IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of hearings regarding submissions to the proposed Waikato District Plan relating to **Hearing 12: Chapter 23 Country Living Zone**.

STATEMENT OF PRIMARY EVIDENCE OF SHANE ALEXANDER HARTLEY ON BEHALF OF THE SURVEYING COMPANY (SUB 746 and FS1308)

Dated 16 March 2020

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1 INTRODUCTION

1.1 My name is Shane Alexander Hartley. I have been a Director of Terra Nova Planning since establishing the consultancy in 2001. I hold the qualifications of Bachelor of Arts in Political Studies and History, and Bachelor of Town Planning. I am a Member of the NZ Planning Institute.

1.2 I was actively involved in policy and resource consent processes while employed by the Rodney District Council, holding from 1981 the various positions of Planner, Senior Planner, Planning Manager, and Forward Planning Manager, and as a consultant since 1999, have been involved in plan policy processes, applications for development and subdivision proposals.

1.3 My professional experience has substantially been in the area of strategic and district plan land use. My extensive experience with statutory processes and documents includes the Auckland Regional Policy Statement, Auckland Regional Growth Strategy, Waikato Regional Plan, and Manawatu-Wanganui One Plan; the Auckland Unitary Plan, the Thames Coromandel District Plan, district structure planning, district plan resource management, including plan preparation and processing, and multiple urban and rural land use and subdivision resource consent applications and private plan changes.

2 SCOPE AND SUMMARY OF EVIDENCE

2.1 My evidence is in relation to submissions to the Proposed Waikato District Plan

lodged by The Surveying Company (TSC) seeking amendments and additions to the land use and subdivision rules in respect of:

(a) Increasing earthworks volumes from 250m^3 to 500m^3 as a permitted activity.

(b) Retaining rules allowing for minor dwellings as a permitted activity (with recommended additional wording for clarification).

(c) Adding a rule requiring buildings to be set back a minimum of 10 metres from the bank of a perennial or intermittent stream (named or unnamed).

(d) Amending the subdivision rule (23.4.2 RDI (a)(i) to allow lots in a proposed subdivision to have a minimum net site area of 3,000m^2 with an average of 5,000 m^2.

2.2 My evidence supports the relief sought by all of the above-mentioned submissions and further submissions by TSC. I note that the Council's s42A Report recommends that submission points (a) to (c) above be accepted, recommending the rejection of only point (d). My evidence therefore briefly addresses the first three points and is mainly focused on point (d).

3 CODE OF CONDUCT

3.1 I confirm that I have read the Environment Court's Code of Conduct for Expert Witnesses and I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.

4 SUBMISSIONS

(a) Earthworks volumes

4.1 I concur with the S42A report conclusion that 500m^3 is an appropriate permitted activity limit for earthworks under Rule 23.2.3.1. On a site of 5,000m^2 building platforms and associated access and landscaping comprising 500m^3 is essentially an average cut and fill earthworks depth of 1m over 500m^2. This is just 10% of a 5,000m^2 site, or 17% for a 3,000m^2 site (if the submission allowing averaging is accepted). This extent and volume of earthworks is relatively minor and

proportionate to these site sizes.

4.2 The associated standards in Rule 23.2.3.1 limiting such earthworks to a 12 month period, a maximum earthworks depth of 1.5 metres, separation from boundaries, and requirements for revegetation, sediment control, and protection of natural water flows are appropriate and typical of standards for such permitted activities. As a comparison, the AUP has permitted activities for such earthworks in the rural zones of up to 1000m^2 and 1,000m^3 respectively[1], so the proposed rules are also generally consistent with those.

(b) Minor dwellings

4.3 I support the provision for minor dwellings, and I note that the s42A Report has recommended these be retained as a permitted activity with location and size standards. I concur with these and the important rationale for minor dwellings, as stated by TSC and other submitters, and as is also noted by the S42A report. I consider that the permitted activity status is entirely appropriate for such an activity, with the potential effects being addressed by the activity standards, including the requirement to be 20 metres from a principal dwelling. The discretionary activity status for non-compliance with the standards provides for the consideration of situations where an alternative access or building location is proposed.

