SECTION 42A REPORT

Opening Statement

Hearing 12: Country Living Zone

Prepared by: Susan Chibnall

Date: 7 April 2020

1. Good morning Chair, Commissioners and submitters. My name is Susan Chibnall and I am the s42A reporting officer for the Country Living Zone. I am also the author of the rebuttal evidence in relation to the zone.

2. I do not intend to cover my recommendations in detail. My opening statement will provide a broad overview of:
    a. The zone as it was notified, namely where it applies in the District and the framework / intent of the zone
    b. The Objectives of the Country Living Zone and the associated policies and rules
    c. Overview of the submissions and main themes
    d. A name change for the Country Living Zone
    e. Relationship with Topic 5 Definitions
    f. Main changes recommended from the notified version
    g. Recommended amendments from consideration of submitter evidence
    h. Remaining areas of contention raised through evidence, rebuttal evidence and legal submissions

Objective, policies, rules and plan structure

3. I will begin by outlining the purpose, structure and content of the Country Living Zone and identify where this zone applies in the District.

4. The Country Living Zone is historical in nature and is in the Waikato Section of the Operative District Plan since 1995. The Country Living Zone provides for low density living at specific locations in rural areas. It is generally located near a town or village, but also applies to isolated rural areas. There are no new areas of Country Living Zone in the Proposed District Plan when compared with the Operative District Plan. The intent and purpose of the Country Living Zone is somewhat of a transition zone between the urban zones and the Rural Zone. The minimum lot size of 5000m^2 is intended to provide rural-residential living opportunities that are large enough to be self-serviced in terms of water supply, wastewater and stormwater.

5. The Country Living Zone has a number of overlays which apply to particular areas. These include:
    a. the Hamilton Urban Expansion Area which adjoins Hamilton City;
    b. the Airport Subdivision Control Boundary and Airport Noise Outer Control Boundary which applies to areas near the Waikato Regional Airport; and
    c. Horotiu Noise Acoustic Area.

6. Subdivision is controlled in the Urban Expansion Area and the Airport Subdivision Control Boundary, whereas the other overlays are more focused on managing land use activities.

7. Other site specific overlays apply within the Country Living Zone such as historic heritage and Maaori Sites and Areas of Significance but these are the subject of later hearings.

8. The objective and policies relating to Country Living Zone are located in the Rural Environment chapter (Chapter 5), reflective of the closer alignment with the rural environment and the more rural character of the zone. This also reflects the relationship of

the Country Living Zone with the often adjacent Rural Zone. In Chapter 5 Rural Environment there is a strategic objective at the start of the chapter that also applies to the Country Living Zone and supports the rural environment in terms of high class soils and the effects of subdivision. In addition, there are broad objectives and policies such as Section 5.2 that arguably apply to Country Living Zone as well as the Rural Zone. The rule framework is contained in Chapter 23 of the Proposed Waikato District Plan.

9. In terms of specific objectives and policies applying uniquely to the Country Living Zone, the Country Living Zone has one overarching objective (Objective 5.6.1) and a suite of policies to support it (Policies 5.6.2-18). The main focus of this objective is to ensure the character and amenity values are maintained or enhanced. The supporting policies include controls imposed on bulk and location of buildings, earthworks, and also support some non-residential activities to occur in the zone. The policies also seek to manage the effects of noise, signage and reverse sensitivity. The policies for subdivision ensure the character of the zone is not eroded through various means which are set out in the policy.

10. Chapter 23 is grouped into four parts as follows:
    a. Section 23.1 Land use activities which provides for a range of activities within the zone, such as residential activity, temporary events and home occupation.
    b. Section 23.2 Land use effects which includes rules that control noise, earthworks and signs. This section also includes rules on notable trees, hazardous substances and significant natural areas, which are addressed in other hearings.
    c. Section 23.3 Land use building which includes rules that generally control the bulk and location of buildings and density of dwellings such as maximum height, setbacks and daylight admission rules.
    d. Section 23.4 Subdivision which controls lot size, shape and form.

Overview of submissions

11. There are 342 primary submission points that relate to the Country Living Zone and 334 further submission received. Of these, 95 submissions were in relation to subdivision. The submissions cover a wide range of issues, including the following main issues:

    a. Recognition of reverse sensitivity, including on neighbouring rural productive areas and existing infrastructure.
    b. Emergency services facilities - objectives, policies and rules to support these activities and their associated structures.
    c. Crime Prevention Through Environmental Design (CPTED) - the use of CPTED in new development.
    d. Provisions to manage the impact of homestays (inclusive of Airbnb and Bookabach).
    e. Provisions to enable childcare facilities and management of home occupations.
    f. Land use - Effects, in particular Noise, Signs and Earthworks.
    g. Land use – Building setbacks, height and daylight admissions and site coverage.
    h. In regard to subdivision, a number of submissions sought amendments to enable smaller lots below 5000m^2.

i. Consideration of the prohibited subdivision rule (which applies to Hamilton's Urban Expansion Area), and controls on subdivision in the Airport Subdivision Control Boundary and Hamilton's Urban Expansion Area.

