

SECTION 42A REPORT

Rebuttal Evidence

Hearing H11: Lakeside Te Kauwhata Zone

Report prepared by: Alan Matheson (Consultant Planner)

Date: 12 March 2020



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1 Introduction

1.1 Background

1. My full name is Alan Ross Matheson.
2. I am the writer of the original S42A report for Hearing 11: Lakeside Te Kauwahta Zone.
3. In the interests of succinctness, I do not repeat the information contained in section 1.1 to 1.4 of that S42A Hearing Report and request that the Hearings Panel take this as read.

2 Purpose of the report

4. In the directions of the Hearings Panel dated 26 June 2019, paragraph 18 states:
If the Council wishes to present rebuttal evidence it is to provide it to the Hearings Administrator, in writing, at least 5 working days prior to the commencement of the hearing of that topic.
5. The purpose of this report is to consider the primary evidence filed by submitters and provide rebuttal evidence to the commissioners.
6. Evidence was filed by the following submitters within the timeframes outlined in the directions from the Hearings Panel¹:
 - a. Terra Firma Mining Ltd [732]
 - b. Ministry of Education [781]
 - c. Kiwi Rail Holdings Limited [986]
 - d. Lakeside Developments 2017 Limited [579, FS1371]

3 Consideration of evidence received

7. The main topics raised in evidence from submitters that have been addressed in this rebuttal evidence include:
 - a. Consideration of submission with respect to the Residential Puketirini Area;
 - b. Number of proposed parks;
 - c. Identification of the stopbank within a significant natural area and activity status;
 - d. Residential living courts;
 - e. Subdivision controls; and
 - f. Rural zone permitted activities.
8. I have structured this report in the order of the provisions within Chapter 16: Residential Zone, Chapter 17: Business Zone and Chapter 22: Rural Zone with reference to the section contained in the s42A Report for Hearing 11: Lakeside Te Kauwhata. I have only addressed those sections and evidence where I consider additional comment is required.
9. In order to distinguish between the recommendations made in the s42A report and Appendices 2 – 4 and the recommendations that arise from this report:
 - a. s42A recommendations are shown in red text (with red underline for new text and strikethrough for deleted text); and

¹ Hearings Panel Directions 21 May 2019

- b. Recommendations from this report are shown in blue text (with blue for new text and ~~strikethrough~~ for deleted text).

4 Definitions

10. There was no section in the s42A Report addressing definitions. Accordingly, I address the evidence from Terra Firma Resources who raised the question as to where their submission in relation to the definition of 'Commercial activity' as it applies to the proposed Residential Puketirini Area is to be heard. I confirm that this matter will be addressed in the s42A report for Hearing 25: Zone Extents.

5 General – Rules 16.5 Lakeside Te Kauwhata and 16.5.1 Application of rules (Section 5 of the s42A Report)

5.1 Analysis

Number of Parks

11. The evidence from John Duthie on behalf of Lakeside Development 2017 Limited [579, FS1371] (paragraphs 19 – 24) question the number of parks to be provided as shown on Plan 3 Lakeside Precinct Plan: Overlays and Open Space in Rule 16.5.1 Application of rules.
12. I have sought confirmation from Council officers with respect to this matter and can advise as follows:
 - a. The 5 parks are shown as part of the PC20 decision;
 - b. The 5 parks are an integral part of the overall development and are required to meet the open space requirements for the whole area;
 - c. 4 of the parks are within the land owned by Lakeside Developments 2017 Limited and one is located on land owned by Northland Property Concept Limited (refer to plan below showing in yellow highlight the property and park); and
 - d. The Northland Property Concept Limited land cannot be developed until the Lakeside Developments 2017 Limited land has been developed to the boundary.

