

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of hearings regarding submissions to the proposed Waikato District Plan relating to **Hearing 18: Chapter 5 Rural Environment & Chapter 22 Rural Zone**.

**SUMMARY STATEMENT
OF PRIMARY EVIDENCE OF SHANE ALEXANDER HARTLEY ON BEHALF OF
MIDDLEMISS FARM HOLDINGS LTD AND THE BUCKLAND LANDOWNERS GROUP
28 September 2020**

1 INTRODUCTION

- 1.1 My name is Shane Alexander Hartley. I have been a Director of Terra Nova Planning since establishing the consultancy in 2001. I hold the qualifications of Bachelor of Arts in Political Studies and History, and Bachelor of Town Planning. I am a Member of the NZ Planning Institute.
- 1.2 Middlemiss' submission seeks deletions, amendments, and additions to several sections of the PWDP, including Chapter 5 and Chapter 22, primarily to introduce incentivised subdivision to achieve environmental and ecological enhancement for biodiversity, water quality and elite soils protection.

2 SUMMARY

- 2.1 My statement concludes that incentivised rural subdivision to achieve a stronger focus on biodiversity, water quality protection and enhancement, and high quality soils protection, is an important and effective approach to achieving important environmental goals in Waikato District. It also gives effect to the requirements of the Waikato Regional Policy Statement and the current National Policy Statement for Freshwater Management that came into effect on 3 September 2020, and the currently proposed draft national policy statements for biodiversity.
- 2.2 I support amendments to several objectives, policies, rules and methods and propose amended wording where I consider it appropriate, relating specifically to

objectives and policies for rural character, biodiversity, water quality and high quality soils.

- 2.3 I propose policies and rules relating to in-situ and transferable development rights (**TDRs**) to secure biodiversity, water quality and high quality soil protection benefits, including the location of TDRs.
- 2.4 I address the significance of achieving improved biodiversity, soil protection and water quality outcomes in both qualitative and quantitative terms, and the increased focus on these matters under the latest national policy statements for biodiversity and freshwater.
- 2.5 The maintenance of rural character, and the associated perceived rural landscape visual effects, should be tempered by significantly improving responses to biodiversity and water quality deterioration, and incentivising indigenous vegetation and high quality soils protection and enhancement.
- 2.6 I do not consider that the Plan or the recommendations in the Section 42a reports relating to these matters fully achieve the balance that is required to do that although I agree with and support many of the proposed amendments in the Reports.
- 2.7 I consider that the proposed objective, policy, and rule changes sought by Middlemiss, including in particular the incentivised SNA and indigenous biodiversity in-situ and transferable development right provisions, are important and appropriate, subject to the additions and modifications I have recommended.
- 2.8 In my opinion, these provisions will give effect to the purpose of the Resource Management Act, the relevant national policy statements, in particular the National Policy Statement Freshwater Management 2020, the Waikato Regional Policy Statement, and the relevant objectives and policies of the proposed Waikato District Plan, in particular those relating to the Natural Environment Chapter.

3 RESPONSE TO FURTHER INFORMATION AND COUNCIL S42A SUPPLEMENTARY STATEMENTS AND REBUTTAL AND CONSEQUENTIAL AMENDMENTS TO DRAFT RULES

- 3.1 In response to further information that has become available since the completion of my statement of primary evidence, I briefly comment below and propose amendments to the draft rules that I prepared and included with my primary statement.
- 3.2 In his supplementary statement Mr Fairgray makes several assertions about changes he considers I propose to Objective 5.1.1 (a), referencing my para 6.2.

and relating predominantly to the effect of removing references to “productive” rural activities (his paras 2.4 to 2.13). I note that my paragraph 6.2 references the changes sought by the Middlemiss submission to Objective 5.1.1 and that the changes I actually propose are in my paragraph 6.6. I have not proposed the deletion of references to “productive” as he states, and my proposed additional words to 5.1.1 (a) (ii) simply seek to provide for other typical rural activities additional to productive activities, with the priority given to respective activities appropriately addressed in policies.

3.3 Mr Fairgray then uses his misunderstanding of the changes I propose to underpin his analysis of the significant changes to the rural environment that he considers will arise in his paragraphs 2.14 to 2.25. It is therefore difficult to assess the weight to be given to his assessment given the importance of the objective and policy approach I actually do propose, and which would guide subdivision assessment given the discretionary activity status I have proposed for the rules I recommend.

