SECTION 42A REPORT

Rebuttal Evidence

Hearing 18:

Rural Subdivision

Report prepared by: Katherine Overwater

Date: 24 September 2020

Waikato DISTRICT COUNCIL

Te Kaunihera aa Takiwaa o Waikato

TABLE OF CONTENTS

1 Introduction

1.1 Background

1. My full name is Katherine Elizabeth Overwater. I am employed by Waikato District Council as a Senior Policy Planner and am the writer of the original S42A report for Hearing 18 Rural Subdivision.

2. My qualifications and experience are set out in the introduction of the s42A report together with my statement to comply with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014.

3. The recommended text changes as a result of this rebuttal evidence are set out in Rebuttal Appendix 1. Recommended amendments that are the result of the original s42A report are shown in red, with recommended changes arising from this rebuttal evidence shown in blue.

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. These timeframes have been departed from for the Rural Zone hearing however, due to the significant number of submitters who sought an extension of time for lodging their evidence.

6. The purpose of this report is to consider the primary evidence and rebuttal evidence filed by submitters. I respond only to the points where I consider it is necessary to clarify an aspect of my s42A report, or where I am persuaded to change my recommendation. In all other cases, I respectfully disagree with the evidence, and affirm the recommendations and reasoning in my s42A report.

2.1 Evidence Received

7. Evidence was received from a number of submitters regarding the Rural Zone objectives and policies and landuse provsions. These statements are addressed in the separate rebuttal evidence by Mr Jonathon Clease. I have read Mr Clease's rebuttal evidence in preparing this statement. The focus of my rebuttal evidence is the evidence received on subdivision provisions only for the Rural Zone.

8. Evidence relating specifically to the subdivision provisions was filed by the following submitters within the timeframes outlined in the directions from the Hearings Panel[1]:

    a. Blue Wallace Surveyors Limited [662] [974] [*FS1287*]

    b. CDL Land New Zealand Limited [612] [*FS1172*].

9. Evidence relating to landuse only was filed by the following submitters within the timeframes outlined in the directions from the Hearings Panel:

    a. T & G Global Limited [676] [*FS1171*]

    b. New Zealand National Field days Society Incorporated [280]

    c. Livestock Improvement Corporation & Dairy NZ [637 and 639]

[1] Hearings Panel Directions 21 May 2019

d. Auckland/Waikato Fish and Game Council [433] [*FS1045*] [*FS1399*]
e. Combined Poultry Industry Representatives [821] [*FS1338*]
f. Dilworth Trust Board [577]
g. Genesis Energy Limited [924] [*FS1345*]
h. Fulton Hogan [575] [*FS1334*]
i. Hynds Pipe Systems Limited & Hynds Foundation [983] [*FS1341*] and [*FS1306*]
j. Ngaakau Tapatahi Trust [654]
k. Mainland Poultry [833] [*FS1265*]
l. Meridian Energy Limited [580]
m. New Zealand Transport Agency [742]
n. Lochiel Farmlands [349] [*FS1315*]
o. Kiwirail [986]
p. NZ Steel [827] [*FS1319*].
q. Hynds Pipe Systems Limited and Hynds Foundation [983] [*FS1341*] and [*FS1306*]

10. Evidence relating to both subdivision and landuse provisions was filed by the following submitters within the timeframes outlined in the directions from the Hearings Panel:

a. Andrew and Christine Gore [330] [*FS1062*]
b. Synlait Milk [581]
c. Fire and Emergency NZ [378] and [*FS1114*]
d. Transpower [576] [*FS1350*]
e. Waikato Regional Council [81]
f. Director-General of Conservation [585] [*FS1293*]
g. Hamilton City Council [535]
h. Middlemiss Farm Holdings Limited and Buckland Landowners Group [794] and [*FS1330*]
i. First Gas Limited [945] [*FS1211*].

2.2 Late Evidence Received

11. Late evidence was filed with panel approval from the following submitters:

Landuse evidence only

a. Bathurst and BT Mining [771] [*FS1198*]
b. Tamahere Eventide Home Trust [1004] [*FS1005*]
c. Zeala Limited trading as Aztech Limited [281] [*FS1275*] and [*FS1370*]
d. Pork NZ [197].

Subdivision evidence only

a. McCracken Surveys/Cheal Consultants Limited [943].

Both Landuse and Subdivision evidence

a. Horticulture New Zealand [419] [*FS1168*]

b. Heritage New Zealand Pouhere Taonga [559]

c. Federated Farmers of New Zealand [680] [*FS1342*]

d. Middlemiss Farm Holdings Limited and Buckland Landowners Group [794] and [*FS1330*]

e. The Surveying Company [746]

f. KCH Trust [437]

g. Kenneth Barry [610] [*FS1198*].

2.3 Rebuttal Evidence Received

12. Further rebuttal evidence was filed by the following submitters:

a. Genesis Energy Limited [924] – 15th September 2020

b. Horticulture New Zealand [419] on the 18th of September 2020 (filed late with Panel approval)

c. Steven and Teresa Hopkins [451].

3 Consideration of evidence received

3.1 Matters addressed by this report

13. This rebuttal evidence only reviews evidence received on subdivision in the Rural Zone Chapter. Mr Clease will address the objectives, policies and landuse provisions in his separate rebuttal evidence.

14. The main topics raised in evidence and rebuttal evidence from submitters in respect to subdivision included:

a. Issues in respect to terminology used in the prohibited rules PR2, PR3 and PR4 in respect to "allotment" and how this relates to boundary relocations.

b. Activity status for subdivision within the Urban Expansion Area (UEA) and more lenient boundary relocation provisions.

c. Amending the prohibited activity status in PR2, PR3 and PR4 to non-complying.

d. Amending the 40ha parent title size from 20ha.

e. Rules restricting high class soils in relation to boundary relocations, rural hamlet and conservation lot subdivision.

f. More enabling provisions using the Conservation lot subdivision pathway.

g. Amendments to the title boundaries rule (Rule 22.4.3), which also relates to subdivision of land containing heritage items (Rule 22.4.8).

h. Amendments to subdivision within identified areas (Rule 22.4.5).

i. Amendments to the esplanade reserves and esplanade strips (Rule 22.4.7) to provide a matter of discretion reflecting s230(3) of the RMA.

j. Support for the building platform provisions in Rule 22.4.9.

k. The introduction of provisions relating to transferable subdivision.

15. In order to address some of the above matters, I have sought technical advice from the following experts:

    a. Dr Reece Hill in respect to issues relating to high class soils. Dr Hill's technical memorandum is attached to my rebuttal evidence as **Appendix 2**;

    b. Mr John Turner, in respect to ecology and biodiversity matters. Mr Turner's technical memorandum is attached to be rebuttal evidence as **Appendix 3**;

    c. Mr Doug Fairgray, in respect to economic matters. Mr Fairgray's statement of evidence is provided as **Appendix 4**.

16. There are a number of points raised within the evidence and rebuttal evidence from submitters which support the recommendations contained within the original s42A report for Hearing 18: Rural Subdivision. While I acknowledge the comments made in that evidence, in the interests of succinctness, I do not comment on these within this report.

17. I have structured my response as follows:

    a. Section 4 - General Points
    b. Section 5 - Prohibited Subdivision – Rule 22.4.1.1
    c. Section 6 - General Subdivision – Rule 22.4.1.2
    d. Section 7 - Boundary Relocation – Rule 22.4.1.4
    e. Section 8 - Rural Hamlet Subdivision - Rule 22.4.1.5
    f. Section 9 - Conservation Lot Subdivision – Rule 22.4.1.6
    g. Section 10 - Title Boundaries – Rule 22.4.3
    h. Section 11 - Subdivision within identified areas – Rule 22.4.5
    i. Section 12 - Esplanade Reserves and Esplanade Strips – Rule 22.4.5
    j. Section 13 - Subdivision of land containing heritage items – Rule 22.4.8
    k. Section 14 - Building Platform – Rule 22.4.9
    l. Section 15 - Transferable Subdivision
    m. Section 16 – Conclusion

18. I note that further changes have been made in respect to the objective and policy framework which relates to the rural subdivision rules. Mr Clease has discussed all evidence in respect to the objective and policy framework in his rebuttal evidence and thus I do not address it here.

4 General Points

4.1 Analysis

Terminology

19. Evidence received from Philip Barrett on behalf of McCracken Surveys Ltd/Cheal Consultants Ltd [943] seeks to replace the term "lot" [allotment] with "Record of Title". Similarly The Surveying Company Limited [746] have raised similar concerns, particularly in respect to the use of the term "allotment" and "Record of Title". Ms Addy for the Survey Company has also raised the use of the term consented lots, which I will discuss later in this report in respect to boundary relocation provisions and rural hamlets.