21E.3.3 Lakeside Precinct Plan 3: Rural Zones: Overlays and Open Spaces



Stopbank – Significant Natural Area and Significant Natural Feature

13. The evidence from John Duthie on behalf of Lakeside Development 2017 Limited [579, FS1371] (paragraphs 25 - 32) questions the identification of part of the area as a “Significant Natural Area and Significant Natural Feature”, where these overlap the walkway and the lake edge/stopbank (refer to diagram at paragraph 39(d) of the s42A Report). Mr Duthie’s evidence seeks that vegetation removal be a restricted discretionary activity (rather than discretionary) and that modifications to the stopbank also be a restricted discretionary activity.
14. I concur with Mr Duthie that Rule 16.2.8 - *Indigenous vegetation clearance inside a Significant Natural Area* should not apply to Lakeside Te Kauwhata where a comprehensive land development consent is applied for. This is because Rule 16.5.3 provides for a comprehensive land development application as a Restricted Discretionary Activity and matter of discretion (v) addresses “...protection, restoration or enhancement of ecological features.” I also note that Rule 16.5.1(1) does not exclude Rule 16.2.8 Indigenous vegetation clearance inside a Significant Natural Area and I recommend that it does so, as this would remedy the situation.
15. With respect to Mr Duthie’s concern that modifications to the stopbank need to be a restricted discretionary activity, I note that Rule 16.5.7.2 *Earthworks – general* applies and that all earthworks are a restricted discretionary activity. Accordingly, I do not consider any change is required.

16. However, I note that there is a consequential change required to Rule 16.5.7.2 Earthworks – general that was not identified in the s42A Report. With the proposed deletion of Rule P3, there is no need for Rule DI. This is shown in the recommended amendments below.

5.2 Recommended amendment

17. It is recommended that Rule 16.5.1 -Application of rules, be amended as follows:

16.5.1 Application of rules

- (1) The rules that apply to a permitted activity in Rule 16.5.2 within the Lakeside Te Kauwhata Precinct as identified on the planning maps are as follows:
- (i) Rule 156.2 (Land Use – Effects) except:
 - A. Rule 16.2.4.1 (Earthworks – general) and Rule 16.2.4.2 (Earthworks – Maori Sites and Maori Areas of Significance) does not apply and Rule 16.5.7.2 applies instead
 - B. Rule 16.2.2 (Servicing hours of operation – Bankart Street and Wainui Road Business Overlay Area
 - C. Rule 16.2.6 Notable trees
 - D. Rule 16.2.8 Indigenous vegetation clearance inside a Significant Natural Area
 - E. Rule 16.5.7.1 Noise and Vibration – North Island Main Trunk Line (NIMT)
 - F. Rule 16.3 (Land Use – Building) does not apply, Rule 16.5.8 (Land Use – Building) applies instead.

18. It is recommended that Rule 16.5.7.2 DI be deleted as shown below:

16.5.7.2 Earthworks - general

DI	Earthworks that do not comply with Rule 16.5.7.2 P3.
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5.3 Section 32AA evaluation

19. The recommended amendment seeks to clarify the application of the rules with respect to indigenous vegetation clearance which does not change activity status and to include a consequential amendment. Accordingly, no s32AA evaluation has been required to be undertaken.

6 Rule 16.5.8.6 Living Court (Section 13 of the s42A Report)

6.1 Analysis

20. The evidence from John Duthie on behalf of Lakeside Development 2017 Limited [579, FS1371] (paragraphs 51 - 53) questions the proposed addition relating to the location of outdoor living courts where provided on a balcony. On reflection, I concur with Mr Duthie that the provisions have been specifically developed for the Lakeside Te Kauwhata situation which is a comprehensive approach to development, and as such do not need to be amended.