12. There were not a significant number of submissions seeking amendments to the overarching objective to the zone. Fire and Emergency New Zealand sought a new objective to support fire and emergency facilities.

13. Submissions on the policies sought recognition of a number of matters including non-residential activities such as childcare, water supplies for fire fighting, recognition of reverse sensitivity, earthworks and signs. Inclusion of CPTED in the policies was also sought by NZ Police. Included in this group was a desire to change the name of the zone to align with the National Planning Standards.

14. The majority of the submissions received were in relation to the Chapter 23 Rules. Submissions sought a range of amendments, inclusion or deletion of activities and changes to the effects and building rules. These submissions were highly specific and sought amendments such as reduced setbacks and more relaxed daylight admission angles.

15. There was much interest in the earthworks provisions, and the management of signs and noise also attracted a reasonable number of submissions.

16. The rules that attracted a relatively large amount of submissions in the building and effects rules were the building setback rule, minor dwellings rule, and the building coverage rule.

17. The submissions on the subdivision provisions sought a more relaxed policy position for undersized lots which was notified as "avoiding" undersized lots. This was complemented by submissions seeking a reduction in the minimum lot size which was notified as being 5000m^2. Submissions challenged the minimum lot size of 5000m^2 and sought a reduced lot size ranging from 1000m^2 to 4000m^2 and everything in between. Submissions also challenged the prohibited activity status for subdivision within Hamilton's Urban Expansion Area. A number of submissions also questioned the larger site size requirement for subdivision in the Airport Subdivision Control Boundary.

Summary of recommended amendments to the notified version

Objective and Policies

18. The first amendment is a name change for the zone. I have recommended that the [1]name "Country Living Zone" is changed to align with The National Planning Standards, and recommend the zone be called "Rural Lifestyle Zone". The concept of the Country Living Zone means different things to the people who reside in this Zone. I note that Mr Chrisp in his evidence suggests the zone is more akin to the National Planning Standards zone "Large Lot Residential', but I do not agree as the intention of the zone is to align more closely with the rural environment, and the combination of standards (including minimum lot size) support a more rural character and amenity, rather than urban.

[1] Paragraph 41-44 of the s42A Report-Country Living Zone

19. I have recommended including a new policy for reverse sensitivity to support the on-going use of neighbouring productive land areas, and primary production activities.[2] This policy also supports the setback rules for various transport modes including the rail corridor which are intended to minimise reverse sensitivity effects. There was a policy regarding reverse sensitivity already in Policy 5.6.3 Subdivision within the Country Living Zone but I have recommended this is a separate policy so it is applicable to land use as well as subdivision.

20. I have recommended a specific policy which provides support for the rules, I have recommended inserting to enable Fire and Emergency Service[3] activities and facilities / structures.

21. I have recommended amendments to the policies regarding subdivision to make the policy position on undersized lots clearer.

22. I have recommended minor amendments to various policies that improve the readability and clarity of the plan.

Chapter 23-Rules

23. The recommended amendments to Chapter 23 are as follows:

    a. Inclusion of provisions for emergency service facilities and associated training and management activities to acknowledge the importance of this service to communities. [4]

    b. Provision of education facilities to support the social infrastructure of communities.[5]

    c. Enabling farming as an activity that can occur in the zone, and sustainable use of land (especially areas with high quality soils). [6]

    d. Enabling small scale childcare facilities as these can have a functional need in supporting the community. [7]

    e. Provisions to allow for travellers accommodation on a small scale.

    f. Recognition has also been given to the importance of the Urban Expansion Area by incorporating new provisions that limit land use activities in this area. [8]

    g. Increase in the permitted maximum earthworks volume to recognise the size of the lots and to be a more practical approach. [9]