20. Given the technical issues which Mr Barrett's evidence raises in respect to using both of these terms, I have sought legal advice on this matter from Mr Peter Duncan of Tompkins Wake. Mr Duncan has indicated that Council has correctly applied the use of the terminology in respect to the term "allotment" in most of the rules. He advises that Mr

Barrett's evidence does not account for sections 13 and 14 of the Land Transfer Act 2017, which provides for the Registrar to issue additional records of title for amalgamated or additional separate records of title[2]; or separate titles for undivided shares in land[3], meaning that additional records of title could be produced without Council's involvement, therefore qualifying landowners to additional subdivision opportunity. This is certainly not the intention of the proposed rules. As I discuss the affected rules throughout this rebuttal evidence, particularly in respect to boundary relocations and rural hamlets, I am mindful of this advice to ensure that the terminology is correctly applied. Mr Duncan has also reviewed Appendix 1 of my recommended changes and has advised that he is satisfied that I have corrected terms where appropriate, as raised in evidence.

New rule for sites containing a gas transmission pipeline

21. Evidence has been received from Mr Edwards for Firstgas Limited [945] [*FS1211*] in regard to their submission point [945.21], which proposed to introduce a new rule in relation to subdivision in the Rural Zone. This would make subdivision of a site containing a gas transmission pipeline a restricted discretionary activity. The specific reasoning in the submission was to address reverse sensitivity effects on the gas pipeline network.

22. I have covered this point in paragraph 95 of my S42A report. Despite the evidence, I am still of the same view that having a specific restricted discretionary activity rule for the gas transmission is not appropriate and not required.

23. In regard to Mr Edwards' comment in respect to my reasoning that the gas pipeline traverses many rural properties not in itself being a reason to reject the submission point, I agree that this is not an adequate reason for rejecting the submission point. I also perhaps did not elaborate on the point in respect to why I consider the proposed matter of discretion to be appropriate, which has been recommended in my report.

24. In this regard I have asked Council's GIS team to indicate how many Rural zoned, or partly Rural zoned properties would be intersected by the gas pipeline as shown on the Proposed District Plan maps. It would appear that 475 properties would be affected, which is at least 5% or more[4] of Rural-zoned properties in the district. This in my opinion is a significant number of properties which would be affected by the proposed First Gas rule for subdivision.

25. As I have indicated in my S42A report, a matter of discretion still requires Council to consider any impact on the gas pipeline infrastructure. Specifically, the matter of discretion proposed in Rule 22.4.1.4 is set out as follows:

> *(viii)* *The subdivision layout and design in regard to how this may impact on the operation, maintenance, upgrading and development of infrastructure assets, or give rise to reverse sensitivity effects on existing land transport networks.*

26. While Mr Edwards makes reference to the gas pipeline being regionally-significant infrastructure and directing the reader to Appendix 1 of his evidence, he does not elaborate on Objective 3.12 e) of the Waikato Regional Policy Statement, which is about recognising and protecting the value and long-term benefits of regionally-significant infrastructure, nor does he discuss how he considers the matter of discretion proposed above does not give effect to Policy 6.6.

27. My interpretation of Policies 4.4 and 6.6 of the Waikato Regional Policy Statement is that territorial authorities must ensure that particular regard is given to each the criteria. Implementation Measure 6.6.5, (not set out in Appendix 1) directs that local authorities

[2] Section 13 of the Land Transfer Act 2017.
[3] Section 14 of the Land Transfer Act 2017.
[4] As the calculation includes some properties which have more than one zone.

should ensure that appropriate measures are implemented to avoid adverse effects of development of the built environment on the safe, efficient and effective operation of regionally-significant infrastructure.

28. It is my view that the above matter of discretion sufficiently covers the WRPS directives of Objectives 3.2 and 3.12 and Policies 4.4 and 6.6. This approach will effectively ensure that any impacts on the gas pipeline network will be considered as part of a subdivision proposal and thereby provide protection.

29. In addition to the higher-order directives, which I consider are being met, I did have some concerns in respect to the rule sought by the submitter. However I did not highlight these in my s42A report, given that my recommendation was to adopt the matter of discretion to address First Gas' concerns.

30. I consider the issues with the rule are as follows:

    a. The rule does not provide a cascade from a restricted discretionary activity status;

    b. Clause (ii) of the matters of discretion would not be information a landowner/applicant would necessarily know unless there was sufficient information provided by the infrastructure owner to understand what maintenance and inspections were required of the asset owner and where the access points were.

    c. I do not consider the requirement for consent notices to be proposed on titles to be a matter of discretion. It appears to be more of a standard. Further, it is unclear whether a landowner would be able to comply with this standard on an ongoing basis or whether the standard (AS2885 Pipelines – Gas and Liquid Petroleum – Parts 1 to 3) is directed at the operator.

    d. The final matter is not a matter of discretion in my opinion. It is in part a requirement for any applicant to consult with a third party, but I question how Council should treat this matter where written approval cannot be obtained.

31. Given the above discussion, I am not persuaded that simply because the gas pipeline is considered a regionally-significant infrastructure, it warrants a specific subdivision rule. I consider the matters of discretion sought by the submitter to be unclear or inappropriate to impose on an applicant.

National Grid provisions

32. Evidence received from Transpower [576] [*FS1350*] does not support duplication of the subdivision rule in Chapters 22 and 14, but instead seeks to retain of the National Grid Subdivision Corridor provisions within Chapter 14. In my mind, having the provision included in the zone chapter would ensure that plan users were aware of the requirements in the rule. I also relied on consideration of this issue in previous zone hearings which recommended a similar approach. However, I do agree with Ms Eng's point that clear cross-referencing could be used to the Infrastructure Chapter as an alternative approach to addressing the risk that the rule be overlooked. I therefore do not have a preference either way if the Panel chooses to include the rules in one chapter or every zone chapter which the National Grid traverses. If they are retained only in Chapter 14, I would suggest a link in Chapter 22 would be helpful to ensure that plan users are aware of the location of the rules, which is simply done with the use of e-plan.

4.2 Recommendations

33. No further changes are recommended in respect to the evidence from First Gas or Transpower.

5 Prohibited Subdivision – Rule 22.4.1.1

5.1 Analysis

PR1 Urban Expansion Policy Area

34. Evidence on Rule 22.4.1.1 PR1 which relates to the Hamilton Urban Expansion Area has been received from Hamilton City Council [535 and *FS1379*], CDL Limited [612 and *FS1172*], Andrew and Christine Gore [330 and *FS1062*].

35. My recommendation in the s42A report was to amend the rule from a prohibited activity status to a non-complying activity status, and to extend the provision to include boundary relocation and rural hamlet subdivision activities as a non-complying activity status in Rules 22.4.1.4 NC1 and 22.4.1.5 NC2.

36. Hamilton City Council wish to retain the prohibited activity status of the notified version, while conversely CDL Limited and Andrew and Christine Gore are seeking a more lenient activity status than my recommendation. CDL Limited have suggested that a discretionary activity status is more appropriate than my recommended non-complying activity status.

Objective and Policy framework and Activity Status

37. Objective 5.5.1 and Policy 5.5.2 relate to the UEA. As notified, Objective 5.5.1 states:

> *'protect land within Hamilton's Urban Expansion Area for future urban development'.*

38. I note that no changes were recommended to this objective in previous hearings.

39. I note one oversight in my s42A report is in relation to the recommended change to Policy 5.5.2 for the Urban Expansion Area, which is discussed in paragraph 327 of Mr Clease's s42A report.

40. The key change which has been an oversight in my report is the recommended terminology change from "manage" to "avoid", as follows:

> *'~~manage~~ avoid subdivision, use and development within Hamilton's Urban Expansion Area to ensure future urban development is not compromised'.*

41. This change was recommended by Mr Matheson in Hearing 3 for Strategic direction as he considered this a more appropriate policy direction to implement the objective of "protecting" land for future development.

42. For Hamilton City Council, Ms Gault in paragraph 12 of her evidence relies on the King Salmon decision[5], which held that the word 'avoid' means 'not allow' or 'prevent the occurrence of'. Ms Gault is concerned that a non-complying activity status leaves the door open for urban activities to establish or the fragmentation of land to occur in the UEA. She remains concerned that an application could be approved on the basis that the proposed development does not compromise future development because infrastructure could simply be placed around it. She considers this does not enable comprehensive and integrated planning of the UEA.