4.4 The only part of the rule that would be improved if there is scope with submissions is to clarify if the 70m^2 gross floor area includes decks and garages (or not). This is currently not in the definition for minor dwellings or gross floor area. In my experience this is sometimes an area of debate and it would be useful to provide clarity for consistent administration of the Plan. This could be achieved by the amendment of Rule 22.3.2 (a) with the addition of the words "*excluding decks and garaging*" so that the rule reads "*One minor dwelling not exceeding 70m^2 gross floor area <u>excluding decks and garages</u> within a lot*".

(c) Stream setbacks

4.5 I consider that the requirement to set back from permanent and intermittent streams is a highly desirable one in terms of the maintenance of water quality and the protection of natural values. I agree with the analysis undertaken in the S42A report, which also notes the consistency with the Waikato Regional Plan.

4.6 For reference and consideration of consistency with adjoining territorial local

[1] Table E12.4.1 Activity table – all zones and roads; (A2, A3 A4 and A8); Auckland Unitary Plan Operative in Part

authorities, I note the riparian yard rule requirement from the Auckland Unitary Plan (AUP) has a 20m set back[2]. However, I do not consider that the WDP needs to precisely mirror the AUP in this respect, and consistency with the Waikato Regional Plan is appropriate.

4.7 The proposed riparian setback is also consistent with and gives effect to the relevant objectives of the Fresh Water National Policy Statement[3], noting that the policies essentially state the Regional Council's responsibilities in this regard.

(d) Average lot area

4.8 In my opinion, it is desirable to provide for an average lot size area, with a lower minimum area as sought by The Surveying Company in both its primary and further submissions. Although the primary submission refers to 3,500m^2, TSC's Further Submission supports Submissions seeking a 3,000m^2 minimum. I prefer the 3,000 m^2 minimum because it provides a discernible difference from the average site required, and therefore enables a more effective design response to site characteristics and conditions.

4.9 In my experience, the smaller the required average site area for rural lifestyle or large lot development, the more important having a lower minimum site area provision is. This is because the design of subdivisions is largely dictated by the location of suitable building platforms, curtilage and access, and not the location of site boundaries. The rigid application of a fixed site size will sometimes result in less than optimum building platform locations, access, etc. due to a landowner's desire to maintain the maximum yield permitted by the rules. The flexibility introduced by having a minimum site area lower than the average will often avoid such outcomes.

4.10 In addition to these design and layout matters, an averaging approach can have the added benefit of providing some slightly larger sites with greater potential for some productive farming activities (although unlikely to be economic in terms of providing a full time income). This can provide a more mixed character and activity interest to such zones, as well as additional economic benefits generally to an area.

4.11 Reference to the assessment criteria for subdivision in the PDP supports my view to the extent that the primary focus is on the impact of the future dwellings and associated buildings. When average site sizes are significantly larger - for example two or four hectares - there is typically much more scope for the location of a building

[2] Table H19.10.3.1; Auckland Unitary Plan (Operative in Part)

[3] Part A. Water Quality, Objectives A1, A2, A3, A4, C1; National Policy Statement for Freshwater Management 2014 (updated 2017)

platform within a site to enable both environmental and future owners' requirements to be met, and consequently a uniform minimum site area is generally appropriate.

4.12 Even then, some flexibility in minimum site sizes versus average site sizes can be appropriate , as is evidenced by provision in the AUP Countryside Living Zone where the minimum and average site size is two hectares, but if a transferable development right is imported, the *average* falls to one hectare, and the *minimum* site size 8,000m^2.

4.13 An even better example from a plan I am familiar with is from the Lifestyle Zone in the Western Bay of Plenty District Plan which has the same 5,000m^2 *average* site size currently proposed in the PWDP, but also has a rule allowing a 3,000m^2 *minimum*[4] site area.