[2] Paragraph 47-51 of the s42A Report-Country Living Zone
[3] Paragraph 64-66 of the s42A Report-Country Living Zone
[4] Paragraph 150-151 of the s42A Report-Country Living Zone
[5] Paragraph 239-240 of the s42A Report-Country Living Zone
[6] Paragraph 161-164 of the s42A Report-Country Living Zone
[7] Paragraph 238 of the s42A Report-Country Living Zone
[8] Paragraph 267-271 of the s42A Report-Country Living Zone
[9] Paragraph 320 of the s42A Report-Country Living Zone

h. Inclusion of a size limit for signs to ensure the character of the zone is maintained and recognition of roads and traffic management and railway crossings in terms of setbacks for signs. [10]

i. The removal of the outdoor storage policy and rule as this is not considered to be a significant issue for this zone and the rules are not workable for property owners.[11]

j. An increased height allowance as a controlled activity for Fire and Emergency facilities. [12]

k. The addition of a rule to manage impervious surfaces, which has been transferred from Chapter 14 infrastructure and Energy. [13]

l. Inclusion of a rule to manage setbacks for sensitive land uses and minimise the potential for reverse sensitivity effects.

m. A more lenient approach to the setback to waterbodies if they are insignificant in nature or a managed wetland and consequential inclusion of a definition for "managed wetland". [14]

Subdivision

24. There was significant interest in the subdivision provisions. I have outlined below the main changes I have recommended in response to submissions:

a. Minor amendments to the subdivision rules that improve the readability of the rule. This includes the separation of rules into specific aspects such as Maaori Sites of Significance or subdivision of land containing historic heritage items.

b. A change in activity status from prohibited activity status for subdivision in the Urban Expansion Areas to discretionary to better represent the number of properties that this may affect and the significance of subdivision in this overlay.

c. Additional matters of discretion for general subdivision to better manage impacts of development on infrastructure, water supply and fire fighting, and reverse sensitivity.

d. Relocation of the rule for subdivision in the National Grid Corridor from Chapter 14 Infrastructure and Energy to give this greater presence in the plan.

e. Deletion of the subdivision rule creating reserves as this is not necessary in this zone.

f. The inclusion of consistent terminology for cycleways and bridle ways into the rule for subdivision of land containing mapped off-road walkways.

[10] Paragraph 359-361 of the s42A Report-Country Living Zone
[11] Paragraph 384 of the s42A Report-Country Living Zone
[12] Paragraph 411 of the s42A Report-Country Living Zone
[13] Paragraph 440 of the s42A Report-Country Living Zone
[14] Paragraph 489 of the s42A Report-Country Living Zone

Further recommended amendments arising from submitter evidence

25. Nineteen pieces of evidence were received (including rebuttal evidence), and a legal submission filed by Mr Peter Fuller, legal counsel for The Surveying Company and Buckland Group.

26. There are seven further amendments to my recommendations as a result of the submitter's evidence that was filed. Many of these are minor amendments that improve the readability of the plan:

    a. The use of "minimise" as opposed to "mitigate" in the recommended new policy for reverse sensitivity. I have detailed this in section 4.1 of my rebuttal report and consider that it more accurately reflects the Waikato Regional Policy Statement.

    b. Amendments to the matters of discretion for education facilities (refer to section 9.1 of my rebuttal report).

    c. Expert advice from Mr Darran Humpheson that recommended accepting the Waikato District Health Board's submission addressing the noise rule (refer to section 11.1 of my rebuttal report).

    d. A minor amendment to the building setback rule on matters of discretion managing the effect on traffic to refer to "transport network safety and efficiency" (refer to section 15.2 of my rebuttal report).

    e. Amendment to the building setback rules so they align better for managing sites adjoining the rail corridor (refer to section 16.2 of my rebuttal report).

    f. A proposed definition for a "managed wetland" when managing the setback rules for buildings (refer to section 17.1 of my rebuttal report).

    g. Amendments to the matters of discretion for general subdivision to focus on a water supply that is accessible for fire fighting, rather than a water supply that is protected for fire fighting (refer to section 5.2 of my rebuttal report).

27. There is one amendment that was a more significant departure from my initial Section 42A report. As a result of considering the evidence from Fire and Emergency New Zealand, I have recommended a new controlled activity for the height of emergency facilities excluding hose drying towers. Ms Duncan pointed out that the facilities need to have a height allowance that supports the operational and functional use of a fire station of 8-9m, and that hose drying towers are usually in the order of 15m. I have agreed with this and subsequently recommended a controlled activity that supports this, as well as amendments to the maximum height standards for these structures (refer to section 5.3 of my rebuttal report).

Remaining matters of contention raised in submitter evidence

28. While submitter's evidence has caused me to change my recommendation on some provisions, I thought it would be helpful for the Panel for me to outline the matters still in contention where I disagree with the evidence.