43. While I agree with Ms Gault in respect to the meaning of "avoid" in the King Salmon decision and that comprehensive and integrated planning in the UEA is required, I am concerned that a Prohibited activity status will "sterilise" the UEA land until such time as Hamilton City Council undertakes a master plan for this area, which in my opinion is a step too far. I question why Hamilton City has not provided any high-level structure planning for this area in the 15 years since the Strategic Agreement was signed in 2005. Significant changes since that time have seen the construction of the Waikato Expressway, which is

[5] Environmental Defence Society Inc v New Zealand King Salmon Co Ltd [2014] NZSC 38

now close to completion, and the development of Hamilton City, which is now touching the jurisdictional boundaries of areas HT1 and R2. While the land has still remained within the Waikato District, it would seem reasonable over this timeframe to expect some high-level planning to have commenced for this area, given that it has already been agreed for transfer. Having high-level planning in place could provide some certainty to landowners and influence decisions for applications for both landuse and subdivision activities within this area.

44. In my opinion, a s104D non-complying activity test is entirely appropriate to ensure that proposals for subdivision are rigorously scrutinised by Waikato District Council. However, if Hamilton City are simply wanting to use a Prohibited activity status to blanket- protect this land, I do not consider this to be the correct approach.

45. Prohibited activities are the most restrictive class of activity provided for in the RMA. The courts have made it clear that a prohibited activity status should not be imposed lightly and without detailed consideration. In Coromandel Watchdog of Hauraki Incorporated v Ministry of Economic Development [2008] NZRMA 77, the Court of Appeal held that the appropriate test for the imposition of the prohibited activity status is whether, having undertaken the processes required by the RMA, a local authority could rationally conclude that prohibited activity status was the most appropriate status of the options available. In my view, the evidence from Hamilton City Council does not justify a total prohibition on subdivision, use and development within the UEA in order to ensure that future urbanisation is not compromised as per the policy direction. There are circumstances, as discussed below, where not all activities in the UEA will compromise future urban development.

46. While the King Salmon decision gave no regard to how or where the "avoid" policy would be used, I consider this situation which would unreasonably "sterilise" land for all activities is an example of where using a prohibited activity status is unreasonable. For example, it seems unreasonable to prohibit a landowner from simply adjusting their boundary with a neighbouring property to correct a fence line or potentially to undertake a boundary relocation using existing titles to subdivide an existing dwelling where the balance title will remain farmland. I will discuss this further in respect to CDL's evidence below.

47. In my s42A report I have shown that only two properties would be eligible for general subdivision, by virtue of meeting the 40ha and title date requirements. It is very difficult to provide evidence on potential boundary relocations and rural hamlets in this area, as potentially any landowners with multiple titles could desire to undertake this type of subdivision. However, given that the land is earmarked for future urbanisation, I suspect that many landowners would know that they have more to gain by waiting for the land to become urban than undertaking a boundary adjustment with a neighbour.

48. Mr Clease and I both agree that the objective and policy framework for the Urban Expansion Area (UEA) does not seek to "avoid everything in its entirety", but is instead directed at avoiding only those activities that would *compromise* future urban development within the UEA, such as subdivision proposals that propose additional allotments. Mr Clease and I also agree that a non-complying activity status simply provides a pathway by which subdivision that does not compromise urban development could be considered, whilst sending a strong signal that it will have to demonstrate unique qualities and is not generally contemplated by the Plan. In terms of the s104D gateway, even if a proposal were presented to Council where it was contrary to the policy, but the effects on urban growth were less than minor (unlikely, but possible), then consent can still be declined under s104(1). Just because an application passes the gateway test does not mean that it will be granted on its merits under s104. Further, if a proposed subdivision did not have any adverse effects on future urban development and was granted, I question what the issue would be, as it would be consistent with the objective and policy framework.

Draft Agreement to amend dates of the Strategic Agreement

49. It is my understanding from Senior Management at Waikato District Council that a draft agreement has been made between Hamilton City Council and Waikato District Council seeking flexibility around the timing of the transfer for areas HT1, R2 and WA. This would mean that landowners within the UEA would not have to wait until the existing dates set out in the 2005 Strategic Agreement (i.e. 2045) for change to occur, and that the transfer could happen much earlier if key conditions were met between the Councils.Based on this understanding, it is now very likely that the UEA land will be urban much sooner, meaning that Hamilton City Council will need to start (if they have not already) determining key infrastructure routes and adopting some high-level structure planning which would provide certainty as to how this area will be developed. On this basis, I would expect a landowner who may be wanting to undertake subdivision prior to the transfer of the land to Hamilton City to be able to ascertain whether their proposal will in fact compromise future urban development within the UEA.

Discretionary Activity Status

50. As set out in Mr Houlbrooke's evidence, CDL Limited are seeking relief in order to expand their existing landholding in the R2 growth cell, and would like scope as a Discretionary Activity to be able to undertake subdivision. He provided the example of landowners subdividing off an existing dwelling and living in it, while releasing the balance of their farmland to developers such as CDL, who may then lease the land to neighbouring farming operations until future development occurs. Mr Houlbrooke's evidence also puts forward an amendment to Rule 22.4.1.1 PR3 to exempt all subdivision within the Urban Expansion Area from Rule 22.4.1.1 PR3(b), as a new clause (b)(vi). This has the effect that any subdivision creating additional allotments within the UEA could then be located on high class soils where it has a title date after 6 December 1997.

51. I do not agree with either of these changes. Firstly, the proposed discretionary rule provides a significant additional subdivision to occur within the UEA if, as requested by CDL, the title date is amended to 18 July 2018, the qualifying title size is a minimum of 1.6ha, and the minimum child title size is 3,000m^2. While I understand that the additional allotment would need to contain a dwelling and no additional dwellings are to be created, an allotment of this density is similar to the proposed Village Zone. In my view, such a density is unlikely to provide sufficient area to be easily accommodated in future urban development plans, which makes well-functioning future urbanisation more difficult to achieve. Further, this rule would not only apply across area R2, but across all UEA areas.

52. Secondly, amending PR3 to exempt all subdivision within the UEA would result in additional allotments within the UEA no longer being prohibited where they land on high class soils if titles are issued after 6 December 1997. While the evidence supplied does not provide any supporting rationale as to why this is considered appropriate in conjunction with the proposed discretionary subdivision, based on the 222 titles affected by the UEA (not taking into account those with dwellings vs those without), both provisions could have significant consequences for future urbanisation in the UEA.

53. I have asked Council's GIS team to calculate and map the number of titles that would potentially be affected by CDL's proposed amendment to the rule, not taking into account titles with existing dwellings. Out of the 222 titles located in the UEA overlay, 104 titles are above the 1.6ha threshold and 118 are below. **Figure 1** below spatially illustrates the number of titles that could qualify under CDL's proposed amendment to the rule. Based on this evidence, I consider that this level of additional development could have significant implications on the Urban Expansion Area, therefore potentially compromising the area for future growth and development.

