SECTION 42A REPORT

Rebuttal Evidence

Hearing 12: Country Living Zone

Report prepared by: Susan Chibnall

Date: 1 April 2020

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1 Introduction

1.1 Background

1. My name is Susan Chibnall. I am employed by Waikato District Council as a Policy Planner within the Resource Management Team.

2. I am the writer of the original S42A report for Hearing 12: Country Living 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 for Country Living Zone 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 and rebuttal evidence filed by submitters.

6. Evidence was filed by the following submitters within the timeframes outlined in the directions from the Hearings Panel[1]:

    a. Ms Hannah Palmer on behalf of Bowrock Properties Limited [FS1197]
    b. Mr Tim Lester on behalf of Blue Wallace Surveyors [662]
    c. Ms Alec Duncan on behalf of Fire and Emergency New Zealand [378]
    d. Ms Teina Malone on behalf of First Gas Limited [945]
    e. Ms Laura Galt on behalf of Hamilton City Council [535]
    f. Ms Carolyn McAlley on behalf of Heritage New Zealand [559]
    g. Mr Vance Hodgson on behalf of Horticulture New Zealand [419]
    h. Ms Pam Butler on behalf of KiwiRail [986]
    i. Ms Alec Duncan on behalf of Ministry of Education [781]
    j. Ms Tanya Running on behalf of New Zealand Transport Agency [742]
    k. Mr Leigh Shaw on behalf of The Surveying Company [746]
    l. Mr Shane Hartley on behalf of The Surveying Company [746 and FS1308]
    m. Ms Pauline Whitney on behalf of Transpower New Zealand [FS1350]
    n. Mark Chrisp [564]
    o. Mr Philip Barrett for William Hodgson and Leo Koppens [820]
    p. Sir William Birch on behalf of CSL Trust and Top End Properties [89]
    q. Mr Jason Howarth [7]

7. Rebuttal evidence was filed by the following submitters within the timeframes outlined in the directions from the Hearing Panel[2]:

[1] Hearings Panel Directions 21 May 2019

a. Ms Katherine Drew on behalf of Waikato Regional Airport Ltd [741 and FS1253]

8. Late evidence was filed by the following submitters:

a. Mr Ethan Findlay [418 and FS1311] on 1 April 2020

9. Mr Findlay sought leave for the filing of late evidence from the Hearings Panel on 25 March 2019.

3 Consideration of evidence received

3.1 Matters addressed by this report

10. The main topics raised in evidence and rebuttal evidence from submitters, in the order I will address them in this report are:

a. Reverse sensitivity

b. Emergency services

c. Heritage-Earthworks policy

d. Non Residential activities

e. Land use- Permitted activities -Home occupations

f. Land use – Restricted discretionary activities -Education facilities

g. Land use- Discretionary activities-Industrial and commercial activities

h. Land use-Effects-Noise

i. Land use-Effects-Earthworks

j. Land use-Effects-Signs

k. Land use-Building-Height

l. Land use-Building-General setback

m. Land use-Building- Waterbodies

n. Subdivision policies

o. Subdivision rules

11. I have identified my recommended amendments from my original Section 42A report in red strikethrough and underlining, and any subsequent recommended amendments arising from my consideration of evidence as blue strikethrough and underlining.

12. Mr Ethan Findlay filed evidence to provide more clarity on his primary submission. I note that he clarifies that the relief sought is that the Country Living Zone extend to incorporate the land areas outlined in blue in the image included in his evidence.[3] He considers the proposed zoning is intended to reflect and validate the land use already present in this area. My understanding of Mr Findlay's evidence is that it focuses on a request for rezoning from Rural Zone to Country Living Zone. The purpose of Hearing 12 is to focus on the objectives, policies and rules associated with the Country Living Zone, rather than the extent of the zone itself. Although I accept that they are intrinsically linked, the geographical extent of each zone will be the subject of Hearing 25 Zone extents which is tentatively scheduled for early 2021. Mr Findlay's evidence outlines alternative relief of allowing

[2] Hearings Panel Directions 26 June 2019
[3] Statement of Evidence of Ethan Findlay, 1 April 2020, Paragraph 8

subdivision of the Rural Zone to lot sizes of 3,000-3,500m2.[4] As the site he refers to is zoned Rural, I consider this aspect of his evidence should be addressed in the hearing on the Rural Zone provisions (Hearing 18 to be held later in 2020).

4 Reverse Sensitivity

4.1 Analysis

13. The submission from Horticulture NZ [419.66] sought the retention of a policy that requires subdivision, building and development within the Countryside Living Zone to ensure that existing lawfully-established activities are protected from reverse sensitivity effects. In my s42A report I recommended carving off Policy 5.6.3 (a)(v) into its own Policy 5.6.19 which seeks to "mitigate" the potential for reverse sensitivity effects.[5] Mr Vance Hodgson prepared evidence on behalf of Horticulture NZ on this matter. I wish to draw the Hearing Panel's and Mr Hodgson's attention to the unfortunate inclusion of two different versions of Policy 5.6.19 in the s42A report. The correct one is the one contained in the tracked changes of Chapter 5 which reads:

> *5.6.19 Policy- Reverse Sensitivity*
>
> *(a) Mitigate the adverse effects of reverse sensitivity through the use of setbacks, the design of subdivisions and development*

14. Mr Hodgson seeks the inclusion of "avoids and minimises" the potential for reverse sensitivity effects[6]. He considers that such a policy approach gives effect more fully to the Waikato Regional Policy Statement.

15. I have looked at the Waikato Regional Policy Statement and note the following references to reverse sensitivity:

Objective 3.12 Built environment	*(g) minimising land use conflicts, including **minimising** potential for reverse sensitivity*
Policy 4.4 Regionally significant industry and primary production	*The management of natural and physical resources* *provides for the continued operation and development of* *regionally significant industry and primary production activities by:* … *(f) **avoiding or minimising** the potential for reverse sensitivity; and*
Implementation methods 4.4.1 Plan provisions	*District and regional plans should provide for regionally significant industry and primary production by* … *(d) recognising the potential for regionally significant industry and primary production activities to have adverse effects beyond its boundaries and the need to **avoid or minimise** the potential for **r**everse sensitivity effects*
Policy 6.1 Planned and co-ordinated subdivision,	*6.1.2 Reverse sensitivity*

[4] Statement of Evidence of Ethan Findlay, 1 April 2020, Paragraphs 9 and 10
[5] Hearing 12: Country Living Zone s42A report, Susan Chibnall, 3 March 2020, Paragraph 527
[6] Statement of Evidence by Vance Hodgson For Horticulture New Zealand, 16 March 2020, Paragraph 30

use and development Implementation methods	*Local authorities should have particular regard to the potential for reverse sensitivity when assessing resource consent applications, preparing, reviewing or changing district or regional plans and development planning mechanisms such as structure plans and growth strategies. In particular, consideration should be given to discouraging new sensitive activities, locating near existing and planned land uses or activities that could be subject to effects including the discharge of substances, odour, smoke, noise, light spill, or dust which could affect the health of people and / or lower the amenity values of the surrounding area.*

16. Mr Hodgson is correct that the Regional Policy Statement seeks to "avoid or minimise" reverse sensitivity in relation to primary production, but only seeks to "mimimise" reverse sensitivity effects in terms of the built environment. It is noted that the Regional Policy Statement definition of "built environment" is:

> *buildings, physical infrastructure and other structures in urban, rural and the coastal marine area, and their relationships to natural resources, land use and people.*

17. I agree with Mr Hodgson that "avoid or minimise" reverse sensitivity would more fully give effect to the Waikato Regional Policy Statement, but I am also mindful that the Regional Policy Statement pre-dated the case law on the word "avoid" and the absolute nature of its interpretation. I am also aware that even with the best of intentions, it is virtually impossible to avoid reverse sensitivity effects (in the Country Living Zone especially) as it is so subjective to the tolerance level of individuals. A position of avoidance would not fit in the context of the Proposed Waikato District Plan where activities and subdivision in the Country Living Zone that may give rise to reverse sensitivity effects are not prohibited or non-complying. I note also that the wording of the Waikato Regional Policy Statement is to avoid ***or*** minimise and thus I consider that a District Plan policy position of "minimise" would still be giving effect to the Waikato Regional Policy Statement as required by Section s75(3)(c) of the RMA.

18. I therefore recommend that Policy 5.6.19 be amended as follows:

> 5.6.19 Policy- Reverse Sensitivity
> (a) ~~Mitigate~~ Minimise the adverse effects of reverse sensitivity through the use of setbacks, and the design of subdivisions and development

19. Horticulture New Zealand [419.49] sought to include a new matter of discretion for general subdivision in the Countryside Living Zone that addresses measures to mitigate and minimise reverse sensitivity effects on adjoining Rural Zone land. I recommended the following new matter of discretion to Rule RD1(b)(v) in my s42A report:

> (v) Measures to mitigate and minimise reverse sensitivity effects, including on adjoining Rural Zone land.

20. Mr Hodgson supported the inclusion of this matter of discretion but sought the addition of the words "measures to *avoid* or minimise reverse sensitivity" to more fully give effect to the Waikato Regional Policy Statement. For the same reasons as I have outlined above, I do not support this further amendment. Given my recommended amendments to Policy 5.6.19, I no longer consider that the assessment criteria requires the word "mitigate" and therefore recommend the following amendment:

> (v) Measures to ~~mitigate and~~ minimise reverse sensitivity effects, including on adjoining Rural Zone land.

4.2 Recommendation

21. Having considered the evidence of Mr Hodgson, I recommend the following amendments:

5.6.19 Policy- Reverse Sensitivity

(a) ~~Mitigate~~ Minimise the adverse effects of reverse sensitivity through the use of setbacks, and the design of subdivisions and development

23.4.2 General Subdivision

RD1	(a) Subdivision must comply with all of the following conditions: (i) All proposed lots must have a net site area of at least 5000m². ….. (b) Council's discretion is restricted to the following matters: … (v) Measures to ~~mitigate and~~ minimise reverse sensitivity effects, including on adjoining Rural Zone land.

4.3 Section 32AA evaluation

22. The recommended amendment to the policy and the insertion of new matters of discretion requires an assessment under Section 32AA.

Other reasonably-practicable options

23. Within the scope provided by submissions, there are a number of options for the matters of discretion. At a broad level, the options are:

(a) Retain the notified version of the matters of discretion;

(b) Add matter of discretion recognising the potential for reverse sensitivity effects.

