an SNA or ONFL