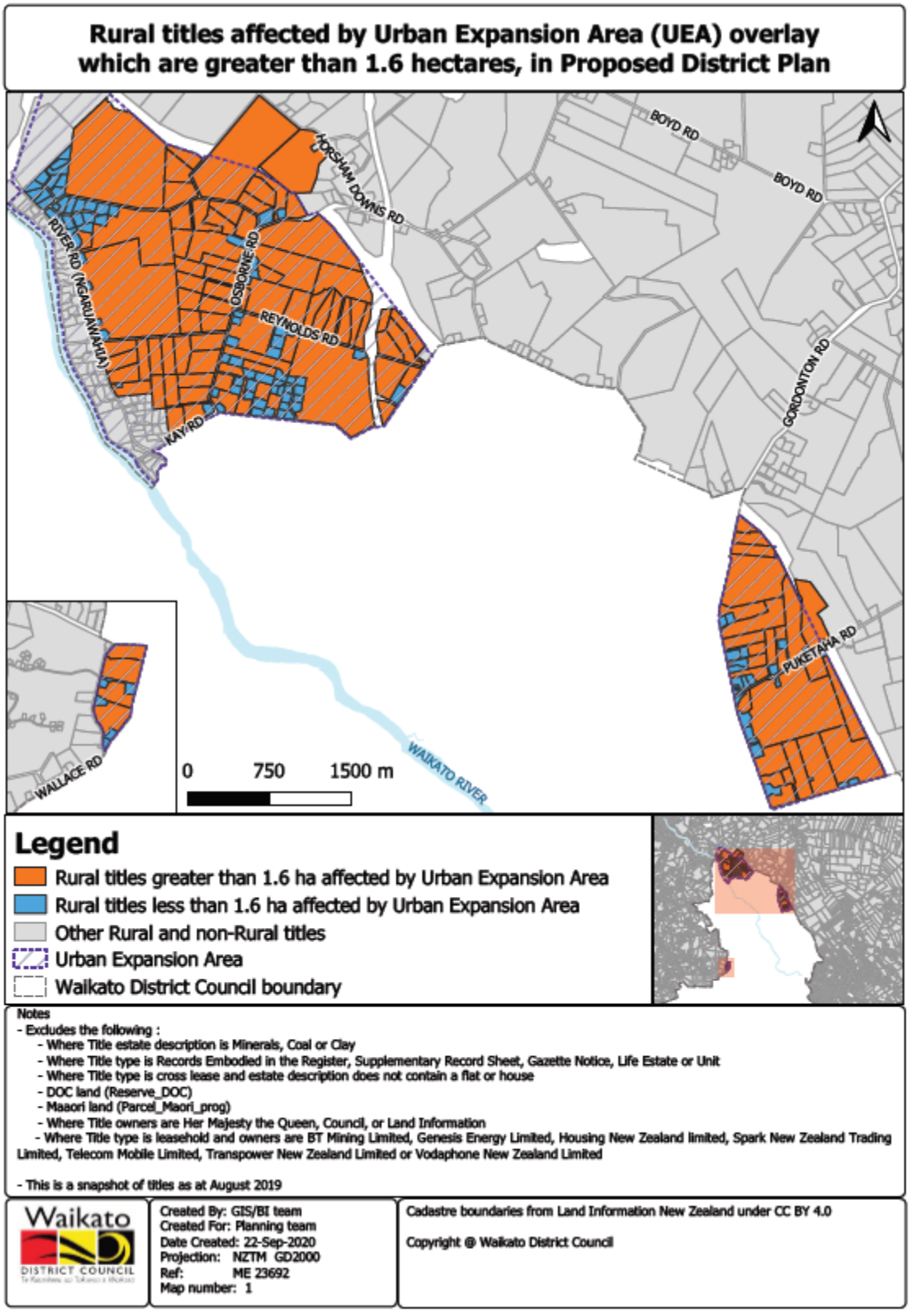

Figure 1. Map showing Rural Titles over 1.6ha affected by the UEA

Boundary relocations within the UEA

54. Mr Houlbrooke has also discussed several changes in respect to the boundary relocation rule, which will be discussed later in this report.I note his point in respect to the proposed change in my s42A report making boundary relocation subdivisions within the UEA a non-complying activity. CDL Limited consider that a boundary relocation can facilitate future urban development by enabling the aggregation of land into larger holdings in the same ownership, which can then be comprehensively master planned. While I agree with Mr Houlbrooke's reasoning, I do not support his request to delete the non-complying activity status for Rule 22.4.1.4 (to be discussed later in this rebuttal), for the reasons discussed above. My view is that if there is merit in an application for a boundary relocation and the proposal will not generate effects which will compromise future urban development, then it may be that consent can be granted.

55. While I understand the issues presented in the evidence from CDL, I consider that an approach that treats all areas of the UEA the same is required for consistency and fairness. As mentioned above, if the land is likely to be transferred to Hamilton City Council earlier, landowners will not have to wait as long as originally set out in the Strategic Agreement.

56. Similar to CDL, evidence received from Andrew and Christine Gore, , seeks a more lenient approach to the UEA to ensure that landowners can still undertake particular activities and that the land within the UEA is not simply left for 30 years.

57. Andrew and Christine Gore's evidence is specific to their property at Kay Road on the fringe of the HT1 area where they would like to undertake further development which would include areas of restored native vegetation of ecological value. The evidence from Andrew and Christine seeks the removal of the prohibited activity status from their land. However, they are seeking relief consistent with higher-density development and would like the ability to subdivide their 4ha block and include provision for an ecological area to be established and protected.

58. While I empathise with the concerns raised in their evidence, I consider a consistent approach is needed to be applied across the UEA. In terms of being unable to further develop their property, all landowners within the UEA will face similar challenges in respect to both landuse and subdivision while the land is in 'transition'.

PR2, PR3 and PR4 - Prohibited Rules

Terminology

59. Evidence received from Mr Barrett for McCracken Surveys/Cheal Consultants raises an issue with respect to the boundary relocation exemption included in PR2, PR3 and PR4. He makes the point that the term "allotment" is problematic and has unintended consequences. Mr Barrett relies on McCracken Survey's original submission point that the term "allotment" needs to be replaced with "Record of Title".

60. On this matter I have sought legal advice from property law specialist, Peter Duncan from Tompkins Wake. He has advised that "allotment" is in fact used incorrectly in this instance, where the aim of the boundary relocation subdivision is not to gain additional Records of Title over and above what existed prior to the subdivision application. Mr Duncan also agrees with Mr Barrett that amalgamation of titles is the most cost-effective method of undertaking boundary relocation proposals, as opposed to re-surveying all of the titles. Therefore I recommend that the term "allotment" be amended and replaced with the term "Records of Title" in PR2, PR3 and PR4.

Activity status

61. Evidence received from The Surveying Company [746] and Federated Farmers of New Zealand [680] [*FS1342*] discuss their submission points in relation to replacing the prohibited activity status with a non-complying activity.

62. While I agree with Ms Walker's discussion in paragraphs 27.3 to 27.5 in respect to viewing the entire suite of provisions included in the WRPS, my position is that the prohibited activity status is very much aligned with this suite of provisions and is an appropriate method of controlling "inappropriate" types of subdivision.

63. PR2 is specifically about title dates prior to 6 December 1997, and is specifically directed at preventing additional allotments from being located on high class soils. Ms Addy for the Surveying Company considers that the loss of high class soils needs to be considered on a case by case basis and should not be unnecessarily prohibited. In my opinion, the prohibited activity status is entirely appropriate because any subdivision that is applied for over and above what can be obtained in Rule 22.4.1.2 and located on high class soils should be "prevented" the way in which is anticipated in the King Salmon decision. In my mind this type of subdivision proposal constitutes "inappropriate" subdivision because of the irreversible impacts that could result on high class soils. I note that implementation method 14.2.1a) directs the restriction of rural-residential development on high class soils.

64. PR3 is about titles issued after 6 December 1997 and controls any lots being located on high class soils. I consider this also to be an appropriate method, as these titles will have been more recently subdivided and are therefore attempting to gain additional allotments through Rule 22.4.1.2. This is effectively "double dipping" or resulting in unanticipated development in the Rural Zone. Rule PR3, similar to PR2, prevents any allotments from being located on high class soils, and in my opinion is an appropriate restriction to prevent inappropriate subdivision occurring on high class soils.

65. While PR2 and PR3 appear to be restrictive, I must highlight the additional changes I have recommended to the exemptions in PR2(b)(v) and PR3(b)(v) which include boundary relocations and rural hamlets. This keeps the prohibition very tightly controlled around only additional lots generated through the general subdivision provision in Rule 22.4.1.2.

66. Ms Addy addresses Rule PR4 in paragraph 19 of her evidence, where she states that this provision is restrictive well beyond the intent of the legacy plan. I note she does not state which plan. Her discussion at paragraph 20makes reference to the Franklin District Plan provisions, which makes sense given the Waikato District Plan did not provide for transferable subdivision.

67. I understand that transferable provisions are not the same as general subdivision in the way that they do not generate an additional lot at the donor property. However the purpose of this rule is to prevent a donor property from being re-utilised for subdivision where it has already been used for the benefit of a transferable subdivision. I am not persuaded by Ms Addy's argument that the provision should have a less restrictive activity status as a non-complying activity. In my mind the rule is clearly preventing additional subdivision from occurring on titles which have been utilised for the benefit of transferable subdivision.

68. For the above reasons, I am not persuaded that the activity status needs to be amended from prohibited to a non-complying activity and maintain my position recommending rejecting these submission points.

Site-specific example

69. Evidence has been received from Kenneth Barry in respect to his property at 185 Checkley Road, Raglan. He has raised concerns as to how the Prohibited rules will prevent further subdivision opportunities for his property where high class soils exist. Mr Barry's evidence

outlines that subdivision has already occurred on the property in 2004, resulting in 7 titles in total, and includes the protection of native bush vegetation gifted to the QEII National Trust.

70. I agree with Mr Barry's findings in respect to his property not likely being located on high class soils. The problem with Land Use Capability (LUC) maps at the scale at which they are drawn, either regionally or nationally, is that they do not provide precise mapping at a site-specific level. If Mr Barry wanted more certainty in respect to whether his land does in fact contain high class soils, a site-specific assessment would provide more certainty than current national or region-scale maps.

71. Irrespective of the soils issue which Mr Barry raises, I consider that additional subdivision would be challenging anyway using the general subdivision provisions proposed because of the title date relating to his property being post 6 December 1997. Mr Barry has said in his evidence that he has already undertaken subdivision and therefore gained 7 additional titles. Mr Barry has also indicated that he would like to undertake further restoration to parts of his farm and subdivide the land into further rural-residential lifestyle lots. There may be merit in his using the Conservation Lot subdivision pathway. As long as he can show that proposed lots are not going to be located on high class soils, subdivision may be an option and would not be prevented by title date or the prohibited rule, which only apply to the general subdivision pathway.