Effectiveness and efficiency

24. The amendments to Policy 5.6.19 and the inclusion of a new matter of discretion requiring consideration of measures to mitigate reverse sensitivity effects, including on adjoining Rural Zone land, is the most effective way to achieve 5.6.1 Objective – Country Living Zone, but also will help to achieve Objective 5.1.1 The rural environment (particularly clause (ii), which seeks to support rural activities). The purpose of this matter of discretion is to ensure that subdivisions in the Country Living Zone consider other lawfully-established activities and consider ways to minimise any reverse sensitivity effects. It should be noted that this matter of discretion is not limited to activities occurring in any adjoining Rural Zone, thus would assist in achieving Objective 6.1.6, which relates to reverse sensitivity in the context of infrastructure also.

25. This is an efficient way of giving effect to various objectives and policies in the Waikato Regional Policy Statement which require reverse sensitivity to be avoided or minimised.

Costs and benefits

26. There are likely to be additional costs, in that additional matters will need to be considered in subdivision applications. Arising from these additional matters of discretion there may also need to be changes in the design or layout of the subdivision. There are likely to be benefits in terms of social and economic effects if these matters of discretion can be effective in minimising the potential for reverse sensitivity effects to arise.

27. These recommended amendments will have no effect on economic growth or employment.

Risk of acting or not acting

28. There are no additional risks in not acting. There is sufficient information on the costs to the environment, and benefits to people and communities, to justify the amendment to the matters of discretion.

Decision about most appropriate option

29. The amendments gives effect to various provisions in the Regional Policy Statement concerned with avoiding reverse sensitivity and enabling the continuing operation of primary productive activities in the Rural Zone. They are considered to be more appropriate in achieving the purpose of the RMA than the notified version of the matters of discretion for Rule 23.4.2 RD1 and the notified version of Policy 5.6.3(a)(v).

5 Emergency Services

5.1 Water Supply for Firefighting

5.1.1 Analysis

30. Ms Alec Duncan on behalf of Fire and Emergency New Zealand (FENZ) [378] has provided evidence on Policy 5.6.2 Country Living Character. She seeks additional wording to the policy to include that activities within the Country Living Zone be self-sufficient in the provision of water supply including for fire fighting purposes. FENZ have disagreed with my analysis in my Section 42A report that this requirement is not practical for a property owner with a Country Living Zoned site.[7]

31. I have sourced the New Zealand Fire Service Fire fighting Water Supplies Code of Practice SNZ PAS 4509:2008 (Code of Practice) and it describes the standards required for development to meet the matters of fire fighting. FENZ consider that development should be self-sufficient in the provisions of water supply for fire fighting purposes and that the code of practice could inform the district plan how the requirements of the code can be met.

32. I am aware that the code of practice is a non-mandatory guide and is specific in its approach when advising how to accommodate fire fighting requirements. The code sets out guidelines and recommendations that FENZ require in order to successfully manage fires. The code has been designed primarily for urban fire districts (as set out in the code's introduction). It includes, as a guide, various measures that can be put in place for other areas that are un-serviced.

33. To meet these standards would require not only include water capacity, but also hardstand areas, couplings suitable for a fire truck, accessways to accommodate a 20 tonne truck and the ability to manoeuvre the truck and to ensure vegetation does not impede in any way when obtaining access to the water supply. I consider that many of these requirements are either not appropriate for a district plan, or place an unreasonable burden on property owners to comply with the standard.

34. Ms Duncan emphasises that the requirement would only apply to new development and not retrospectively. However she also states that any re-development that requires resource consent would be required to meet the standard. Water tanks also raise practical issues in terms of access, space and visual impact of having multiple tanks – where at least one would need to be dedicated for firefighting purposes.

35. The inclusion of this requirement would be difficult for Council to monitor. Any rule or conditions imposed on development requiring compliance with the code would require

[7] Hearing 12: Country Living Zone s42A report, Susan Chibnall, 3 March 2020, Paragraph 79

support by Councils Monitoring Team to ensure compliance. This has costs to Council and as well the community. As mentioned, the code itself states it is only intended to provide guidance for rural areas.

36. I note that Gisborne Council has also addressed this matter and I quote from their s32A report; Proposed Plan Change 56- Firefighting Water supplies Code of Practice;

> *The legitimacy of a rule in the District Plan requiring compliance with the Code in rural areas was also raised, as the Code itself states it is only intended to provide guidance in rural areas. Legal advice on the issue suggests that the rule can do no more than the Code, that is, Council can use the Code as a guide as to whether a 'sufficient water supply' is available, but cannot apply the standards in it as an absolute requirement. This results in a rule that is uncertain and subjective.* [8]

37. In conclusion, the requirements of the Firefighting Water Supply Code of Practice are not just about water supply and capacity but also other aspects as discussed above, which will add further burden on a property owner. Therefore my recommendation on this matter is unchanged.

5.2 Subdivision

5.2.1 Analysis

38. Ms Duncan also provided evidence on behalf of Fire and Emergency New Zealand who submitted on Rule 23.4.2 General Subdivision [378.44]. The submission sought that the rule be amended to require all new lots to be connected to a water supply that is sufficient for firefighting purposes, with applications becoming a non-complying activity where such supply is not available. In my s42A report I considered that given that much of the Country Living Zone is not reticulated for water supply, a requirement to connect to a water supply with sufficient volume and pressure to meet firefighting standards is unlikely to be practicable, and instead recommended including a new assessment criteria that included water supply for firefighting purposes where practicable. Ms Duncan considered that the words "where practicable" are problematic due to the implication that in some circumstances, non-compliance with the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008 is appropriate. She instead sought that the words "including water supply for firefighting *where practicable*" be replaced with "including water supply for firefighting *purposes*".

39. While I acknowledge that this rule will only apply to new subdivisions, I remain concerned that it implies an unrealistic expectation of protecting a water source (such as water tanks) that are only accessible for fire fighting purposes. In the recent drought of this summer (2019/2020) when water was in short supply, it is inevitable that any water held aside for firefighting would have been repurposed for domestic needs and animals. Ms Duncan's evidence has made me think more carefully about what is a realistic and reasonable approach for firefighting needs. I can appreciate that Fire and Emergency New Zealand require water to save lives and property, but I do not think it reasonable nor realistic that a tank of water remain full and unused until a fire occurs. I do not think this is a reasonable cost to the developer or the eventual landowner. I consider it more important that a water source is accessible for firefighting purposes. I accept Ms Duncan's concerns about the use of the words "where practicable". I therefore recommend deleting those words. I also recommend that the matter of discretion in Rule 23.4.2 RD1(b) General Subdivision be

[8] Sourced from Gisborne Council Proposed Plan Change 56- Firefighting Water supplies Code of Practice

amended to focus on a water supply that is accessible, rather than be protected, for firefighting.

5.3 Maximum Height

40. The submission from Fire and Emergency New Zealand sought a height exemption for emergency service facilities and hose drying towers up to 15m. In response to the original submission, I recommended a controlled activity status for the facility and the hose-drying towers.[9] Ms Duncan has rightly pointed out in her evidence that if the facility was over 7.5m in height, it would be classified as a discretionary activity which creates an inconsistency in the standards for height and the activity status of the structure. Ms Duncan's evidence clarifies that fire stations are typically 8-9m in height, and as such would become a discretionary activity making the consenting process more costly and difficult.

41. The evidence provided by Ms Duncan has proposed the following amendment:

> C1
> a) The maximum height of emergency services and hose drying towers associated with emergency services must not exceed 15m.
> (b) The matters over which control will be reserved:
> (i) Location on the site
> (ii) Dominance on adjoining sites
> (iii) Design

42. I agree with a more lenient approach to the height of fire stations, however I consider that a height restriction of up to 9m as a controlled activity would be more appropriate for the facility and 15m for the hose tower. The maximum height in the Country Living Zone is 7.5m, and I consider that an additional 1.5m height for an emergency services building will not significantly affect the character or amenity of the zone. I understand that hose drying towers are more of an open lattice structure and would have less adverse effects than a solid building of the same height (such as impeding daylight and overshadowing effects). Thus I agree that a maximum height of 15m would be appropriate for hose drying towers. An assessment would still be required as a controlled activity which would allow any adverse effects to be considered and managed, and in the event that the building of a fire station needs to be greater than 9m (or a hose drying tower greater than 15m in height) this can be assessed through a more stringent consenting process as a discretionary activity.

5.3.1 Recommendations

43. I accept it is unlikely my revised recommendation will be supported by Fire and Emergency New Zealand, however I recommend that the matter of discretion in Rule 23.4.2 RD1(b) General Subdivision be amended as follows to focus on a water supply that is accessible, rather than be protected, for firefighting:

> (b) Council's discretion is restricted to the following matters:
>
> …
>
> (iii) The provision of infrastructure, including water supply accessible for firefighting ~~where practicable.~~
>
> …

44. I am persuaded by points raised by the evidence of Ms Duncan [378.42] and therefore make the following recommendation to Rule 23.3.4.1

P1	The maximum height of any building must not exceed 7.5m.

[9] Hearing 12: Country Living Zone s42A report, Susan Chibnall, 3 March 2020, Paragraph 411

C1	(a) The maximum height of emergency facilities (excluding hose drying towers) must not exceed a height of 9m. (b) The matters over which control will be reserved: (i) Location on the site (ii) Dominance on adjoining sites (iii) Design
C2	(a) The maximum height of emergency services hose drying towers must not exceed 15m. (b) The matters over which control will be reserved: (i) Location on the site (ii) Dominance on adjoining sites (iii) Design
D1	Any building that does not comply with Rule 23.3.4.1 P1, C1, or C2

5.3.2 Section 32AA evaluation

Water supply

Other reasonably-practicable options

45. Within the scope provided by submissions, there are a number of options for the matters of discretion. At a broad level, the options are:

(a) Retain the notified version of the matters of discretion;

(b) Add matter of discretion regarding the provision of infrastructure including firefighting, enabling the continuing access and operation of infrastructure and recognition of reverse sensitivity effects.

Effectiveness and efficiency

46. The recommended amendments addressing the provision of infrastructure including an accessible water supply for firefighting is an efficient way to achieve 6.4.1 Objective – Integration of infrastructure with subdivision, land use and development. This matter of discretion applies to all infrastructure, and is a way to ensure that any subdivision has appropriate design of infrastructure. Water supply may not always be available at a scale or pressure that is suitable for firefighting, given that most Country Living-zoned sites do not have a reticulated water supply. Therefore, the words recognise that a water supply that can be used for firefighting purposes must be accessible.