6.2 Recommended amendment

21. It is recommended that the proposed amendments to Rule 16.5.8.6 P1 and P2, be deleted as follows:

16.5.8.6 Living court

P1	<p>(a) A living court must be provided for each dwelling in the Medium Density Precinct as shown on Te Kauwhata Lakeside Precinct Plan Rule 16.5.1(3)(a) which meets all of the following conditions:</p> <ul style="list-style-type: none"> (i) the living court is readily accessible from a living area of the dwelling; and either (ii) on the ground floor the living court has a minimum area of 60m² capable of containing a circle of 6m diameter, and has a minimum width of 2.5m; or (iii) if the dwelling does not have a habitable room on the ground floor, a balcony is provided that meets the following: <ul style="list-style-type: none"> A. has an area of 10m² with a diameter of at least 2.0m for 1 bedroom dwellings; or B. has an area of 15m² with a minimum diameter 2.4m for 2 or more bedroom dwellings; and C. where the balcony is more than 1.5m above ground level and located along any side or rear boundary, a minimum separation distance of 5m is required from those boundaries.
P2	<p>(a) A living court must be provided for each dwelling in the High Density Precinct as shown on Te Kauwhata Lakeside Precinct Plan Rule 16.5.1(3)(a) which meets either Rule (a)(v) or condition (a) (ii):</p> <ul style="list-style-type: none"> (i) it complies with the living court rules for the medium density precinct, except that the ground floor living court must have a minimum area of 50m²; or (ii) Communal open space is provided and: <p>(b) the communal open space is accessible from all dwellings subject to this provision, and</p> <ul style="list-style-type: none"> (i) each dwelling has a legal right to use and enjoy the communal open space, and (ii) an on-site private open space is provided where either: <ul style="list-style-type: none"> A. on the ground floor the living court has a minimum area of 30m² capable of containing a circle of 4m diameter, and has a minimum width of 2.5m; or B. if the dwelling does not have a habitable room on the ground floor, a balcony is provided containing at least 10m² and a circle with a diameter of at least 2.0m. and C. where the balcony is more than 1.5m above ground level and located along any side or rear boundary, a minimum separation distance of 5m is required from those boundaries.

6.3 Section 32AA evaluation

22. The recommended amendment seeks to align the provisions of the Lakeside Te Kauwhata that have been specifically developed and tested through the submission and hearing process. Accordingly, no s32AA evaluation has been required to be undertaken.

7 Rule 16.5.9.1 Subdivision Lakeside – general (Section 16 of the s42A Report)

7.1 Analysis

23. The evidence from John Duthie on behalf of Lakeside Development 2017 Limited [579, FS1371] (paragraphs 60 - 64) is concerned that subdivision for a development that occurs post obtaining 'comprehensive land development consent' and/or 'comprehensive subdivision' consent would be required to obtain two consents.

24. Rule 16.5.9.1 CI provides for subdivision for an existing or approved housing development. This means that if a housing development had been approved through a 'Comprehensive Land Development Consent' then a subsequent subdivision of that development would be a controlled activity. Where one of the conditions for CI cannot be met, the application would become a restricted discretionary activity.
25. Rule 16.5.9.2 RDI (and the definition of 'Comprehensive Subdivision Consent') provides for both the Comprehensive Subdivision Consent and the Comprehensive Land Development Consent to be applied for at the same time.
26. From my reading of the provisions and in subsequent discussion with Mr Duthie, the situation set out in Mr Duthie's evidence appears to be provided for. Accordingly, no change in the subdivision provisions is recommended.

8 Rule 22.8.2 Permitted Activities (Section 24 of the s42A Report)

8.1 Analysis

27. The evidence from John Duthie on behalf of Lakeside Development 2017 Limited [579, FS1371] (paragraphs 67 - 70) sets out the background to the zoning and the activities anticipated in the balance 'open space' part of the Lakeside development.

Home occupations P4 and Homestay P9

28. With respect to these two activities it is noted that Rule 22.8.2(a)(ii) excludes a number of Land Use – Building rules, including Rule 22.3.1 Number of dwellings within a lot, that provides for one dwelling per lot containing less than 400ha in the Rural Zone. As there is no provision for dwellings in the Rural Zone – Lakeside Te Kauwhata Precinct, then there can be no home occupation or homestay. Accordingly, it is recommended that these two permitted activities be deleted.

Farming P6

29. Mr Duthie's evidence as to the open space purpose of the Rural Zone provides helpful elaboration on the reasons for the specific decision sought. On that basis it is agreed that permitted activity P6 can be amended as sought. I have reviewed the reports for Hearing 5: Definitions and did not find a definition that could be used to address this matter. Accordingly, I have provided a definition of 'Pastoral farming' and also note that as a consequence of deleting 'Farming' as an activity it will also be necessary to delete permitted activity P18 'Horticulture' (horticulture is included within the definition of farming).