5.2 Recommendations

72. Having considered the points raised in evidence and rebuttal evidence, I have amended Rules 22.4.1.1 PR2, PR3 and PR4 to reflect the amendments to the terms allotment and record of title as shown in Appendix 1.

6 General Subdivision – Rule 22.4.1.2

6.1 Analysis

40ha parent title size

73. Evidence from both Hamilton City Council [535] and Waikato Regional Council [81] support the amendments that I have recommended to Rule 22.4.1.2. setting the minimum lot size at 40ha.

74. As highlighted in the evidence of Mr Hodgson for Horticulture New Zealand [419] [*FS1168*], who propose to delete the general subdivision rule, Mr Hodgson has conveyed his opinion on previous experience with Plan Change 14 that rural subdivision needs to be limited in areas of rural production. He considers rural lifestyle living be directed to specific areas, rather than through sporadic and scattered subdivision.

75. While I agree with Mr Hodgson's supporting comments, I do consider that the recommended general subdivision rule is a significant step in the right direction. While it does still provide for the creation of rural lifestyle blocks, the 40ha parent title size limits the number of properties eligible for subdivision and affords greater protection of high class soils.

76. Mr Hodgson makes a valid point in his conclusion on these rules that "future plan changes and future generations have the opportunity to revisit the method at another time".

77. Evidence received from The Surveying Company Limited [746], Federated Farmers [680] and Blue Wallace Surveyors [*FS1287*] oppose the 40ha parent title size which I have recommended in my s42A report. In Mr Lester's opinion, I have not provided a balance assessment of the effects that such a significant increase will have on rural communities, and

considers that a more robust consultation process should be undertaken in considering such a large deviation from the notified provisions.

78. I disagree with these comments, as a 40ha lot size has been signalled by the Regional Council since Plan Change 2, which introduced the 20ha lot provision through appeals. Blue Wallace were a party to this Plan Change and will have known that this was a future direction at that time. It is my view that these submitters are not looking at the wider rural subdivision package which offers a number of subdivision pathways, possibly more than many other Councils provide. I consider that this process has been robust and the 40ha should be no surprise to submitters. I therefore do not consider that a separate plan change process needs to be undertaken.

79. In regard to succession planning, evidence received from Ms Walker for Federated Farmers of New Zealand [680] [*FS1342*] raises similar issues to Mr Lester in regard to farmer succession planning and ensuring the vibrancy of rural communities. I am sympathetic to these reasons and understand these concerns, having grown up in the very small rural community of Matakohe, near Dargaville in Northland, and have elderly grandparents who need to make decisions about "the family farm". However professionally, I have a very different viewpoint, as my view must consider effective and efficient management of the rural environment for at least the next 10 years in the life of this District Plan. The rule framework before the Panel now must be based on the potential impacts and consequences if the provisions do not remain restrictive.

80. In my view the WRPS is clear in its directive that district plans must restrict rural-residential development and protect high class soils. The rural subdivision provisions must also be viewed as a package, not just simply looking at this one avenue. Many farmers will qualify for conservation lot subdivision, boundary relocations or rural hamlets in addition to this general subdivision provision, which will certainly ensure that rural communities grow and thrive. However, I am not persuaded by the arguments in respect to succession planning. My understanding, from the Waipa District Plan's s32 analysis that found that most "retirement lots" had changed owners within 5 years of the subdivision being completed - and I do not consider this is not a sufficient RMA reason to enable subdivision.

81. I understand Mr Lester's expertise is in facilitating subdivision and development, however, his evidence fails to mention the distribution of the types of applications being undertaken by his firm. From my experience and in discussions with the Council's consents team, conservation lot subdivisions and boundary relocations are the key types of applications being received by the Council and continue to require the expertise of surveying firms.

Activity Status

82. Federated Farmers sought a controlled activity status in their original submission point for the general subdivision rule. They have accepted my recommendation to use a restricted discretionary activity. However, similar to The Surveying Company they would like the default activity status to be less onerous than a non-complying activity and are seeking a discretionary activity status as the default if the restricted discretionary activity criteria cannot be achieved. While I accept Ms Walker's point about a discretionary activity consent providing an opportunity for a full range of matters to be considered and potential public notification, I am still firmly of the view that the plan must send a strong signal where subdivision is inappropriate. If the criteria in the general subdivision rule (RD1) is not met, I consider the proposal needs a high degree of scrutiny.

83. Having spent the past few months examining the effects of subdivision where proposals do not meet the provisions of the recommended rule, I do not see how a discretionary activity status would deter applicants from testing the rule framework.

84. I consider that general subdivision needs to be the most tightly-controlled subdivision provision in the rural subdivision framework, given that it generates additional rural-lifestyle

lots. As Mr Hodgeson for Horticulture New Zealand point out in his evidence, having a provision such a the general subdivision rule in a District Plan is not always the most effective tool for subdivision, given the outcomes that can be generated by this provision. While I don't think it is necessary to remove this rule in its entirety, the plan should only provide limited opportunities. In my view, the increase in the parent title threshold to 40ha and the non-complying activity status where title dates are not met and proposed lot sizes are not met require Council's rigorous scrutiny in order to protect primary productive land, which is the higher-order directive in Policy 14.2 of the WRPS that these provisions are giving effect to. Additionally, the draft National Policy Statement for highly productive land (NPS-HPL) also signals tighter controls on high class soils.

85. As I highlighted in my s42A report, rural-residential lifestyle properties should not be enabled in an ad-hoc way across the rural zone. As presented in the evidence from all of the technical experts as part of the s42A report, this comes at a cost to Waikato District's rural sector industries - both financial and in terms of effects. It also impacts on the loss of high-class soils, which cannot be reversed once they are no longer available for productive uses; as well as loss of amenity and open space areas.

High Class Soils

86. Evidence from Mr Hodgson for Horticulture New Zealand has indicated that their preference is for rural-lifestyle lots to not be located on high class soils at all. However, they have indicated the difficulty in achieving this and providing sufficient area for safe and stable land to support a building platform and effluent disposal.

87. Mr Hodgson has also indicated support for the recommended matters of discretion which enable the consideration of the effect of high class soils within the site and surroundings.

Water supply for fire-fighting purposes

88. Evidence received from Ms Duncan for Fire and Emergency New Zealand continues to seek an amendment to Rule 22.4.1.2 to include a provision that proposed lots must be connected to a water supply sufficient for firefighting purposes, along with the matter of discretion which I have recommended in my s42A report. Ms Duncan has indicated support for the matter of discretion, however maintains that subdivision should be a non-complying activity status where this requirement cannot be met.

89. I disagree with adding the provision that proposed lots must be connected to a water supply sufficient for firefighting purposes to Rule 22.4.1.2 for several reasons.
Firstly, subdivision is the only the first step towards development where effectively the "lines get drawn on the map". In my opinion it is unreasonable to require a rural lot to be connected to a water supply at the time of subdivision, as generally, unless there is already a bore or trickle-feed supply already in place at the site to support productive uses such as crops or stock. It is often not until residential development occurs that the landowner will determine how they will accommodate a water supply (generally by way of water storage tanks). Further, the provision is not clear as to what constitutes 'sufficient for firefighting purposes'. Therefore, unless there is a minimum requirement set out in the New Zealand Fire Service Firefighting Water Supplies Code of Practice for what water storage must be supplied on a rural property, the provision remains ambiguous and would always trigger a non-complying activity consent.

90. Secondly, I am also of the view that a non-complying activity consent is a somewhat onerous requirement for an applicant, simply because the applicant does not provide sufficient water supply for fire fighting purposes. While I take Ms Duncan's point in respect to section 5 of the RMA relating to people's health and safety, I consider that a matter of discretion can also effectively meet this requirement.

91. In terms of the building consent process, I understand from colleagues in Council who assess building consent applications that water supply is something the Council officers will always review at the time a building consent application is made. The Council officers are aware of the requirements contained in the New Zealand Fire Service Firefighting Water Supplies Code of Practice. In rural situations, these requirements are often easily met.

92. I therefore maintain my view that a matter of discretion is an appropriate provision for ensuring that subdivision adequately provides water supply sufficient for firefighting, and that no further amendments are necessary.

Additional Matters of Discretion – Reverse Sensitivity

93. Mr Hodgson for Horticulture New Zealand supports the recommended changes to Rule 22.4.1.2 RD1 (b)(iv).

94. Evidence from Ms Rykers for Synlait Milk [581] discusses Synlait Milk's requested changes to Rule 22.4.1.2 RD1(b)(iv) to more effectively manage reverse sensitivity effects. Ms Rykers supports the recommendation made in my s42A report, but notes that addressing reverse sensitivity at the time of subdivision is only part of the issue. She indicates that new housing developments on existing rural lots, being a single house or multiple houses, require the same level of scrutiny for reverse sensitivity effects.