Costs and benefits

47. There are likely to be additional costs, in that additional matters will need to be considered in subdivision applications. Arising from these additional matters of discretion there may also need to be changes in the design or layout of the subdivision. There are likely to be benefits in terms of social and economic effects if these matters of discretion can be effective in minimising the potential for reverse sensitivity effects to arise. There will also be economic and social benefits to infrastructure providers, in that the ongoing operation of and access to their assets will be considered. There is wider benefit to the local and wider community from the ongoing operation of, or upgrades to, infrastructure.

48. These recommended amendments will have no effect on economic growth or employment.

Risk of acting or not acting

49. There are no additional risks in not acting. There is sufficient information on the costs to the environment, and benefits to people and communities, to justify the amendment to the matters of discretion. Decision about most appropriate option

50. The amendments give effect to various provisions in the Regional Policy Statement concerned with avoiding reverse sensitivity and enabling the continuing operation of infrastructure. They are considered to be more appropriate in achieving the purpose of the RMA than the notified version of the matters of discretion for Rule 23.4.2 RD1.

Height

51. The amendments inclusion of a controlled activity rule in Rule 23.3.4.1 Height –General will provide for the functional requirements of FENZ when constructing Fire and Emergency facilities.

Other reasonably-practicable options

52. One option is to maintain the s42A amended version of the rule which allowed for a controlled activity for hose towers up to 15m. However, the amended rule did not allow for a controlled activity for fire and emergency buildings over 7.5m, where in this regard, the activity status over this height was discretionary. A fire station is usually between 8 and 9 m in height. This approach will not support the functionality of Fire and Emergency New Zealand to achieve its statutory function.

Effectiveness and efficiency

53. A controlled activity status for fire and emergency buildings for up to 9m ensures consent will be granted and therefore the effective operation of the facility. This will help provide for the health and safety of the community by enabling the efficient functioning of Fire and Emergency New Zealand.

Costs and benefits

54. There are potential costs with the increase in the height to the character of the zone, however I acknowledge that emergency services facilities in the Country Living Zone will be rare. The activity has been recommended to be a controlled activity and as I have recommended that the height for the hose drying towers also be a controlled activity, the character of the zone can be taken in be taken in to consideration through the consenting process, therefore still achieving Objective 5.6.

Risk of acting or not acting

55. There are no additional risks in not acting. There is sufficient information on the costs to the environment and benefits to people and communities to justify the amendment to the rule.

Decision about most appropriate option

56. The recommended amendment to Rule 23.3.4.1 Height –General is a minor allowance which will provide for the health and safety of the community, but also retains the character and amenity of the zone as sought by Objective 5.6.1.

6 Heritage – Policy 5.6.7 –Earthworks

6.1 Analysis

57. Ms Carolyn McAlley prepared evidence on behalf of Heritage New Zealand (Heritage NZ) [559]. Their original submission sought to include additional wording to the policy that addresses the effects on historic and cultural values, to which I have rejected on the basis that the Policies in Chapter 2 Tangata Whenua and Chapter 7 Heritage are sufficient.[10] Ms McAlley understands that the National Planning Standards are to be implemented, however she still prefers that Heritage NZ's amendment be accepted. I am still of the view that their amendment is unnecessary as there are other policies that address their concerns. I do not agree to the changes and have not changed my recommendation set out in the original s42A report.

6.2 Recommendation

58. My recommendations remain as set out in the S42A report in paragraph 97.

7 Policy 5.6.8 Non-residential activities

7.1 Analysis

59. Ms Laura Galt prepared evidence on behalf of Hamilton City Council. The original submission sought to retain Policy 5.6.8 as notified [535.75]. Ms Galt sought to amend Policy 5.6.8 to require that commercial activities seeking to establish in the Country Living Zone do not undermine the policies in the Business and Business Town Centres. Ms Galt in her evidence goes on to support the intent of Policy 5.6.8 subject to the relief sought in submission point 535.75. However Submission point 535.75 does not seek to amend Policy 5.6.8 but rather seeks to **add** objectives and policies as a consequential amendment to seeking amendments to the Discretionary Activity rule. In regard to amending Policy 5.6.8, I consider this request to be out of scope of Hamilton City Council's submission, however I will address submission point 535.75 later in this rebuttal.

7.2 Recommendation

60. My recommendations remain as set out in the S42A report in regard to Policy 5.6.8.

8 Landuse Activities-Permitted Activities

8.1 Analysis

61. Ms Tanya Running prepared evidence on behalf of New Zealand Transport Agency, and disagreed with my stance that it is not necessary to impose a limit on heavy vehicles for a home occupation.[11] This issue was also discussed in Hearing 6 where the author of the Section 42A report has suggested NZTA provide evidence of what the appropriate level of heavy vehicles may be for this activity.

62. I have considered Chapter 14 Infrastructure that includes standards for vehicle movements in permitted activity Rule 14.12.1.4 which allows 100 vehicle movements per day, of which

[10] Hearing 12: Country Living Zone s42A report, Susan Chibnall, 3 March 2020, Paragraph 97

[11] Hearing 12: Country Living Zone s42A report, Susan Chibnall, 3 March 2020, Paragraph 228

no more than 15% of vehicle movements are to be heavy vehicles. 15 heavy vehicle movements may seem generous for a home occupation. Ms Running's view is to not allow any heavy vehicles associated with the activity. I do not believe it would be reasonable to impose this when there is a general allowance for up to 15 heavy vehicles per day within the Country Living Zone (although I accept that the matter of traffic generation will be more fully considered in Hearing 22 Infrastructure. Therefore it would be unreasonable to prohibit heavy vehicles for a home occupation when the surrounding properties may have up to 15.

8.2 Recommendation

63. My recommendations remain as set out in the S42A report.[12]

9 Landuse Activities- Restricted Discretionary Activities

9.1 Analysis

64. Ms Alec Duncan prepared evidence on behalf of The Ministry of Education and accepts in part my recommendations for a restricted discretionary status for education facilities.[13] The Ministry considers that the matters of discretion in the original submission [751.15] appropriately address the relevant matters over which council should have discretion. However, to have consistency across the Plan, Ms Duncan recommends that there is an allowance within the matters of discretion for the bulk and location of the buildings. I agree with Ms Duncan and therefore recommend adding to RD1 Education Facilities, clause (iv) the following; '*character and amenity of the neighbour, with particular regard to the bulk and location of the buildings*'.

65. Ms Teina Malone prepared evidence on behalf of First Gas Limited and reiterates the original submission, where they sought a new restricted discretionary rule to manage activities in the vicinity of the gas pipeline [945.22]. She clarified that the principles applicable for the Country Living Zone will be expanded on at the hearing for the Rural Zone at which First Gas intend to present evidence.

9.2 Recommendations

66. I recommend further amendments to the matters of discretion relating to the establishment of education facilities as a restricted discretionary activity in Rule 23.1.1A.

9.3 Recommended amendments

67. I therefore recommend the following additional amendments:

23.1.1A Restricted Discretionary Activities
(1) The activities listed below are restricted discretionary activities:

23.1.1A Restricted Discretionary Activity-Education facilities

RD 1	(a) Council's discretion shall be restricted to the following matters: (i) The extent to which it is necessary to locate the activity in the Country Living Zone. (ii) Reverse sensitivity effects of adjacent activities. (iii) The extent to which the activity may adversely impact on the transport

[12] Hearing 12: Country Living Zone s42A report, Susan Chibnall, 3 March 2020, Paragraph 29
[13] Hearing 12: Country Living Zone s42A report, Susan Chibnall, 3 March 2020, Paragraph 239

	network. (iv) The extent to which the activity may adversely impact on the streetscape, character and amenity of the neighbourhood, with particular regard to the bulk and location of the buildings (v) The extent to which the activity may adversely impact on the noise environment. ~~(vi) Effects on character~~ ~~(vii) Building form, bulk and location~~ ~~(viii) Site layout and design~~ ~~(ix) Privacy on other sites~~ [781.15]

9.4 Section 32AA evaluation

68. The amendment does not alter the overall intent of the matters of discretion and thus an additional s32AA evaluation is not required.

10 Landuse Activities- Discretionary Activities

10.1 Analysis

69. Ms Galt prepared evidence on behalf of Hamilton City Council, and addressed their submission which sought to ensure existing commercial centres are maintained [535.75]. Her evidence states that all of the Country Living Zones are located near Hamilton or main towns. This is not entirely correct as the map provided in the s42a report shows that the Country Living Zone is also in more isolated rural areas.

70. In response to Ms Galt, I consider that Policy 5.6.8 appropriately limits the establishment of commercial or industrial activities, while Policy 5.6.9 enables the existing non-residential activities to continue. There are policies that manage the bulk and location, height etc. As well, there is a discretionary activity status for, amongst other things, a commercial activity and an industrial activity within the zone. There are a suite of building rules that limit the size and height of buildings which further support these policies.

71. I consider that the regime of policies and rules that will come into play when assessing a commercial or industrial activity will still ensure the primacy of commercial centres in Hamilton City as they (the policies) do not support larger commercial type activities but rather the existing or those with a functional need.

72. The policies and supporting rules allow for businesses with a functional need to occur in the Country Living Zone that will support those communities. I do not consider the proposed polices are contrary to the Business and Business Town Centre Zone policies. The policies within the Country Living Zone chapter are specifically to manage these activities in the Country Living Zone. The policies as written ensure commercial and industrial activities are at a scale that is appropriate for the Country Living Zone.

10.2 Recommendation

73. My recommendations remain as set out in the S42A report in regard to the management of commercial activities in the Country Living Zone.

11 Land Use –Effects Noise

11.1 Introduction

74. In my Section 42A report, I acknowledged the submission point from Waikato District Health Board which did sought amendments to Rule 23.2.1.1[14]. The submission was of a highly technical nature and I sought advice from Mr Darran Humpheson, Senior Acoustics Specialist from Tonkin and Taylor. Unfortunately his assessment of the submission point was not available before my section 42A report was due to be made publicly available, and therefore I was unable to address the submission point.

75. Since my Section 42A report was made available, Mr Humpheson has provided a technical assessment of the submission points which I have appended to this report.