8.2 Recommended amendments

30. It is recommended that Rule 22.8.2 Permitted Activities be amended as follows:

Activity	Activity specific conditions
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P1	A Marae Complex or Papakaainga Housing Development on Maori Freehold Land or on Maaori Customary Land.	<ul style="list-style-type: none"> (a) Land Use – Effects in Rule 22.2; (b) Land Use – Building in Rule 22.3 except: <ul style="list-style-type: none"> (i) Rule 22.3.1 (Number of dwellings) does not apply; (ii) Rule 22.3.2 (Minor Dwellings) does not apply; (iii) Rule 22.3.3 (Buildings and structures in landscape and natural character areas) does not apply; (iv) Rule 22.3.4 (Building Height) does not apply; (v) Rule 22.3.6 (Building Coverage) does not apply; (c) Building height does not exceed 7.5m in any of the following areas: <ul style="list-style-type: none"> (i) Outstanding Natural Landscape; (ii) Outstanding Natural Feature; (iii) Outstanding Natural Character Area of the coastal environment; (iv) High Natural Character Area of the coastal environment; (d) A Concept Management Plan is provided, with either: <ul style="list-style-type: none"> (i) A Licence to Occupy at the time of lodgement of the building consent application where the land is vested in trustees whose authority is defined in a Trust Order and/or a Maaori Incorporation; or (ii) Where a Trust Order or Maaori Incorporation does not exist, one of the following instruments is provided to Council at the time of lodgement of the building consent application: <ul style="list-style-type: none"> A. A lease; or B. An Occupation Order of the Māori Land Court.
P2	A temporary event	<ul style="list-style-type: none"> (a) The event occurs no more than 3 times per consecutive 12 month period; (b) The duration of each event is less than 72 hours; (c) It may operate between 7.30am to 8:30pm Monday to Sunday; (d) Temporary structures are: <ul style="list-style-type: none"> (i) erected no more than 2 days before the event occurs; (ii) removed no more than 3 days after the end of the event; (e) The site is returned to its previous condition no more than 3 days after the end of the event; (f) There is no direct site access from a national route or regional arterial road.
P3	Cultural event on Maaori Freehold Land containing a Marae Complex	Nil
P4	A home occupation	<ul style="list-style-type: none"> (a) It is wholly contained within a building; (b) The storage of materials or machinery associated with the home occupation is wholly contained within a building; (c) No more than 2 people who are not permanent residents of the site are employed at any one time; (d) Unloading and loading of vehicles or the receiving

		of customers or deliveries only occur after 7:30am and before 7:00pm on any day; (e) Machinery may be operated after 7:30am and up to 9pm on any day.
P5	Afforestation	Nil
P6	Pastoral Farming	(a) Is excluded from Lake Waikare and the natural waterway shown on Precinct Plan 4.
P7	Forestry	Nil
P8	Produce stall	Nil
P9	Home-stay	Nil
P10	Equestrian Centre	Nil
P11	Horse Training Centre	Nil
P12	Walkways and cycleways	Nil
P13	Informal recreation	Nil
P14	Active recreation	Nil
P15	Information signage	Nil
P16	Public art	Nil
P17	Planting and landscaping	Nil
P18	Horticulture	Nil
P19	Gardens, landscaping and planting including communal areas	Nil
P20	Shelters	(a) not exceeding 4m in height; and (b) 50m ² gross roof area.
P21	Information kiosk	(a) Provided it is catered located within the cultural and heritage overlay shown on Precinct Plan 4.
P22	Structures providing information on culture, history or environment of the Lake Waikare and Te Kauwhata area	(a) Provided it is catered located within the cultural and heritage overlay shown on Precinct Plan 4.
P23	Memorials recognising the culture and history of the Lake Waikare and Te Kauwhata area	(a) Provided it is catered located within the cultural and heritage overlay shown on Precinct Plan 4.

31. It is recommended that the following definition of 'Pastoral farming' be added to Chapter 13 Definitions as follows:

Pastoral farming (As applied to Rule 22.8.2 P6 only)	Means the use of land and/or buildings where the primary purpose is to graze livestock
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8.3 Section 32AA evaluation

32. As there is no provision for a dwelling as a permitted activity in the Lakeside Te Kauwhata Precinct and Home Occupations and Home Stay activities can only occur in a dwelling, this is an error. The provision of a broad range of farming activities does not support the open

space purpose of the Rural Zone as it applies at Lakeside Te Kauwhata. Accordingly, no s32AA evaluation has been required to be undertaken.

A handwritten signature in black ink, reading "Alan Matheson", enclosed within a thin black rectangular border.

Alan Matheson

Consultant Planner