6.2 Recommendations

95. Having considered the points raised in evidence and rebuttal evidence, I have not changed my recommendations.

7 Boundary Relocation – Rule 22.4.1.4

7.1 Analysis

96. Evidence received from Philip Barrett on behalf of McCracken Surveys Ltd/Cheal Consultants Ltd [943] seeks to replace the term "lot" [allotment] with "Record of Title", specifically in relation to Rule 22.4.1.4(a)(iii), which states that the subdivision does not result in any additional allotments. Mr Barrett considers this rule effectively precludes the lawful use of RMA section 220 by preventing an allotment from being created and amalgamated where it is necessary that an allotment be created for other purposes.

97. Scenario Sketch 1 in the evidence shows one Record of Title comprising two allotments which are amalgamated, yet severed by a road. The sketch showing the result of a boundary adjustment shows a new "Lot 1B" being amalgamated with an adjoining property and the balance area being Lot 1A and Lot 2.

98. I understand that what Mr Barrett is pointing out is that Lot 1B is technically considered an "additional allotment", which did not exist prior to the subdivision proposal for boundary relocation.

99. I agree with his points in respect to the cost of surveying the entire allotment areas, and consider that in order to address this issue, a similar approach be taken to my proposed wording in the prohibited rules, which currently refers to "no additional allotments created overall as a result of the subdivision".

100. Evidence received from CDL Limited also seeks to amend "allotments" to "Records of Title" in respect to (iii) and seeks 3,000m^2 minimum area in the UEA.

101. As discussed previously in this evidence in respect to the prohibited rule, Mr Houlbrooke for CDL Limited has also discussed several changes in respect to the boundary relocation rule in relation to the Urban Expansion Area.

102. CDL Limited considers that a boundary relocation can facilitate future urban development by enabling the aggregation of land into larger holdings in the same ownership which can then be comprehensively master planned. I agree with Mr Houlbrooke that in some situations, a boundary relocation can result in beneficial outcomes, such as consolidating titles for future land development. However, I do not agree that the boundary relocation provision should provide for a minimum lot area of 3,000m^2 within the UEA. This density is akin to a Village Zone density, and I consider that it would be difficult for lots of this size to transition to an urban allotment size. Given that there are 222 titles within the UEA, if the Panel were to favour Mr Houlbrooke's recommendation, the impact would significant on the UEA and would likely compromise future urban development.

103. In respect to the non-complying activity status I have recommended, while I understand Mr Houlbrooke's reasoning for opposing my recommendation, I still consider a non-complying activity to be an appropriate activity status to signal that subdivision is largely not appropriate in the UEA in order to give effect to the objective and policy directions. I still maintain that if an application for a boundary relocation has merit and can demonstrate that the proposal will not generate adverse effects that would compromise future urban development within the UEA, then that consent could be granted. If the Panel were of a mind to make the non-complying activity status less stringent, I remain concerned that boundary relocations pose a significant risk by enabling subdivision which could have consequential impacts on the UEA if not carefully managed. The same applies in respect to rural hamlet subdivision.

104. CDL Limited's evidence also seeks to delete Rule 22.4.1.5 RD1 (a)(v) in respect to high class soils. Mr Houlbrooke makes the point that it can often be difficult to determine which allotment is the balance allotment and which one is not. He also indicates that Council can consider effects on rural productivity and fragmentation of high-quality soils as a matter of discretion. While I agree with both of these points, I have discussed this matter in detail with Dr Hill with respect to the consequential impacts of relying solely on the matter of discretion. Dr Hill's view was the that having a rule to control rural-residential lots from locating on high class soils was preferable and while relying solely on a matter of discretionis an option, his concerns were similar to mine, that without any provisions in place, boundary relocations will be a preferred pathway as a restricted discretionary activity for any landowners wanting to locate existing titles on high class soils, which would be contrary to the objective and policy framework in the Proposed District Plan and the higher order direction of Policy 14.2 of the WRPS .

105. In reliance on advice from Dr Hill included in his technical memo in Appendix 2, I have recommend amending the rule to incorporate a provision similar to the general subdivision rule, using a 15% threshold which would apply to any individual allotments created by the boundary relocation that are less than 4ha in area. This approach is derived from the draft National Policy Statement for Highly Productive Land. This would ensure that lots which are less productive and more typically rural-residential lifestyle lots are more scrutinised than larger lots, which can generally accommodate a wider range of primary production activities. Dr Hill discusses this point in further detail in his memorandum appended to this report.

106. Finally Ms Addy for The Surveying Company [746] raises concerns in respect to consented lots being able to utilise the boundary relocation rule and the reference to Rule 22.4.4.9 as being a permitted activity. My view is that the provisions are directed at existing titles, not consented lots which are created through other provisions. I have discussed this point also in respect to the rural hamlet rule. In regards to the reference to the subdivision rule for building platform being a permitted activity Ms Addy is correct and I have therefore recommended amendments to Rule 22.4.1.4 RD1(a)(i) as follows:

~~(i)~~ Relocate a common boundary or boundaries between two existing Records of Title. All Records of Title used in the boundary relocation subdivision must contain an area of at least 5,000m^2; is

not a road severance or stopped road; and is able to accommodate a suitable building platform ~~as a permitted activity under~~ in accordance with Rule 22.4.9 (subdivision rule for building platform), ~~that existed prior to 18 July 2018~~;

7.2 Recommendations

107. Having considered the points raised in evidence, I recommend the following change to Rule 22.4.1.4 (a)(iii) as follows:

(iii) Not result in any additional ~~lot~~ ~~allotments~~ Records of Title created overall as a result of the subdivision;

108. Further, I recommend the following change to Rule 22.4.1.4 (a)(v) to address the matters relating to high class soils:

(v) ~~The proposed allotments, excluding the balance allotment, must not be located on high class soils.~~ Where the land to be subdivided contains high class soil (as determined by a property scale site specific assessment Land Use Capability Classification prepared by a suitably qualified person), any individual new allotment created by the boundary relocation less than 4ha in area, must not individually contain more than 15% of the allotment area as high class soils.

109. Finally, I recommend the following change to Rule 22.4.1.4 RD1(a)(i) as follows:

(vi) Relocate a common boundary or boundaries between two existing Records of Title. All Records of Title used in the boundary relocation subdivision must contain an area of at least 5,000m^2; is not a road severance or stopped road; and is able to accommodate a suitable building platform ~~as a permitted activity under~~ in accordance with Rule 22.4.9 (subdivision rule for building platform), ~~that existed prior to 18 July 2018~~;

110. While I have not undertaken an extensive s32AA evaluation of these changes, the key change relates to the 4ha title size threshold to determine the when the 15% threshold should apply. Otherwise the rule is essentially having the same effect as similar rules proposed for the general subdivision, conservation lot subdivision and rural hamlet rules.

111. Dr Hill has provided detail on this matter in his technical memorandum in Appendix 2. The key justification for 4ha is that this title size is the tipping point for many properties being able to support a wide range of activities for primary production and also the NPS-HPL uses 4ha as a guide for rural-residential sized properties.

8 Rural Hamlet Subdivision – Rule 22.4.1.5

8.1 Analysis

Support for Rule 22.4.1.5

112. Evidence from both Hamilton City Council [535] and Waikato Regional Council [81] support the amendments that I have recommended to Rule 22.4.1.2 requiring the minimum lot size at 40ha.

Additional Matters of Discretion – Reverse Sensitivity

113. Evidence from Ms Rykers for Synlait Milk [581] discusses Synlait Milk's proposed changes to Rule 22.4.1.5 RD1(b)(iv) similar to the general subdivision rule, to more effectively manage reverse sensitivity effects. Ms Rykers supports the recommendation made in my s42A report for the rural hamlet rule, but notes that addressing reverse sensitivity at the time of subdivision is only part of the issue. She indicates that new housing developments on existing rural lots, being a single house or multiple houses, require the same level of scrutiny for reverse sensitivity effects. Given that Ms Rykers is referring to landuse provisions, I

defer to Mr Clease's rebuttal evidence to address these matters in respect to the landuse provisions.

Terminology "allotment" vs "Record of title"

114. Evidence received from Philip Barrett on behalf of McCracken Surveys Ltd/Cheal Consultants Ltd [943] seeks to replace the term "lot" [allotment] with "Record of Title", specifically in relation to Rule 22.4.1.1.

115. The evidence recommends deleting (a)(vi) and deleting "allotment" in (a)(v) in favour of Record of Title.

116. Given the technical issues which Mr Barrett's evidence raises, as discussed previously I have sought legal advice on this matter from Peter Duncan of Tompkins Wake. Mr Duncan has indicated that I have incorrectly used the term "allotment", and recommends replacing this with the term "Record of Title" in respect to clause (a)(vi).