29. Land use Activities

a. Mr Hodgson filed evidence on behalf of Horticulture New Zealand and considered that the policy addressing reverse sensitivity should be to "minimise or avoid" to more appropriately give effect to the Waikato Regional Policy Statement. Mr Hodgson raises a valid point, 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 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. (A more full discussion of this issue in contained in section 4 of my rebuttal report.)

b. Ms Duncan on behalf of Fire and Emergency New Zealand sought to incorporate rules requiring water supply for fire fighting. I have not been persuaded by Ms Duncan to change my opinion on this matter. As discussed in my rebuttal report, I am still of the opinion that this is an unreasonable burden to place on a property owner. This is detailed in section 5.1 of my rebuttal report.

c. Ms McAlley on behalf of Heritage New Zealand Pouhere Taonga sought amendments to the earthworks policy to address the effects on heritage and cultural values. I remain of the opinion that the objectives and policies relating to heritage in Chapter 2 Tangata Whenua and Chapter 7 Heritage are sufficient to address the concerns of Heritage New Zealand Pouhere Taonga. This matter is discussed in my rebuttal report in section 6.1.

d. Ms Galt sought additional objectives and policies for the management of commercial and industrial activities in the Country Living Zone on behalf of Hamilton City Council. I remain of the opinion that the changes sought are unnecessary as the policies fundamentally do not support large scale commercial or industrial activities which are the concerns of Hamilton City Council. This is detailed in section 7.1 of my rebuttal report.

e. Ms Running on behalf of New Zealand Transport Agency sought a standard for the number of heavy vehicles that can be associated with a home occupation. I have pointed out in my rebuttal that as the standard is for 15 for the whole zone, it was not reasonable to limit home occupations to 4 heavy vehicles. This is further discussed in section 8.1 of my rebuttal report.

f. Ms Galt sought changes to the rules managing commercial and industrial activity on behalf of Hamilton City Council. As discussed above I see this as unnecessary as there are some commercial and industrial activities in this zone that provide a functional support to the community, albeit at a scale appropriate for the purpose of the zone. This is discussed in section 10.1 of my rebuttal report.

g. Mr Lester on behalf of Blue Wallace Surveyors sought amendments to allow for earthworks for accessways as a permitted activity. I have concerns about allowing a permitted activity for an unknown amount of earthworks. Since my rebuttal I have received the below advice from Council's Development Engineer (Mr David Bastion):

> "*There are circumstances where an access to a building platform may be along an access leg for a rear lot and to not have a rule framework in place could result in significant earthworks (volumes, depth) or consequential effects on adjoining land owners.*

Mr Bastion also pointed out that the threshold for earthworks under the Waikato Regional Plan are significantly higher than in the Country Living Zone and should only be considered appropriate for large scale rural land on a regional scale. Country Living Zone allows lots down to 5000m^2 and unregulated earthworks could significantly affect the amenity of an area both during the activity and in relation to any change in land form.

Mr Lester also sought amendments to allow for earthworks near a boundary to be 0.5m rather than the proposed 1.5m. Mr Bastions advice was:

> *"I understand the argument being made here and I don't want a consent to be required unnecessarily. The only thing I would need to consider where earthworks are undertaken and a wall built less than 1.5m high which does not trigger any consent. A basic rule of thumb is applying a 45 degree incline from the base of the wall up to natural ground to assess what level of surcharge is applied on a slope or wall. This could mean a wall that is up to 1.5m high wouldn't trigger a building or land use consent but may influence the use of the land up to 1.0m inside the neighbouring property if the desired 0.5m setback is accepted. Without a proper assessment the true long terms effects to the neighbour couldn't be established. My recommendation is to retain the minimum earthworks setback as 1.5m to capture risk of earthworks or walls being built that could compromise the use of adjoining land."*

I am mindful of the advice of Mr Bastion and therefore this remains a matter of contention.

h. Heritage New Zealand sought amendments to the signage rules. I am not persuaded by the evidence provided and believe the signage rules are appropriate without detracting from the Heritage and cultural values. This is discussed in section 13.1 of my rebuttal.