Submission point	Submitter	Summary of submission
923.159	**Waikato District Health Board**	Amend Rule 23.2.1.1 P2, P3, P4, P5 and D1- Noise- General as follows: P2 Sound measured in accordance with NZS 6801:2008 and assessed in accordance with NZS 6802:2008 must not exceed: (a)~~Noise measured~~ at the following noise limits at any point within a notional boundary on ~~within any site in the Rural Zone and within~~any other site in the Country Living Zone ~~must not exceed~~: (i) 50dB LAeq(15min) ~~dB (LAeq)~~, 7am to 7pm, every day; (ii) 45dB LAeq(15min) ~~dB (LAeq)~~, 7pm to 10pm every day; (iii) 40dB LAeq(15min) ~~dB (LAeq) and 65 dB (LAmax)~~, 10pm to 7am the following day; (iv) 65dB LAFmax, 10pm to 7am the following day; (b)The permitted activity noise limits for the zone of any other site where sound is received. ~~P3 (a)Noise measured within any site in any zone, other than the Country Living Zone and Rural Zone, must meet the permitted noise levels for that zone.~~ ~~P4 (a)Noise generated by any activity in Tamahere Commercial Area A and Tamahere Commercial Area B, as identified on the planning maps, must not exceed the following levels:~~ ~~(a)In Tamahere Commercial Areas A and B does not exceed: (i)65dB (LAeq), 7am to10pm; (ii)50dB (LAeq) and 75 dB (LAmax), 10pm to 7am the following day,~~ ~~(b)Outside Tamahere Commercial Areas A and B, does not exceed:~~ ~~(i)55dB (LAeq), 7am to 10pm;~~ ~~(ii)40dB (LAeq) and 70Db (LAmax), 10pm to 7am the following day.~~ ~~P5 (a) Noise levels shall be measured in accordance with the requirements of NZS 6801:2008 "Acoustics Measurement of Environmental Sound."~~ ~~(b)Noise levels shall be assessed in accordance with the requirements of NZS 6802:2008 "Acoustic Environmental Noise."~~ D1 (a)Sound that is outside the scope of NZS 6802:2008 or a permitted activity standard; and (b)Sound ~~Noise~~ that does not comply with Rule 23.2.1.1 P1 or P2, ~~P3, P4 or P5.~~
923.160	**Waikato District Health Board**	Add new Rule 23.2.1.X applying to activity in Tamahere Commercial Areas A and B, worded as follows: P1 Farming noise, and sound generated by emergency generators and

[14] Hearing 12: Country Living Zone s42A report, Susan Chibnall, 3 March 2020, Paragraph 302

		emergency sirens. P2 Sound measured in accordance with NZS 6801:2008 and assessed in accordance with NZS 6802:2008 must not exceed: (a) The following noise limits at any point within any other site in Tamahere Commercial Areas A and B: (i) 65dB LAeq(15min), 7am to 10pm; (ii)50dB LAeq(15min), 10pm to 7am; (iii)75 dB LAFmax, 10pm to 7am the following day; (b)The following noise limits at any point within any site outside the Tamahere Commercial Areas A and B: (i) 55dB LAeq(15min), 7am to 10pm; (ii) 40dB LAeq(15min), 10pm to 7am; (iii) 70dB LAFmax, 10pm to 7am the following day; D1 (a)Sound that is outside the scope of NZS 6802:2008 or a permitted activity standard; and (b)Sound that does not comply with Rule 23.2.1.X P1 or P2.

11.2 Analysis

76. The Waikato District Health Board [923.159] and [923.160] seeks to amend Noise rule 23.2.1.1 to change the terminology used in the rule and to create a separate rule for Tamahere Commercial Areas. The advice given from Mr Humpheson was in general agreement with the suggestions made by the Waikato District Health Board. However he recommends the use of the term 'noise' rather that both 'noise' and 'sound' and that although there is a difference between the terms it is likely to be confusing if both are use in the same rule.

11.3 Recommendation

77. For reasons given above, I recommend that the hearings panel:

(a) **Accept in part** Waikato District Health Board [923.159] and [923.160]

11.4 Recommended amendments

23.2.1.1 Noise-General

P1	Farming noise, and noise generated by emergency generators and emergency sirens.
P2	(a) ~~Noise measured at the notional boundary within any site in the Rural Zone and within any other site in the Country Living Zone~~ Noise measured in accordance with NZS 6801:2008 and assessed in accordance with NZS 6802:2008 must not exceed: (i) 50dB LAeq(15min) ~~dB (LAeq),~~ 7am to 7pm, every day; (ii) 45dB LAeq(15min) ~~dB (LAeq),~~ 7pm to 10pm every day; (iii) 40dB LAeq(15min) ~~dB (LAeq) and 65 dB (LAmax),~~ 10pm to 7am the following day; (iv) *65dB LAFmax*, 10pm to 7am the following day; (b)The permitted activity noise limits for the zone of any other site where sound is received.
~~P3~~	~~(a) Noise measured within any site in any zone, other than the Country Living Zone and Rural Zone, must meet the permitted noise levels for that zone.~~

~~P4~~	~~(a) Noise generated by any activity in Tamahere Commercial Area A and Tamahere Commercial Area B, as identified on the planning maps, must not exceed the following levels:~~ ~~(a) In Tamahere Commercial Areas A and B does not exceed:~~ ~~(i) 65dB (L_{Aeq}), 7am to 10pm;~~ ~~(ii) 50dB (L_{Aeq}) and 75dB (L_{Amax}), 10pm to 7am the following day;~~ ~~(b) Outside Tamahere Commercial Areas A and B, does not exceed:~~ ~~(i) 55dB (L_{Aeq}), 7am to 10pm;~~ ~~(ii) 40dB (L_{Aeq}) and 70dB (L_{Amax}), 10pm to 7am the following day.~~
~~P5~~	~~(a) Noise levels shall be measured in accordance with the requirements of Standard NZS 6801:2008 "Acoustics Measurement of Environmental Sound".~~ ~~(b) Noise levels shall be assessed in accordance with the requirements of Standard NZS 6802:2008 "Acoustic Environmental noise".~~
D1	(a) Noise that is outside the scope of NZS 6802:2008 or a permitted activity standard; and (b) Noise that does not comply with Rule 23.2.1.1 P1, P2, ~~P3, P4 or P5.~~

23.2.1.1A Noise - Tamahere Commercial Areas A and B

P1	Farming noise, and noise generated by emergency generators and emergency sirens.
P2	Noise measured in accordance with NZS 6801:2008 and assessed in accordance with NZS 6802:2008 must not exceed: (a) The following noise limits at any point within any other site in Tamahere Commercial Areas A and B: (i) 65dB LAeq(15min), 7am to 10pm; (ii)50dB LAeq(15min), 10pm to 7am; (iii)75 dB LAFmax, 10pm to 7am the following day; (b)The following noise limits at any point within any site outside the Tamahere Commercial Areas A and B: (i) 55dB LAeq(15min), 7am to 10pm; (ii) 40dB LAeq(15min), 10pm to 7am; (iii) 70dB LAFmax, 10pm to 7am the following day;
D1	(a) Noise that is outside the scope of NZS 6802:2008 or a permitted activity standard; and (b)Noise that does not comply with Rule 23.2.1.A P1 or P2.

11.5 Section 32AA evaluation

78. The amendments to the General Noise Rule 23.2.1.1 will provide clarity for the application of the standards.

Other reasonably-practicable options

79. One option is to maintain the notified version of the rule, however incorrect terminology was used in the proposed rule. This would lead to conflict with the standard specified in the rule.

Effectiveness and efficiency

80. Changing the terminology within the rule will ensure consistency in application of the standard. The recommended amendments will be the most appropriate way in giving effect to Policy 5.6.16 Noise and therefore achieve Objective 5.6.

Costs and benefits

81. The benefits are that there will be clarity when applying the noise standard.

Risk of acting or not acting

82. There are no additional risks in not acting. There is sufficient information on the costs to the environment and benefits to people and communities to justify the amendment to the rule.

Decision about most appropriate option

83. The recommended amendment to Rule 23.2.1.1 Noise General is a minor and will help towards retaining the character and amenity of the zone as sought by the policy and Objective 5.6.1.

12 Land Use-Effects- Earthworks

12.1 Analysis

84. Mr Tim Lester on behalf of Blue Wallace Surveyors Ltd has further elaborated on the reasoning for the submission to allow for earthworks for access ways to the building platform to be a permitted activity [662.24]. Mr Lester further says that there is no fundamental difference between an undetermined building platform and an undetermined accessway. I can agree with this up to a point. I refer to the notified subdivision rules, which require a building platform with an area of 1000m^2 exclusive of boundary setbacks, and a permitted earthworks rule to create the building platform in this regard is a reasonable approach. In regard to the earthworks rules, it would be logical to also provide for access to the building platform however, it is common for these building platforms and accessways not to be formed at the time of subdivision. This allows for flexibility as to where the building platform is located.

85. It is expected that there will be an entranceway created to the property, but not necessarily access to the building platform. I have concerns with allowing a permitted activity for an unknown amount of earthworks. If you add in the area of an accessway to the building platform there is potential for large areas and volumes of earthworks that not only have potential effects on the landscape but also in terms of management of stability and erosion.

86. In application of the rules, earthworks for a building platform for a residential activity and an accessory building are permitted activities. If the rules in P2 for earthworks are applied, which are applicable to earthworks other than a building platform and accessory building, there is an allowance for 1000m^2. Further to this, I have recommended in response to Blue Wallace's submission in regard to volume that this be increased to 500m^3 (rather than 250m^3).[15]

87. A property owner has a choice to comply with the permitted baseline where no consent is required. If the desire is to build on the property in area location that means more earthworks are necessary than the permitted baseline, then I am of the opinion that if an accessway cannot be created within these parameters then it would be appropriate to

[15] Hearing 12: Country Living Zone s42A report, Susan Chibnall, 3 March 2020, Paragraph 320

obtain consent. This approach will ensure any greater area and volume can be managed accordingly.

88. Mr Lester also raises the issue of the setback for earthworks to a boundary in his evidence and does not agree with the 1.5m set back. Mr Lester considers that a 0.5m setback would be sufficient and believes that fences or retaining wall of a scale or height on or close to a property boundary have been constructed to a specific standard, so as to not incur unreasonable restrictions on an abutting property and have gone through an assessment process. This is not always the case. Nevertheless I agree that damage to a neighbouring property during earthworks activities is likely to be a civil matter. However, if during earthworks activities, the stability of the land is compromised in any way, and sediment erosion is not adequately controlled, this becomes a resource management concern. I am still of the opinion that a 1.5m setback allows space for good management of earthworks on a site. The 1.5m setback not only supports good sediment control systems but also a reasonable setback when a property owner constructs a landscape bund. My recommendation is therefore unchanged.