Consented lots

117. Evidence received from Ms Addy for The Surveying Company [746] continues to seek the use of the term "consented lots" to be included in the rural hamlet rule in addition to Records of Title. Including the term "consented lots" enables lots which have been through a subdivision process and are yet to have titles issued, be used for the rural hamlet subdivision.

118. While I have no specific objection to "consented lots" being used, the purpose of the rural hamlet rule is to facilitate the relocation of existing titles into a rural hamlet, therefore leaving the balance of the property in one large 40ha title. My only concern with accepting Ms Addy's recommended amendments set out in paragraph 45 of her evidence is that consented lots already assessed as part of general subdivision and conservation lot subdivision provisions would then be used to qualify a rural hamlet subdivision. For example a landowner may undertake a general subdivision and before titles are obtained that subdivision, uses the consented lot as part of a rural hamlet subdivision. In my view, this is not the intention of the rural hamlet rule and may potentially lead to some perverse outcomes. I am therefore not persuaded to make the amendments as requested in the evidence unless it can be demonstrated that this is not problematic.

40ha balance lot for Rural Hamlet

119. Ms Addy for The Surveying Company [746] disagrees with the 40ha balance lot proposed in my s42A recommendations and requests that the 20ha size should be retained for rural hamlet subdivision. I disagree with this point and consider that consistency is required between the general subdivision provision and in order to ensure the higher order directives in the WRPS are met in respect to restricting the number of rural-residential properties which are created in the Rural Zone. In my opinion (and from the size distribution of titles shown in my S42A report), most farms will easily comply with the 40ha balance area requirement.

High class soils

120. Mr Hodgson for Horticulture New Zealand supports the recommendations included in my s42A report for Rule 22.4.1.5 RD1 (a)(vii) and the complementary matter of discretion included in Rule 22.4.1.5 RD1 (b)(vi). However he notes that this approach may provide constraints for site development and where development is around an existing dwelling and curtilage located on high class soils. He has therefore recommended that a 15% high-class soils threshold be established to be consistent with the approach taken for general subdivision rule (22.4.1.2)

121. Mr Barrett for McCracken Surveys Ltd/Cheal Consultants Ltd objects to proposed rule 22.4.1.5(a)(vii) in respect to proposed allotments being located on *any* high class soils. He raises the point that farmers will often relocate around existing and surplus dwellings that are already in situ and likely to be on high class soils.

122. He highlights paragraph 218 of my s42A report where I have discussed that it would be unreasonable and impractical to require that no high class soils be protected. Mr Barrett also highlights that my report emphasises having consistency between the rules.

123. I agree with the above comments from Mr Hodgson and Mr Barrett. However, I wish to highlight that the general subdivision rule is about managing the effects of additional lots being created, as opposed to existing titles. I consider that a 15% rule as proposed in my s42A report, is a much easier rule to apply to a subdivision involving only a parent and child lot of a specified size; whereas a rural hamlet involves the relocation of multiple titles.

124. Given both the number of lots that could eventuate on high class soils, and given the direction in Policy 14.2 of the WRPS which directs Council to avoid a decline in the availability of high class soils, I am concerned that there could be a far greater risk of impacts on high class soils through this subdivision pathway than the general subdivision rule. I agree with Mr Barrett that my evaluation omitted to convey this point in my s32AA evaluation of this proposed change.

125. In order to determine the change needed, I have worked through this issue in detail with Dr Hill to ensure that a more reasonable approach is applied, and to ensure that the recommended approach is practical.

126. Dr Hill has provided a memorandum which I have relied on for direction on this matter, which addresses the impacts if a similar approach to the general subdivision is applied in respect to calculating a 15% threshold for high class soils. Dr Hill undertook a comparison to ascertain the impact if the lots were calculated individually or combined, and determined that although the effect was the same, calculating 15% individually would lead to better outcomes. He also discusses the effect of placing the rural hamlet around an existing dwelling and curtilage area, and how this could also lead to perverse outcomes, given that there are areas where dwellings and curtilage have already been highly modified and therefore are not generally considered to be high class soils. This aspect is discussed further in Mr Hill's memorandum in Appendix 2.

Water supply for firefighting purposes

127. Similar to the discussion above in respect to the General Subdivision Rule 22.4.1.2, Ms Duncan for Fire and Emergency New Zealand seeks the relief sought in their original submission point to include a new provision in Rule 22.4.1.5 requiring proposed lots to be connected to water supply sufficient for firefighting purposes. The recommendation in my s42A report was to not to adopt Fire and Emergency's proposed provision, which would default to a non-complying activity where the standard regarding water supply for fire fighting purposes was not complied with. Instead, I recommended an additional matter of discretion to the rule (Rule 22.4.1.5 RD1(b)(ix), as shown in the track changes version). For the same reasons I have highlighted previously in this report, I do not consider the provision sought by the submitter to be appropriate and am not persuaded to amend my recommendation.

8.2 Recommended amendments

128. I therefore recommend the following further amendments to my initial recommendation to Rule 22.4.1.2 RD1 (a)(vi) and (vii):

(vi) It does not create any additional ~~lot~~ ~~allotments~~ Records of Title beyond the number of existing Records of Title.

(vii) ~~The proposed allotments, excluding the balance allotment, must not be located on high class soils.~~ Where the land to be subdivided contains high class soil (as determined by a property scale site specific assessment Land Use Capability Classification prepared by a suitably qualified person), the individual new allotments created by the rural hamlet subdivision, exclusive of the balance area, must not individually contain more than 15% of the allotment area as high class soils.

129. Given that the above changes are either minor in nature or consistent with similar rules in respect to controlling proposed lots on high class soils, I have not undertaken a S32AA evaluation.

9 Conservation Lot Subdivision – Rule 22.4.1.6

9.1 Analysis

Support for Conservation Lot Subdivision Rule

1. Evidence was received from The Director-General of Conservation [585] [*FS1293*]. Paragraph 7 discusses the Director-General's support of the original submission point from the Surveying Company, which seeks to extend Rule 22.4.1.6 RD1 to include areas to be restored/or enhanced. While the further submission point supported The Surveying Company submission, the evidence highlights concerns about the lack of precision sought by the submission point. The evidence considers that the proposed Discretionary activity rule (as recommended in my s42A report) provides for additional lots where a Significant Natural Area is subject to revegetation or enhancement planting and therefore addresses these concerns.

130. Evidence received from Horticulture New Zealand also appears to be largely supportive of the rule, with the exception of the rule in regard to high class soils. Mr Hodgson simply points out that there are some discrepancies in the wording of Rule 22.4.1.6 RD1(a)(ix) and his preference is the wording included in my s42A report.

131. While I agree with his point, this rule needs to reflect the changes for high class soils to ensure that it is clear how multiple lots proposed under Rule 22.4.1.6 need to be calculated. As discussed previously in this report in respect to rural hamlets, my recommendation is that a 15% threshold for high class soils within individual proposed lots should be provided for, rather than a combined total of 15%.

Terminology of SNA and Allotment vs Record of Title

132. Evidence received from The Surveying Company [746] at paragraph 50, indicates partial support for the amendments made to Rule 22.4.1.6 RD1 (a)(i) in respect to removing the requirement for the SNA area to be identified on the planning maps. However Ms Addy disagrees with the continued use of the terminology "Significant Natural Areas" and "SNA" and suggests that the terminology should change to 'areas of significant indigenous biodiversity' to align with Appendix 2 which contains the criteria for determining significance of indigenous biodiversity.

133. While I am not averse to Ms Addy's proposed changes and consider Ms Addy is correct in terms of the terminology used in Appendix 2, I am aware that Hearing 21A for Significant Natural Areas has yet to be heard. I do not have a preference either way in respect to the Conservation Lot rule provided there is consistency between terminology discussed in Hearing 21A for Significant Natural Areas and this rule which incentivises the protection of these areas. If the Panel are minded to adopt the revised terminology as sought by Ms Addy,

I would support this on the basis that it is consistent with the objective and policy and rule framework for SNAs which is yet to be heard.

134. In respect to the terminology "allotment" versus "record of title", this matter has been discussed in the general points section above. My advice from property law specialist, Mr Peter Duncan is that referring to the term "allotment" is correct in this instance.

Discretionary activity status for subdivision around existing dwellings

135. At paragraph 51 of Ms Addy's evidence for The Surveying Company [746], she discusses the proposed discretionary activity rule for conservation lot subdivision around an existing dwelling and curtilage area. While I understand Ms Addy's position, my comments provided in paragraphs 462 and 463 of my s42A report sets out clearly why I do not support the introduction of a discretionary activity rule. In order to meet the higher order directives in the WRPS in respect to all effects of subdivision, particularly where lot sizes are undersize or oversize, my view is that the non-complying activity status ensures careful and robust consideration of applications.