Subdivision

a. Ms Duncan on behalf of Fire and Emergency New Zealand sought that the assessment criteria for general subdivision be explicit about requiring a water supply for firefighting purposes. 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, and instead have recommended that the focus be on accessibility of a water supply for firefighting purposes rather than a protected water supply for firefighting. I have discussed this in section 5.2 of my rebuttal report.

b. Mr Lester on behalf of Blue Wallace Surveyors Ltd sought a softening of the subdivision policy position from "avoid" to "discouraging". Given Council's experience with soft policy positions on smaller lots in the Operative Countryside Living Zone, I am not persuaded by Mr Lester's evidence. I consider the use of

"avoid" is important in order to provide clear direction, particularly when consent planners are assessing undersized and sub-optimal subdivision applications. This is further discussed in section 18.1, paragraph 114-115 of my rebuttal report.

c. Ms Palmer on behalf of Bowrock Properties disagrees with avoiding undersized lots and recommends an "avoid" policy position, with an additional clause allowing undersized lots if it can be demonstrated that the productive capacity is retained. Ms Palmer recommends providing flexibility in subdivision design/lot size if an applicant can demonstrate that productive capacity of the land can be retained. I believe this could create an unintended loophole for undersized lots where there may be no intention of utilising the land for productive use. This is further discussed in section 18.1 paragraphs 116-119 of my rebuttal report.

d. Mr Chrisp filed evidence seeking to reduce the lot size, and contending that the Country Living zone is more akin to a large lot residential zone. I am not persuaded by either argument. I believe that allowing for lot sizes as small as 3000m^2 would erode the character of the Country Living Zone and further exacerbate reverse sensitivity effects. This is further discussed in section 18.1 paragraphs 124-130 of my rebuttal report.

e. Mr Hartley prepared evidence for the Surveying Company and supported an average lot size regime. As discussed above I have concerns that an average lot size regime would create a situation where it was difficult to decline a subdivision with undersized lots. As discussed above there is also the risk that the character of the zone would be eroded and would become highly similar to the Village Zone, which has a deliberately different purpose and character. This is discussed in section 18.1 paragraphs 131-133 of my rebuttal report.

f. Ms Galt on behalf of Hamilton City Council sought retaining the notified prohibited rule for subdivision in Hamilton's Urban Expansion Area. I am not persuaded by Ms Galt's evidence. I do not believe a minimum lot size of 5000m^2 would compromise future urbanisation, particularly given the small number of lots that could realistically be generated. This is discussed in section 18.3 paragraphs 138-142 of my rebuttal report.

g. Mr Howath prepared evidence addressing the limitations on subdivision within the Airport Subdivision Control Boundary and considered this approach to be unreasonable given the current and future operation of the Waikato Regional Airport. As discussed in my rebuttal report, the Waikato Regional Airport is deemed "Regionally Significant Infrastructure" as defined in the Waikato Regional Policy Statement. IN addition, there are a number of directives in the Waikato Regional Policy Statement to "minimise or avoid reverse sensitivity". As such it is important to minimise reverse sensitivity effects that can arise from subdivision and limit the number of additional lots (and therefore residents) living in the area affected by elevated aircraft noise. This matter was also addressed by Ms Drew in her rebuttal evidence which supported my recommendations. However, Ms Drew's support was contingent upon additions to Policy 5.6.3 to refer to Regional Significant Infrastructure which I do not agree with. This is discussed in section 18.4 paragraphs 145-146 of my rebuttal report.

h. Mr Barrett on behalf of Mr Koppens and Mr Hodgson also disputes the limitation on subdivision in the Airport Subdivision Control Boundary. He suggested that no-complaints covenants be introduced via land encumbrances on subdivisions. I believe that limiting subdivision in this area is a more effective and efficient approach. As discussed above. This is discussed in section 18.4 paragraphs 147-148 of my rebuttal report.

i. Ms Whitney on behalf of Transpower NZ opposed my recommendation to relocate the subdivision rule applying to the National Grid Corridor into the zone chapter rather than remaining in Chapter 14 Infrastructure and Energy. Whether the rule is in Chapter 14 or located in the zone, either approach delivers the desire outcome. However I consider that in the meantime to ensure the rule is not overlooked it is transferred to each zone chapter. This is discussed in section 18.5 of my rebuttal report.

j. Ms McAlley on behalf of Heritage New Zealand Pouhere Taonga raised concerns that the new subdivision provisions do not fully integrate heritage items. There is no need for heritage items to be included in the new subdivision rule as it is already addressed in the existing rule. This is discussed in section 18.6 of my rebuttal report.

k. Mr Lester on behalf of Blue Wallace surveyors Ltd sought to reduce the size of the building platform to be identified on subdivision applications. I have not agreed with Mr Lester in this regard, and consider requiring a larger platform is appropriate to ensure the landowner can, as a permitted activity, have options as to locating buildings on the property. This is discussed in section 18.9 of my rebuttal report.

Conclusion

30. I would like to take the opportunity to thank the experts and submitters who have provided well thought out, thorough and reasoned evidence. I look forward to further evidence presented by submitters over the course of the hearing and welcome any questions that the Panel may have.