4.14 The Section 42A report does not support a change to the minimum lot size. While the Report acknowledges that the flexibility in lot sizes "*… would allow a subdivision pattern that was more responsive to the natural features of the site, such as contours common native bush etc*."[5] the concern is expressed that "… *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*".

4.15 I understand the concern but on balance I consider that the positives gained in providing for a more flexible subdivision pattern, whilst maintaining the overall intended site density for the zone, outweighs the potential for multiple applications to be approved with the average lot density at the 3,000 m^2 mark. Rule 23.4.2 makes any proposal that does not comply with the restricted discretionary rule a non-complying activity. While the matters of discretion for a restricted discretionary activity are essentially limited to adverse effects on amenity values in terms of "character" effects, the objective and policy test for a non-complying activity of the kind the S42A report envisages are considerably more challenging.

4.16 The objective for the zone is that "*Subdivision, use and development in the Country Living Zone maintains or enhances the character and amenity values of the zone*" (Objective 5.6.1).

4.17 There is also a higher-level rural environment character and amenity objective and policy which I have assessed as also applying to the Country Living Zone:

[4] Rule 17.4.2 Section 17 Western Bay of Plenty District Plan; https://www.westernbay.govt.nz/repository/libraries/id:25p4fe6mo17q9stw0v5w/hierarchy/property-rates-building/district-plan/district-plan/current-district-plan/district-plan-sections/Section17%20-%20Lifestyle%20-%20PDF.pdf

[5] Para 601; page 158 S42A Report Country Living Zone

5.3 Rural Character and Amenity

5.3.1 Objective - Rural character and amenity

(a) Rural character and amenity are maintained.

…

5.3.4 Policy - Density of dwellings and buildings within the rural environment

(a) Retain open spaces to ensure rural character is maintained.

…

4.18 In any case, the specific objective and policies for the Country Living Zone directly applicable to the concerns raised in the S42A Report are extensive, focused and directive:

5.6.1 Objective – Country Living Zone

(a) Subdivision, use and development in the Country Living Zone maintains or enhances the character and amenity values of the zone.

5.6.2 Policy – Country Living character

(a) Any building and activity within the Country Living Zone are designed, located, scaled and serviced in a manner that does not detract from the character of the area by:
    (i) Maintaining the open space character;
    (ii) Maintaining low density residential development;
    (iii) Recognising the absence of Council wastewater services and lower levels of other infrastructure.

(b) Maintain views and vistas of the rural hinterland beyond, including, where applicable, Waikato River, wetlands, lakes, and the coast.

(c) Maintain a road pattern that follows the natural contour of the landform.

(d) Ensures that the scale and design of any non-residential activities maintains the open rural character and addresses site specific issues such as on-site servicing, and transport related effects.

(e) Requires activities within the Country Living Zone to be self-sufficient in the provision of water supply, wastewater and stormwater disposal, unless a reticulated supply is available.

5.6.3 Policy – Subdivision within the Country Living Zone

(a) Subdivision, building and development within the Country Living Zone ensures that:
    (i) The creation of undersized lots is avoided where character and amenity are compromised;
    (ii) new lots are of a size and shape to enable sufficient building setbacks from any boundary;
    (iii) building platforms are sited to maintain the character of the Country Living Zone and are appropriately-positioned to enable future development;

4.19 In my opinion these well-constructed policies establish a clear direction for determining and rejecting unworthy subdivision proposals of the kind the S42A

Report has concerns over. A proper S104D assessment of proposals that aim to replicate 3,000m^2 sites as an average density would thoroughly test these policies on both a zone-wide and locality basis. In addition, a determination of the adverse effects of undermining the integrity of the plan provisions with any such proposals will be necessary.

4.20 While there may well be outliers that warrant approval from time to time, these would be assessed on their individual merits and can be expected to be both rare and justified.

4.21 I support the amended minimum site area of 3,000m^2, while maintaining an average of 5,000m^2, primarily due to the improved layout and design outcomes that are highly likely to occur with the ability to arrange site sizes.

4.22 I consider that it would also be appropriate to include 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.

Shane Hartley

March 2020