89. Ms Malone on behalf of First Gas Limited has provided evidence that reiterates their original submission, where First Gas Ltd sought a new rule to manage earthworks in the vicinity of the gas pipeline. She clarifies that the principles applicable for the Country Living Zone will be expanded on at the hearing for the Rural Zone at which First Gas intend to present evidence.

12.2 Recommendations

90. My recommendations remain as set out in the S42A report in section 6.6.2 in regard to the earthworks rules

13 Land use –Signs

13.1 Analysis

91. Ms McAlley on behalf of Heritage New Zealand Pouhere Taonga has disagreed with the permitted activity status for signs on heritage items and Maaori Sites of Significance in her evidence and believes signs should be a restricted discretionary status. Ms McAlley states that the permitted standard does not relate to the individual nature of heritage buildings and therefore not robust enough to ensure the effects are managed. I maintain my position on this matter in that the size of the sign, which is proposed to be no bigger than 1m^2 and is for the purpose of identifying said heritage item are appropriate limitations to enable a permitted activity status. I believe a sign helps not only to bring to the public's attention to the heritage item but will further ensure the community knows it is likely to be protected.

92. Ms McAlley also raises the matter of an advice note guiding plan users to Heritage New Zealand Pouhere Taonga. As per my discussion at paragraph 357, I have suggested that an advice note will be useful when the Proposed District Plan is transitioned to the National Planning Standards where there is to be a dedicated Historic Heritage chapter and it will be in this chapter that an advice note could be incorporated.

93. Ms Running prepared evidence on behalf of NZ Transport Agency and sought a minor amendment to Rule 23.2.6.2 Signs-Effects on Traffic. Of particular interest is P1 clause (v) which reads *Contain no more than 40 characters and no more than 6 symbols.* Ms Running suggests altering the wording to reflect the Transport Agencies brochure which reads *Signs should have a maximum of 6 words and/or symbols, with a maximum of 40 characters'*. I have contacted Ms Running to clarify as the brochure appears to be more lenient that the Proposed Plan rule. Ms Running's response was to not make their suggested changes and maintain the proposed version and ensure it is consistent across all zones.

94. Further to above, the rule not only applies to roads managed by NZTA, but as well Council managed roads and I believe the current wording of the rule is a better outcome in terms of safety for all concerned. Ms Running may wish to make comment on this during the hearing.

13.2 Recommendation

95. My recommendations remain as set out in Section 6.7 of my S42A report in regard to the signage rules.

14 Land use- Minor dwelling

14.1 Analysis

96. Evidence provided by Mr Shane Hartley on behalf of the Surveying Company supports the s42A report in regard to the provisions for minor dwellings [746.117]. However Mr Hartley raises a concern about the rule and that if there was scope provided by submissions to clarify as to whether the 70m^2 gross floor area includes decks and garages as the rule would be improved if there was. In response to his concerns, the Definitions hearing 5 has dealt with this issue. I am mindful that the National Planning Standard's definition for gross floor area is:

> *means the sum of the total area of all floors of a building or buildings (including any void area in each of those floors, such as service shafts, liftwells or stairwells),*
>
> > *i. where there are exterior walls, measured from the exterior faces of those exterior walls*
> >
> > *ii. where there are walls separating two buildings, measured from the centre lines of the walls separating the two buildings*
> >
> > *iii. where a wall or walls are lacking (for example, a mezzanine floor) and the edge of the floor is discernible, measured from the edge of the floor.*

97. From this definition I consider it is clear that the intent of the term is that it includes areas enclosed by walls, but not decks. I consider that an attached garage could be deemed to be part of the minor dwelling and would be included in the gross floor area calculation. However a standalone garage would be classed as an accessory building in accordance with the National Planning Standards definition of accessory building:

> *means a detached building, the use of which is ancillary to the use of any building, buildings or activity that is or could be lawfully established on the same site, but does not include any minor residential unit.*

14.2 Recommendation

98. My recommendations remain as set out my S42A report.

15 Land Use –Building setbacks- All boundaries

15.1 Analysis

99. Ms Running prepared evidence on behalf of NZ Transport Agency and has suggested that their submission point [742.241] has not been addressed. This particular submission point reads as follows 'Retain *Rule 23.3.7.2 D1 Building setback - sensitive land use, as notified*' and as such has been duly accepted in paragraph 473 of the s42A report.

100. In the evidence provided, Ms Running refers to submission point [742.241] as being in relation to *Rule 23.3.7.1. RD1 Building setbacks-All boundaries*. There is some confusion in this regard. I have reviewed the original submission, which in the relief sought refers to the Rural

Zone equivalent rule (**22.**3.7.1). This submission has been allocated to the Rural Zone Hearing as submission point [742.239]. However, I believe the rule referencing to be an error by NZTA and based on the evidence from Ms Running it appears the intent was for the relief sought in the equivalent rule in the Country Living Zone (i.e. Chapter 23). With this in mind I have undertaken an analysis of the equivalent rule in relation to the Country Living Zone.

Rule 23.3.7.1 Building setbacks-All boundaries

Submission point	Submitter	Summary of submission
742.239	New Zealand Transport Agency	Retain Rule 22.3.7.1 Building Setbacks- All boundaries, except for the amendments sought below AND Amend matter of discretion (b)(ii) in Rule 22.3.7.1 RD1 Building Setbacks - All boundaries, as follows: *Effects on traffic Transport network safety and efficiency;* AND Request any consequential changes necessary to give effect to the relief sought in the submission.

15.2 Analysis of submission 724.239

101. New Zealand Transport Agency [742.239] submission refers to Rule 22.3.7.1 in the Rural Zone. I have reviewed their original submission and believe this was an error and that NZTA seek to amend the wording in the matters of discretions in Rule 23.3.7.1 clause (b)(ii) of the Country Living Zone. The submission seeks to change the wording to refer to the Transport network safety and efficiency as opposed to the effects on traffic. I consider this to be a minor amendment and provide better clarity for the plan user when assessing the effects of a building when dispensation is sought from the permitted setback rule. I recommend the panel accept New Zealand Transport Agency [742.239].

15.3 Recommendation

102. **Accept** the submission point from New Zealand Transport Agency [742.239]

15.4 Recommended amendments

Restricted Discretionary Activity- Rule 23.3.7.1 Building setbacks- All boundaries

RD1	(a)A building that does not comply with Rule 23.3.7.1 P1 or P2 (b)Council's discretion is restricted to the following matters: (i)amenity values; (ii)~~effects on traffic~~Transport network safety and efficiency; (iii)daylight admission to adjoining properties; (iv)effects on privacy of adjoining sites.

15.5 Section 32AA evaluation

103. The recommended amendments are to provide clarity without changing the planning outcomes. Accordingly no s32AA evaluation has been undertaken.

16 Land use - Building setback

16.1 Analysis

104. Ms Butler has prepared evidence on behalf of KiwiRail Holdings Ltd has disagreed with my recommendations to reject their submission for a 5m setback to the rail corridor for 'any new' buildings.[16] Ms Butler has safety concerns for human safety associated with the interface between rail operations and activities on all sites adjoining the rail corridor.

105. I have considered where the railway corridor is adjacent the Country Living Zone and this is located in Te Kauwhata, Ohinewai and the northern Ngaruawahia area.

106. KiwiRail's submission refers to Rule 23.3.7.2 Building setback-Sensitive land use, where they seek an additional rule P2 to manage any new building or alteration to be setback 5m from the rail corridor regardless of the building being for a sensitive land use.

107. I have undertaken a closer look at the rules and I am persuaded by KiwiRail to make some amendments. I believe it would be logical to move Rule 23.3.7.2 (P) (a)(i) *5m from the designated boundary of the railway corridor;* to Rule 23.3.7.1 P2 for sites which are less than 1000m^2 as these will be the only sites that have a setback requirement less than 5m. In regard to a building on a site larger than 1000m^2, this will be captured by Rule 23.3.7.1 where a 12m set back is imposed on every boundary other than a road boundary.

16.2 Recommendations

108. Based on my consideration of Ms Butler's evidence I recommend the following further amendments.

23.3.7.1 Building setbacks-All boundaries

P2	(a)Any building located on a lot containing 1000m^2 or less must be set back a minimum of: (i)3m from a road boundary; (ii)1.5m from every boundary other than a road boundary; (iii)24m from an existing dwelling on any adjoining site. (iv) 5m from the designated boundary of the railway corridor. [986.55]

23.3.7.2 Building setback- Sensitive land use

P1	(a)Any new building or alteration to an existing building for a sensitive land use must be set back a minimum of: ~~(i)5m from the designated boundary of the railway corridor;~~ [986.55] (ii)15m from a national route or regional arterial boundary; …

[16] Hearing 12: Country Living Zone s42A report, Susan Chibnall, 3 March 2020, Paragraph 474-476

16.3 Section 32AA evaluation

109. The recommended amendments are to provide clarity without changing the planning outcomes. Accordingly no s32AA evaluation has been required to be undertaken.

17 Land use - Building setback -Waterbodies

17.1 Analysis

110. Mr Lester prepared evidence on behalf of Blue Wallace and has agreed with my recommendation to have a more lenient setback to a 'managed wetland'. The author hearing 6 Village Zone addressed a similar submission but did not land a position due wanting verification from a relevant expert. I have recommended in the s42A report[17] that it would be sensible to include a definition to support this terminology. Blue Wallace have provided in their evidence a description of what they consider is meant by this term, which is as follows:

> *In its broadest sense, a managed wetland is a body of attenuated water that has been created, or otherwise modified, so as to be able to be regulated in regard to inflows and outflows of water (i.e., stormwater). Stormwater wetlands generally consist of an inlet zone (sedimentation basin or forebay), a planted zone, and a high flow bypass channel. Such managed wetlands have been subject to an approved engineering design, as well as being subject to an appropriate maintenance regime – such as in the case of stormwater drainage reserves.*

111. Mr Lester also signals a willingness to work with Council to devise an appropriate definition. I have discussed possible definitions with Blue Wallace and have developed the following definition:

> *Managed Wetland- In the context of rules regarding Building setback means- Stormwater wetlands, (artificially made or natural but modified) may contain the following:*
>
> *(i) an inlet zone (sedimentation basin or forebay),*
> *(ii) a planted zone, and a high flow bypass channel,*
> *(iii) regulated inflows and outflows of water.*

17.2 Recommended amendments

112. For the reasons outlined above, I recommend a new definition be added to Chapter 13:

Chapter 13 Definitions-M

Managed wetland-In the context of rules regarding Building setback

Means- Stormwater wetlands, (artificially made or natural but modified) may contain the following:

(i) an inlet zone (sedimentation basin or forebay),
(ii) a planted zone, and a high flow bypass channel,
(iii) regulated inflows and outflows of water. [662.62]

[17] Hearing 12: Country Living Zone s42A report, Susan Chibnall, 3 March 2020, Paragraph 491

17.3 Section 32AA evaluation

113. The recommended amendments are to provide clarity without changing the planning outcomes. Accordingly no s32AA evaluation has been undertaken.