3.4 However, I will note that the Environment Court Decision on the rural subdivision provisions¹ and the related High Court decision² did not appear to accept that the scale of subdivision enabled by the rules sought by the appellants based on the Auckland IHP's was in reality likely to be achieved. I consider the same applies to Waikato District, for the reasons set out in the Environment Court's decision and my own experience of operating similar provisions in the Rodney District for over 20 years.

3.5 It is also incumbent on the Council to monitor the implementation of such rules, and if necessary, to introduce plan changes to modify those rules if unforeseen or unexpected planning issues arise. In my experience one of the greatest “brakes” on the scale of such subdivision is the cost of undertaking the required indigenous revegetation and protection (including pest and weed management) required, let alone the land acquisition and holding, and application, costs. In this respect also, it is essential that the incentives provided for by the rules are calibrated to the local market values in which they operate in order to be effective. I also note that in her s42A rebuttal Ms Overwater places some reliance on Mr Fairgray's statement (paras 151 to 152) and so should be read with the comments I have made above in mind.

¹ Cabra Rural Developments Ltd & ORS and Auckland Council; Decision 2018 NZEnvC 90

² CIV-2018-404-1294 [2019] NZHC 1892

- 3.6 I further note in her s42A rebuttal Ms Overwater addresses the subdivision provisions already proposed for Rule 22.4.1.6 in her S 42A report (paras 147 to 150). I agree with her suggestion that her proposed discretionary activity for restoration or enhancement planting³ allows existing SNA to be added to so as to meet the standards of the RDI rule. However, the key point is that the ratios, lot yield caps, and “type” structure for SNA protection, enhancement and revegetation, are insufficient to significantly contribute to achievement of the biodiversity and freshwater objectives and policies of the PWDP, and relevant regional and national policy statements I have addressed in my evidence, and Part 2 of the RMA.
- 3.7 Ms Overwater discusses the implications of what she has termed ad hoc subdivision as opposed to location in Residential and Village zones (para 222). As I addressed in my primary statement of evidence, the potential for rural lots to be scattered throughout the rural areas of the District is not appropriate and for that reason I identified receiving areas for the reasons I set out. However, in having done that, the approach is still criticised by Ms Overwater because it undermines Residential and Village zones - and lesser in the Country Living Zone - strategy for growth management (para 229).
- 3.8 The problem is that in order to provide for incentivised subdivision to achieve significant higher order objectives and policies, it is necessary to provide an opportunity where one does not currently exist. In my experience, that can usually only be achieved in such above-mentioned zones if additional density is proposed, and this is very difficult to achieve in RMA terms as it immediately poses the questions: why is that density not already provided for if the effects are acceptable, and how could it be justified if the effects are unacceptable?
- 3.9 The approach I recommend is to locate incentivised subdivision sites only in cluster format, with relatively small sites so as to limit the visual and spatial impacts within the receiving environment. In addition, I have proposed these as discretionary activities to enable the full application of Plan objectives and policies to avoid the kinds of effects that Ms Overwater identifies (para 230). This would include the significant objectives and policies of Chapter 3 Natural Environment. In such case, I consider that the kinds of policy effects Ms Overwater refers to (para 227) concerning open space character and amenity of rural areas, minimising the effects of ribbon development, and maintaining rural character and amenity values, can all be taken into account in an assessment, and an application either heavily conditioned or even refused if that is appropriate.

³ Pages 231 and 232 S42A Report Hearing 18 Rural Subdivision Waikato District Council 25 August 2020

- 3.10 In regard to the proposed rule amendments I proposed with my evidence in chief, I support proposed further changes that were provided to Mr Fuller and **attached** to his legal submissions as Appendix 1 as follows.
- 3.11 In the first instance, the addition of Buckland and Logan roads to the schedule of receiving areas for transferable development rights, and consequential deletion of specific reference to Harrisville and Barnaby roads and the District boundary I specifically referenced in the rules, by way of strikeouts in the attached amendment. The areas incorporated by the addition of these roads remains in accord with the overlay plans I included in Appendix A of my primary statement.
- 3.12 Secondly, the amendment of the rule tables in several instances to increase the number of TDR lots able to be created from the protection of significant indigenous vegetation, for both existing and revegetation. This reflects the more detailed market analysis of the ratios required to provide sufficient incentive to proceed with these options. It is my understanding that these will better reflect the market value of TDRs in relation to the typical land sale values in Waikato District.
- 3.13 Thirdly, amended high quality soils rules to operate more effectively in policy and operational terms to better achieve the key intent of the rules to incentivise amalgamation of sites with high quality soils. These have originated from Mr Forrester's further consideration of the draft rules from a surveying perspective,

Shane Hartley