18 Subdivision

18.1 Policy 5.6.3 Subdivision within the Country Living Zone

18.1.1 Analysis

114. Mr Tim Lester prepared evidence on behalf of Blue Wallace Surveyors Ltd and addressed a number of the recommendations in my s42A report pertaining to their submission and further submission. Blue Wallace Surveyors Ltd [662.3] submitted on Policy 5.6.3 Subdivision within the Country Living Zone and sought a softening of the policy position from "avoiding" under sized lots, to "discouraging" them. Mr Lester does not agree with my recommendation to retain the word "avoid. He is particularly concerned that whilst environmental effects will also be assessed under 104D(1)(a), an absolute term such as avoid, and its recent legal (Supreme Court) interpretation, will represent an inflexible obstacle in that Council will be in a position to not allow undersized allotments in the Country Living Zone regardless of the circumstances. Mr Lester considered that by excluding the inflexible word 'avoided' from the a policy, subdivision design which due to a natural or physical feature means an undersized allotment will be created will be able to considered and assessed from both an environmental effects perspective, as well as not automatically being contrary to the relative objectives and policies of the Proposed Waikato District Plan following s104D of the RMA.

115. I am sympathetic and acknowledge Mr Lester's concerns, but the use of the word "avoid" was deliberately included in the Plan to address deficiencies in the Operative District Plan (Waikato Section). The Operative District Plan does not provide clear policy direction to refuse resource consent applications for undersized lots in the Country Living Zone, and this meant that undersized and sub-optimal subdivision applications could not be refused (even though the activity status in the Operative District Plan for undersized lots is a non-complying activity). I do not recommend any further amendments in response to Mr Lester's evidence.

116. Ms Palmer prepared evidence on behalf of Bowrock Properties Limited and addresses the policy direction in Policy 5.6.3. She does not agree that avoiding undersized lots is the best mechanism to retain productive capacity of lots within the Country Living Zone, and considers a more flexible approach to subdivision will result in more efficient use of land. Ms Palmer seeks an amendment to Policy 5.6.3(a)(i) which would create an exclusion from the minimum lot size where it could be demonstrated that productive capacity of land can be retained. She considers that this approach will better accommodate the productive capacity of land within the zone by providing flexibility in subdivision design, whilst still seeking to retain the character and amenity of the zone. She considers that this approach provides for the 5000m^2 minimum lot size, while also providing a pathway for processing officers to consider alternative subdivision proposals which may have smaller lot sizes but use land more efficiently and encourage productive use of balance lots for example.[18]

117. I appreciate the argument that Ms Palmer has advanced, particularly as I consider it is important to enable productive use of Country Living Zoned land. However I remain concerned that such a policy position creates a loophole than can (and will) be exploited. I am also concerned that the productive capacity of the land will be demonstrated through

[18] Statement of Evidence of Hannah Palmer for Bowrock Properties Limited (Planning), 16 March 2020, Paragraph 7.6

the subdivision consent application, but there is no surety or way of ensuring that the eventual landowner will use the site for this purpose. I consider it more important that productive use of the land is enabled through the landuse policies and rules (and thus giving effect to the objectives and policies in the Waikato Regional Policy Statement on this matter), rather than subdivision.

118. I am also mindful of Objective 5.1.1 which seeks to achieve two outcomes relevant to consideration of Ms Palmer's evidence:

> *5.1.1 Objective – The rural environment*
> *(a) Subdivision, use and development within the rural environment where:*
> …
> *(ii) productive rural activities are supported, while maintaining or enhancing the rural environment;*
> *(iii) urban subdivision, use and development in the rural environment is avoided.*

119. While Ms Palmer's approach would partially assist in achieving Objective 5.1.1(a)(ii), it is unlikely to achieve clause (a)(iii) due to the resulting smaller lots.

120. Evidence was received from Ms Butler on behalf of KiwiRail and agreed with my recommendations with regards to submission point 986.28 on Policy 5.6.3 Subdivision.

18.1.2 Recommendations

121. Having considered the evidence received on Policy 5.6.3, I do not recommend any further amendments.

122. Ms Palmer has also helpfully identified a drafting error in clause (iv) which is correct in the s42A report but unfortunately was transcribed incorrectly in the tracked change version of Chapter 5. I have corrected the error in Appendix 3.

18.2 Minimum Lot Size for General Subdivision

18.2.1 Analysis

123. Rule 23.4.2 General Subdivision is the primary rule for managing subdivision in the Country Living Zone. RD1(a)(i) applies to all Country Living-zoned sites which are outside the Hamilton Urban Expansion Area, the Airport Subdivision Control Boundary or inside the SEL 95 Boundary, as identified on the planning maps. The minimum lot size for the Country Living Zone attracted thorough and well thought out evidence from the following experts:

a. Mr Mark Chrisp [564]
b. Mr Shane Hartley on behalf of The Surveying Company [746 and FS1308]
c. Ms Laura Galt on behalf of Hamilton City Council [535 and FS1379]
d. Sir William Birch on behalf of CSL Trust and Top End Properties [89]
e. Ms Pam Butler on behalf of KiwiRail [986]

124. Mr Chrisp sought in his primary submission to reduce the lot size in the Country Living Zone to 3000m^2 and his evidence addressed this request. Mr Chrisp contends that the Country Living Zone is more akin to a large lot residential zone and considers that zone does not enable primary production.[19] Whether each site is used for primary production (noting that it does not necessarily need to contribute to the economic prosperity of the rural economy in order to be primary production) or constitutes a large domestic lawn is entirely the choice of the landowner. The point I made in my s42A report is that a minimum lot size of 5,000m^2 *enables* small scale primary production to occur. Mr Chrisp

[19] Statement of Evidence of Mark Chrisp, 23 March 2020, Paragraphs 4.2-4.4

draws attention to the covenants which apply to Tamahere which prevent the keeping of livestock or particular types of livestock, however as Mr Chrisp will be aware these were not at the behest of Council and were a choice that the developer made at the time of subdivision. I would also note that Tamahere is perhaps not representative of the Country Living Zone in other parts of the District.

125. I note that Mr Chrisp considers that the Country Living Zone is more closely aligned with the Large Lot Residential Zone in the National Planning Standards. I respectfully draw Mr Chrisp's attention to the s42A report on Hearing 6 Village Zone where this zone is considered as being appropriate for the Village Zone.[20] The intent of the Country Living Zone is different from the Village Zone, with the Village Zone being more aligned with a large lot urban density, and the Country Living Zone having more of a rural character. It is for this reason that the objectives and policies for the Country Living Zone were located in Chapter 5 Rural Environment of the Proposed District Plan, rather than Chapter 4 Urban Environment. I am mindful that the Country Living Zone (and its inclusion in Chapter 5) gives effect to Strategic Objective 5.1.1, and in particular clause (a)(iii) which seeks to avoid urban subdivision, use and development in the rural environment. I consider a decrease in the minimum lot size would no longer achieve this outcome.

126. Mr Chrisp incorrectly states that outside of Tuakau and Te Kowhai, there are no residential lots able to be created within the District between 3,000m^2 and 5,000m^2. [21] I respectfully draw his attention to the s42A report for Hearing 6 Village Zone[22] which states that the Village Zone is widely dispersed around the district, encompassing a number of existing villages that were either zoned as Village under the Operative Waikato District Plan: Franklin Section, or were zoned Living/Country Living under the Operative Waikato District Plan: Waikato Section. The s42A report for Hearing 6 Village Zone contains maps of all the areas zoned as Village Zone. The significance of the Village Zone is that that zone does indeed enable lots in the range of 3,000m^2 – 5,000m^2, and goes further in the s42A report to recommend reducing this minimum lot size to 2,500m^2.[23]

127. I consider that it is important that the Village Zone and the Country Living Zone are sufficiently different to create and maintain different living environments and opportunities for the District's communities. In addition, the 5,000m^2 minimum lot size standard that applied to the Countryside Living Zone in the Operative District Plan has created a particular character, notwithstanding that developer covenants may create a different form of character for a particular area such as Tamahere. Mr Chrisp considers that reducing the minimum lot size to almost half will continue to achieve the objective and policies for Country Living Zone.[24] I disagree, and consider that such a response will no longer achieve Objective 5.6.1 which seeks to "maintain or enhance the character and amenity values of the zone". I am mindful of Policy 5.6.2(a) which sets out the ways in which the character of the area is maintained by:

> (i) Maintaining the open space character;
> (ii) Maintaining low density residential development;

128. I do not consider that reducing the minimum lot size to 3000m^2 will achieve these policies either.

[20] Section 42a Report Hearing 6: Village Zone Part A – Land use, Kelly Cattermole 11 November 2019, Paragraphs 583-586
[21] Statement of Evidence of Mark Chrisp, 23 March 2020, Paragraph 4.9 and 5.12
[22] Section 42a Report Hearing 6: Village Zone Part A – Land use, Kelly Cattermole 11 November 2019, Paragraph 16
[23] Section 42a Report Hearing 6: Village Zone Part B – Subdivision, Jonathan Clease, 8 November 2019, Paragraph 56
[24] Statement of Evidence of Mark Chrisp, 23 March 2020, Paragraph 4.14

129. Mr Chrisp considers that the difference in subdivision yield between 5,000m^2 and 3,000m^2 is not significant[25], however I disagree as it will result in almost a doubling of the density. The existing roads and transport networks have been designed for the existing subdivision pattern created by the Operative District Plan rules, and have not been designed with intensification in mind.

130. I remain concerned that reducing the lot size of the Country Living Zoned sites has the potential to increase the potential for reverse sensitivity, particularly given that these areas are often surrounded by Rural Zoned sites undertaking primary production.

131. Mr Shane Hartley prepared evidence for The Surveying Company [746 and FS1308] and supported the introduction of an average lot size, as well as a minimum lot size of 3,000m^2 on the basis that this approach enables a more effective design response to site characteristics and conditions.[26] He identifies a number of advantages of having an average lot size as well as a minimum, being more optimal building platforms and access, opportunity to undertake productive farming activities on the larger sites resulting in more mixed character and activity interest, increased scope for the location of a building.[27]

132. Mr Hartley considers that the objectives and policies for the Country Living Zone establish a clear direction for determining and rejecting unworthy subdivision proposals.[28] In terms of mechanisms to prevent further subdivision of larger balance lots, he suggests including a rule that requires a consent notice to be applied to any site of one hectare or greater created by a subdivision consent that prevents further subdivision of such site unless the Plan rules change, making the averaging requirement over all the sites originally part of the subdivision redundant.[29]

133. My concern is that by allowing smaller sites (albeit balanced with larger sites to maintain the overall average lot size of 5,000m^2) there is a risk that the character of the Country Living Zone is eroded, and it becomes significantly more challenging to decline a subdivision with under-sized lots. This would particularly be the case where the smaller sites are located on the road frontage, and the larger sites are rear sites. In my experience, the perception of character is usually based on viewpoints from public places such as the road.

134. I note that Ms Galt on behalf of Hamilton City Council addressed the minimum lot size issue in her evidence and expressed support for the retention of 5,000m^2 as notified.

135. Evidence was received from Sir William Birch on behalf of CSL Trust and Top End Properties [89]. Sir Birch's evidence expressed support for retaining the minimum net site area for Rule 23.4.2 General Subdivision at 5000m^2, and considered that decreasing the minimum net site area will greatly increase the potential lot yield from Country Living zoned properties throughout the District which would not align with the intended function of the zone.

136. Evidence was received from Ms Pam Butler on behalf of KiwiRail and agreed with my recommendations with regards to submission point [986.90] on Rule 23.4.2 General Subdivision.

[25] Statement of Evidence of Mark Chrisp, 23 March 2020, Paragraphs 6.2 and 6.3
[26] Statement of Primary Evidence of Shane Hartley on Behalf of The Surveying Company, 16 March 2020, Paragraph 4.8
[27] Statement of Primary Evidence of Shane Hartley on Behalf of The Surveying Company, 16 March 2020, Paragraphs 4.9-4.11
[28] Statement of Primary Evidence of Shane Hartley on Behalf of The Surveying Company, 16 March 2020, Paragraphs 4.19
[29] Statement of Primary Evidence of Shane Hartley on Behalf of The Surveying Company, 16 March 2020, Paragraphs 4.22

18.2.2 Recommendations

137. Having considered the evidence provided by submitters on the minimum lot size for subdivision in the Country Living Zone, I have not altered my recommendations outlined in my s42A report.

18.3 Hamilton's Urban Expansion Area

18.3.1 Analysis

138. Ms Galt prepared evidence on behalf of Hamilton City Council and addressed HCC's submission point [535.77] on Rule 23.4.1 which sought that the prohibited activity status for subdivision in the Urban Expansion Area be retained as notified in order to protect the land resource which will be transferred to HCC in the future. In my s42A report I recommended amending Rule 23.4.1 so that subdivision moves from prohibited to a discretionary activity status.

139. I understand that the basis for the Urban Expansion Area provisions (and therefore HCC's interest in this rule) is to give HCC the best chance to fully urbanise the land, however I do not agree with Ms Galt that it should be protected from any development through a prohibited activity status.[30] She considers that the potential low yield of four additional lots is immaterial to determining the most appropriate activity status but I respectfully disagree as this provides a useful scale for assessing how significant (or widespread) subdivision in the Urban Expansion Area could be. I note that my analysis showed a potential for 15 additional lots. Ms Galt also considers that any further fragmentation of the land will degrade the resource and HCC's ability to retrofit the land for future urbanisation purposes.[31] However given the very small yield in this area, I do not consider that fifteen additional lots will significantly affect the urbanisation of this area, particularly when coupled with Objective 5.5.1 Hamilton's Urban Expansion Area and Policy 5.5.2 Activities within Hamilton's Urban Expansion Area, against which a discretionary activity resource consent application would be assessed. A minimum lot size of 5,000m^2 provides sufficient space to locate a house without necessarily compromising future urbanisation. The key concern for Hamilton City Council is not necessarily the density, but more that any development makes it difficult later to lay piped infrastructure in optimum alignments and achieve full residential densities. Given the small level of development possible, I do not share Ms Galt's concerns and consider that any subdivision applications in this area can demonstrate how a subdivision and placement of a dwelling now will not compromise urbanisation in the future. I understand that HCC have concerns about sub-optimal developments such as North Ridge Drive in Rototuna, but I am cognisant that this application was approved under Hamilton's Operative District Plan.[32]

140. I am aware that Mr Matheson recommended in Hearing 3 that the wording of Policy 5.5.2 Activities within Hamilton's Urban Expansion Area recommended changing "manage" to "avoid" as follows:

> *5.5.2 Policy – Activities within Hamilton's Urban Expansion Area*
>
> ~~*Manage*~~ *Avoid subdivision, use and development within Hamilton's Urban Expansion Area to ensure that future urban development is not compromised.*

141. I am mindful of my recommendation to retain Policy 5.6.3(a)(i) Subdivision within the Country Lifestyle Zone which seeks to avoid the creation of undersized lots. This policy will apply to subdivision within the Urban Expansion Area and thus there is unlikely to be any greater yield in this area than Council has calculated.

[30] Statement of Evidence of Laura Galt on Behalf of Hamilton City Council, 17 March 2020, Paragraph 13
[31] Statement of Evidence of Laura Galt on Behalf of Hamilton City Council, 17 March 2020, Paragraph 14
[32] Statement of Evidence of Laura Galt on Behalf of Hamilton City Council, 17 March 2020, Paragraph 40

142. As the Hearings Panel are not making interim decisions, I have not assumed that Mr Matheson's recommendation will be accepted by the Panel. Hearing 12 and indeed the later hearing on the Rural Zone (over which the Urban Expansion Area also applies) will provide the Hearings Panel with an opportunity to consider the suite of objective, policy and rules for the Urban Expansion Area as a package. If the Panel deem that a policy position of "avoid" is appropriate, then perhaps a more stringent activity status is warranted. If the Panel consider that "manage" is a more appropriate policy position, then I consider that a discretionary activity status would align well with the policy. I am also mindful that Mr Matheson may not have had the benefit of GIS analysis to determine how many additional lots are realistically possible so may not have had access to complete information when drafting his s42A report.

143. Mr Lester prepared evidence on behalf of Blue Wallace Surveyors Ltd addressing Rule 23.4.1 PR1 Prohibited Subdivision. In contrast to Ms Galt, Mr Lester agrees with my recommendation to remove the Prohibited Activity Rule for subdivision in the Urban Expansion Area and expressed support for a discretionary activity status instead.

18.3.2 Recommendations

144. At this stage, and based on the GIS analysis of the potential subdivision I do not recommend any further amendments in response to Ms Galt's evidence.

18.4 Subdivision within the Airport Subdivision Control Boundary

18.4.1 Analysis

145. Mr Jason Howarth prepared evidence addressing the limitations on subdivision within the Airport Subdivision Control Boundary. He considers there has been significant development in Tamahere both inside and outside the Airport Subdivision Control Boundary since 2003 when this control was introduced, and that "the horse has already bolted".[33] He considers that in prior planning processes such as Plan Change 19, the reverse sensitivity issues were due to jet aircraft operating and growth of the airport. He considers that this approach is somewhat redundant as there are no longer scheduled jet operations at Hamilton, there has been a reduction in scheduled domestic services, Air New Zealand closed its Hamilton maintenance base and there is no funding proposal to fund any runway or airport upgrade.[34] Mr Philip Barrett prepared evidence on behalf of Mr William Hodgson and Leo Koppens [820] and similarly states that the airport environment has changed considerably since the Operative District plan rule was first negotiated at mediation.[35]

146. Mr Howarth contends that there is no need for a special rule controlling development due to potential reverse sensitivity effects associated with the operation of aircraft from the Waikato Regional Airport. I disagree. The purpose of additional controls on subdivision in this area is to limit the number of people and land uses subject to adverse noise effects from aircraft. While I accept that aircraft are not constrained to flying within the area delineated on the District Plan maps, I consider that the concept of the Airport Subdivision Control Boundary is a sound planning response to minimising the potential for reverse sensitivity effects to arise in the areas where the highest levels of aircraft noise are likely to be experienced. I note that the Hamilton International Airport is defined as being a "Regionally Significant Infrastructure" in the Waikato Regional Policy Statement and that there are many provisions that seek to protect Regionally Significant Infrastructure in that document, including:

a. Policy 6.6 Significant infrastructure and energy resources

[33] Submission to Hearing 12 Country Living Zone, Jason Howarth, Paragraph 2
[34] Submission to Hearing 12 Country Living Zone, Jason Howarth, Paragraph 3
[35] Submission Statement of Philip Barrett for William Hodgson and Leo Koppens, 20 March 2020, Paragraphs 1.2 and 1.3

b. Implementation Methods 6.6.1(f) Plan Provisions

c. Implementation Methods 6.6.5 Measures to avoid adverse effects

147. Mr Barrett considers that growth of the airport and the growth of Tamahere community indicate that these activities can continue simultaneously and that future subdivision and residential development will not hinder that growth. Mr Barrett considers that there is an absence of evidence indicating that reverse sensitivity is a fact and considers that retaining the rule is disproportionally favourable to the Airport at the expense of the Tamahere community's ability to grow.[36] While I accept that there may be an absence of complaints, I consider this does not justify enabling subdivision in an area affected by noise from aircraft and therefore increasing the potential for reverse sensitivity effects to occur.

148. Mr Barrett advances a proposition that a viable strategy for dealing with reverse sensitivity effects could be requiring new activities to enter into a "no complaints" covenant via a land encumbrance.[37] Covenants controlling complaints is not a matter that can be addressed within the Proposed Waikato District Plan. If a no-complaints covenant is entered into, it will be between the Airport and landowner and will not involve Council at all. It is inappropriate for Council to place such a condition on a subdivision consent which is binding on a third party. I consider limiting the subdivision in areas affected by high levels of noise from aircraft and therefore limiting the additional risk of reverse sensitivity effects to arise is a more effective and efficient approach. This approach is more effective in achieving Objective 6.1.6 Reverse Sensitivity.

149. Ms Katherine Dew prepared rebuttal evidence on behalf of the Waikato Regional Airport Limited who was both a submitter and further submitter on the rules regarding subdivision in the Airport Subdivision Control Boundary [741.2 and FS1253]. In response to the issues raised by Mr Howarth, Ms Drew helpfully outlined the background and rationale for the inclusion of rules controlling subdivision near the Waikato Regional Airport and within the area affected by aircraft noise. Ms Drew helpfully also addresses each of the points in Mr Howarth's evidence and makes the following main points:

a. Although the rules were introduced in 2003 they were retested through a Schedule 1 process in 2010 through Variation 14 and reassessed again as part of the PWDP s32 analysis. Through these processes the modelling of aircraft movements and consequential noise effects were based on a strategic airport planning out to 2030. The main airport designations allow for a runway extension and those designations have a lapse date of 2026.

b. The Waipa District Plan includes similar rules restricting subdivision and development within the Airport Noise Outer Control Boundary.

c. While there was approval of a multi-lot subdivision within the Airport Subdivision Control Boundary in 2010, the density of subdivision within the Airport Subdivision Control Boundary is substantially lower than elsewhere so the Operative District Plan: Waikato Section has been effective at 'holding the line' as intended.

d. Airport operations are not constrained by the Airport Subdivision Control Boundary.

e. The Airport Subdivision Control Boundary is modelled on a wide range of inputs including aircraft types, their noise characteristics, flight paths, meteorological

[36] Submission Statement of Philip Barrett for William Hodgson and Leo Koppens, 20 March 2020, Paragraph 1.8

[37] Submission Statement of Philip Barrett for William Hodgson and Leo Koppens, 20 March 2020, Paragraph 3.1

conditions, frequency of movements and whether they are day or night-time movements, not just flightpaths.

f. The reverse sensitivity noise effects are based on not just current effects, but also future effects as have been modelled out to 2030.

g. The noise effects are based on NZS:6805 which includes well-established parameters and widely accepted parameters of when a noise effect is significant enough to trigger a planning response.

150. Ms Drew considers it is important that restrictive subdivision provisions should apply to the land within the Airport Subdivision Control Boundary, with the purpose of limiting the number of people to exposure to the effects of airport noise.[38] I agree that this is the purpose and value of the Airport Subdivision Control Boundary and that it should be retained in the Proposed District Plan, with associated limitations on subdivision.

151. In terms of the activity status of subdivision within the Airport Subdivision Control Boundary, the primary submission from Waikato Regional Airport Ltd sought the retention of a prohibited activity status for subdivision that could not meet the lot size requirements. Ms Drew agrees in her evidence that a non-complying activity status would achieve the same purpose provided it was put in place with a strong policy basis to support it.[39] On this basis she seeks amendments to Policy 5.6.3(a)(v) Subdivision within the Country Living Zone to better protect regionally significant infrastructure from reverse sensitivity effects. I draw Ms Drew's attention to my recommendations to carve out this clause from Policy 5.6.3 and instead have it as a separate policy (Policy 5.6.19 Reverse Sensitivity). Although I am sympathetic to the amendments Ms Drew is seeking, I consider that this outcome is already achieved by a combination of the new Policy 5.6.19 (noting my recommended amendments so that the policy "minimises" the adverse effects of reverse sensitivity rather than "mitigates"), and the following objective and policy in Chapter 6 Infrastructure and Energy:

> ***6.1.6 Objective – Reverse sensitivity***
> *Infrastructure is protected from reverse sensitivity effects, and infrastructure (including the National Grid) is not compromised.*
>
> ***6.1.7 Policy – Reverse sensitivity and infrastructure***
> *Avoid reverse sensitivity effects on infrastructure from subdivision, use and development as far as reasonably practicable, so that the ongoing and efficient operation of infrastructure is not compromised.*

18.4.2 Recommendations

152. Having read through the thorough evidence from Mr Howarth, Mr Barrett and Ms Drew, I do not recommend any further amendments in response.

18.5 Subdivision within the National Grid Corridor

18.5.1 Analysis

153. Transpower NZ made a further submission [FS1350.129] opposing the submission from Waikato District Council to replicate the subdivision rule applying to the National Grid Corridor. I recommended in my s42A report that Transpower NZ's further submission be rejected as I considered that placement of this rule in every zone ensures that the rule is not overlooked[40]. There is a risk that users of the Plan will not think to look in Chapter 14

[38] Statement of Rebuttal Evidence by Kathryn Drew on Behalf Of Waikato Regional Airport Limited, Paragraph 30

[39] Statement of Rebuttal Evidence by Kathryn Drew on Behalf Of Waikato Regional Airport Limited, Paragraph 30

[40] Hearing 12: Country Living Zone s42A report, Susan Chibnall, 3 March 2020, Paragraphs 625-631

when considering subdivision in close proximity to the National Grid as this relates to infrastructure and energy and is not an obvious place for a lay person to look. Ms Pauline Whitney prepared evidence on behalf of Transpower NZ stating her opposition for this recommendation, instead supporting a standalone set of National Grid provisions. The reason for this is that this approach avoids duplication and provides a coherent set of rules which submitters can refer to, noting that the planning maps clearly identify land that is subject to the National Grid provisions.

154. Ms Whitney considers a preferable option would be to have clear cross-referencing (which could be by way of a hyperlink in an eplan) in the subdivision sections of each zone chapter to the National Grid subdivision rule provisions in the plan's Infrastructure and Energy chapter.

155. I consider there is a high degree of agreement between the parties. There is agreement on the need for a stand-alone rule controlling subdivision adjacent to the National Grid. The need for such inclusion was the key outcome sought in the Waikato District Council's submission, with Transpower not opposing the need for such a rule. The only question is where this rule is best located – either repeated in each zone's subdivision rules, or consolidated into a single chapter, with a cross-reference in each of the zone-specific subdivision rules to alert Plan users.

18.5.2 Recommendations

156. Either approach delivers the desired outcome of a rule to manage the effects of subdivision adjacent to the National Grid. The approach of a consolidated rule as sought by Transpower appears to better align with the National Planning Standards. Issues of Plan structure and alignment with the National Planning Standards are to be considered as part of the decision-making process. If the Panel ultimately decide that a consolidated approach with a cross-reference is more efficient and effective then I am quite comfortable with that structural approach. In the meantime, and to ensure the rule does not become 'lost', it is recommended that it be retained within the set of provisions relating to subdivision in the Country Living Zone.

18.6 Subdivision of Sites with Historic Heritage Items

18.6.1 Analysis

157. Ms McAlley prepared evidence on behalf of Heritage New Zealand Pouhere Taonga and addressed Rules 23.4.5 Site boundaries – Significant Natural Areas, heritage items, archaeological sites, sites of significance to Maaori. I recommended amendments to Rules 23.4.5 and 23.4.6, and the creation of a new Rule 23.4.6A to refocus each rule. Ms McAlley supports the division of the existing rule, but expressed concern that the new Rule 23.4.6A does not fully integrate heritage items. I acknowledge Ms McAlley's concerns however I wish to draw her attention to Rule 23.4.6 which relates solely to the subdivision of land containing heritage items. There is no need for heritage items to be included in the new Rule 23.4.6A as it is already addressed in existing Rule 23.4.6 which I have recommended be retained.

158. In her evidence Ms McAlley sought the retention of the cascade to a non-complying activity in Rule 23.4.6 Subdivision of land containing heritage items, where a heritage item is not wholly contained on one lot. I have not recommended any amendments to Rule 23.4.6 Subdivision of land containing heritage items, and thus the activity status cascades from restricted discretionary to non-complying if the heritage item is not wholly contained on one lot.

18.6.2 Recommendations

159. No further amendments are required in response to Ms McAlley's evidence.

18.7 Subdivision – Road Frontage

160. Ms Running provided evidence on behalf of the New Transport Agency and agreed with the recommendation on submission 742.144 which pertained to Rule 23.4.7 RD1 Subdivision – Road frontage. Her support is acknowledged.

18.8 Subdivision in Coal Mining Areas

161. Mr Lester prepared evidence of behalf of Blue Wallace Surveyors Ltd [662.29] on Rule 23.4.3 D1 (a) (vi) Subdivision within identified areas relating to Coal Mining Area. He does not oppose my recommendation to retain a Discretionary Activity status for subdivision in the Coal Mining Policy Area. He notes that the Coal Mining Policy Area is significantly reduced in scale and area to that of the current Operative District Plan planning maps; consequently, the potential restrictions imposed under 23.4.3 D1(a) (vi) will be reduced from a district-wide perspective. His support is acknowledged.

18.9 Building Platform for Subdivision

18.9.1 Analysis

162. Mr Lester prepared evidence of behalf of Blue Wallace Surveyors Ltd on Rule 23.4.8 RD1 and their request to reduce the size of the building platform to be identified on subdivision applications [662.30]. He considers that a 1,000m^2 building platform is excessive in consideration of subdivision design in the Country Living Zone, and is significantly above and beyond that of a reasonable building envelope platform. Mr Lester considers that any deviation from the indicative building location will be at the developer's discretion, and whether or not any future land use consent will need to be applied for in regard to development standard infringement (i.e., internal setbacks, height to boundary etc.). I appreciate that it is unlikely that many people will be building a 1000m^2 dwelling and on the face of it the requirement appears excessive, however the purpose is to ensure that the resulting lot can be built on and accommodate a range of buildings and is versatile enough to accommodate many different orientations, shapes and sizes. Buildings that are likely on a Country Living Zoned site may include a primary dwelling, minor unit, garaging, sheds and other accessory buildings.

163. Requiring a larger platform to be identified as being appropriate for building will ensure that the landowner (or developer) has choice about where the buildings are situated within that platform. It is also an effective mechanism for ensuring that a future resource consent for encroaching the building standards (such as setbacks, daylight angles etc) is not required.

18.9.2 Recommendations

164. I have not changed my recommendation in response to Mr Lester's evidence on this matter.

18.10 Subdivision Creating Reserves

165. Mr Leigh Shaw prepared evidence for The Surveying Company Ltd on Rule 23.4.9 RD1 Subdivision Creating Reserves as they submitted on this. I recommended deleting the rule in its entirety and this recommendation is supported by Mr Shaw. I acknowledge his support for my recommendation.

19 Conclusion

166. In conclusion, I consider that the submissions on the Country Living Zone provisions should be accepted, accepted in part or rejected, as set out in Appendix 1, for the reasons set out in this report

167. I recommend that provisions in Chapter 5 and 23 be amended as set out in Appendix 2 below.

168. I consider that the amended provisions will be efficient and effective in achieving the purpose of the RMA (especially for changes to the objectives), the relevant objectives of the Proposed Plan and other relevant statutory documents, for the reasons set out in the Section 32AA evaluations undertaken and included in this report.