Enhancement/restoration planting

136. Evidence was received from Middlemiss Farms Limited and the Buckland Landowners owners group substantially relates to new provisions for transferable subdivision put forward in Mr Hartley's evidence. The aspects of Mr Hartley's evidence relating to transferable subdivision will be addressed in further detail in section 15. I will therefore only address the points related to the conservation lot rule and restoration planting in this section, and discuss the aspects of the evidence by Mr Hartley, Mr Keesing (ecological), Mr Thompson (economic), Mr Pryer (landscape) and Mr McGowan (Director of Middlemiss Farms Ltd) relating to the Conservation lot subdivision rule (Rule 22.4.1.6).

137. Mr Hartley's evidence and proposed rule package is largely focused on restoration and enhancement planting. He has recommended rules that propose separate criteria for both indigenous vegetation and wetlands in two separate tables (Tables 2 and 3). He also proposes a new revegetation conservation lot subdivision rule (22.4.1.6B). It also provides for both in-situ and transferable lots in respect to incentivisation for the protection of the features.

138. In order to interpret the tables provided in the evidence, I contacted Mr Hartley to provide clarification as to how the rule tables work. He confirmed that the rows in each column were cumulative. He also confirmed that the heading of each column is to ensure that there is no double counting of in-situ and transferable sites in any one row. It is one option or the other. He also explained that this does not prevent using an in-situ site in one row and transferable in another row – just not both in one row.

139. In terms of the size thresholds and number of lots that can be gained through in-situ subdivision for indigenous vegetation (Table 2), this is the same as I have recommended in the s42A report, where the potential lot yield is known, based on current SNA data.

Additional data to assess potential SNA

140. Since the S42A report was prepared, Council's GIS team have produced some additional information in respect to covenanted titles vs non-covenanted titles. I note that these numbers are only estimates based on Council's Property & Rating database[6]. They have also provided the number of SNA's which fall below my recommended starting point threshold of 0.5ha (5,000m^2) for inside the Hamilton Ecological Basin (Table 1 below) and 2ha for

[6] P&R database doesn't show the area of SNA covenanted, only the property boundary. Therefore I have assumed all SNA on the property is covenanted (i.e. All titles within the property that have SNA on them). Therefore this method may be overestimating the area of SNA covenanted.

outside of the Hamilton Basin area (Table 2 below). The highlighted data clearly shows that there are a significant number of identified SNA features, which are largely unprotected.

SNA size (ha)	**Number of titles** (covenanted and non-covenanted)	Estimated number of covenanted titles	Estimated number of non-covenanted titles
>0 and <0.5	233	8	225
>=0.5 and <1	77	1	76
>=1	206	9	197
TOTAL	516	18	498

Table 1. Potential SNA inside the Hamilton Basin Area

SNA size (ha)	**Number of titles** (covenanted and non-covenanted)	Estimated number of covenanted titles	Estimated number of non-covenanted titles
>0 and <1	958	132	826
>=1 and <2	343	76	267
>=2 and <5	389	66	323
>=5 and <10	241	23	218
>=10 and <20	177	17	160
>=20 and <30	65	3	62
>=30 and <40	32	1	31
>=40 and <50	26	0	26
>=50 and <60	14	1	13
>=60 and <70	7	2	5
>=70 and <80	4	0	4
>=80 and <90	4	0	4
>=90 and <100	3	0	3
>=100 and <110	2	0	2
>=110 and <120	2	0	2
>=120 and <130	3	0	3
>=130 and <140	1	0	1
>=140 and <150	2	0	2
>=150 and <160	2	0	2
>=160 and <170	0	0	0
>=170 and <180	1	0	1
>=180 and <190	1	0	1

>=190 and <200	1	1	0
>=200 and <210	2	0	2
>=210 and <220	0	0	0
>=220 and <230	0	0	0
>=230 and <240	0	0	0
>=240 and <250	0	0	0
>=250 and <260	0	0	0
>=260 and <270	1	0	1
>=270 and <280	0	0	0
>=280 and <290	0	0	0
>=290 and <300	0	0	0
>=300 and <310	0	0	0
>=310 and <320	1	0	1
TOTAL	2,282	322	1,960

Table 2. Potential SNA outside the Hamilton Basin Ecological Area

141. My concern in respect to changing the recommended thresholds is the implication on the potential lot yields that can be generated, which are already high, being estimated 283[7] within the Hamilton Ecological Basin and 1,737[8] outside the Hamilton Basin.

142. In respect to the draft provisions put forward by Mr Hartley, it is difficult to ascertain potential lot yields for his Table 3 option relating to wetlands. Council's database does not differentiate wetland features from indigenous vegetation and therefore I could not calculate the likely effect this provision would have on potential lot yields. However, given the 0.5ha (5,000m^2) starting point, I would anticipate a large increase, given the number of features which fall below these size thresholds.

143. In addition to the potential lot yields for in-situ subdivision, Mr Hartley has also indicated that the provisions could generate additional lot yield through a transferable approach. While I discuss the transferable aspect of this provision later in this report, I do wish to highlight the potential lot yields based on an unlimited provision for features over 10ha in size. Table 3 below indicates the number of potential lots which could be generated based only on using the transferable option.

SNA size (ha)	Number of transferable lots granted	**Number of titles** (covenanted and non-covenanted)	Estimated number of covenanted titles	Estimated % of covenanted titles	Estimated number of non-covenanted titles	Estimated % of covenanted titles	Conservation lots created
>=2 and <5	1	389	66		323		323
>=5 and <10	2	241	23		218		436
>=10 and <20	3		17		160		480

[7] Taking into account covenanted areas within the Hamilton Basin.
[8] Taking into account covenanted areas outside of the Hamilton Basin.

		177					
>=20 and <30	4	65	3		62		248
>=30 and <40	5	32	1		31		155
>=40 and <50	6	26	0		26		156
>=50 and <60	7	14	1		13		91
>=60 and <70	8	7	2		5		40
>=70 and <80	9	4	0		4		36
>=80 and <90	10	4	0		4		40
>=90 and <100	11	3	0		3		33
>=100 and <110	12	2	0		2		24
>=110 and <120	13	2	0		2		26
>=120 and <130	14	3	0		3		42
>=130 and <140	15	1	0		1		15
>=140 and <150	16	2	0		2		32
>=150 and <160	17	2	0		2		34
>=160 and <170	18	0	0		0		0
>=170 and <180	19	1	0		1		19
>=180 and <190	20	1	0		1		20
>=190 and <200	21	1	1		0		0
>=200 and <210	22	2	0		2		44
>=210 and <220	23	0	0		0		0
>=220 and <230	24	0	0		0		0
>=230 and <240	25	0	0		0		0
>=240 and <250	26	0	0		0		0
>=250 and <260	27	0	0		0		0
>=260 and <270	28	1	0		1		28
>=270 and <280	29	0	0		0		0
>=280 and <290	30	0	0		0		0
>=290 and <300	31	0	0		0		0
>=300 and <310	32	0	0		0		0
>=310 and <320	33	1	0		1		33
TOTAL		981	114	12%	867	88%	**2,355**

Table 3. Estimated number of transferable lots using Mr Hartley's Table 2

144. This data in my opinion demonstrates that a significant number of lots could potentially be generated by only one of Mr Hartley's rules, and when added to the in-situ lot yield, could generate over 4,000 lots. Even if a conservative approach were taken to these numbers, in terms of the overall package for rural subdivision, conservation lots would provide the bulk share of rural-residential lifestyle properties.

Ecological Evidence supporting Mr Hartley's provisions

145. Mr Keesing's evidence submitted as part of the Middlemiss Farms evidence package discusses the benefits of protecting smaller areas of indigenous vegetation and wetland has been reviewed by Mr Turner, Council's consultant ecologist. I have also asked Mr Turner to respond to two questions, which are addressed in Mr Turner's technical memorandum included as Appendix 4 to this rebuttal evidence.

146. The first question I asked Mr Turner was in relation to protecting features not identified as existing SNA. He response highlights that if the intent of incentivising subdivision is provide for greater protection and enhancement of biodiversity within the Waikato District in a meaningful way, then focusing on those areas that meet recognised and agreed minimum criteria seems to me to provide an appropriate focus."

147. As I have highlighted previously above, the minimum criteria is also in place to ensure that a reasonable balance is struck between protection of indigenous biodiversity and the effects on the rural environment that result from the generate lot yields. As Table 1 and 2 above show, there are slightly over 1,318 non-covenanted SNA's below the size threshold required by Rule 22.4.1.6, which does not include features which have not been assessed as potential SNA. In my mind making the provisions too lenient has consequential impacts, which need to be balanced with the protection of indigenous biodiversity.

148. In my opinion (and supported by Mr Turner) the pathway recommended in Rule 22.4.1.6 D1, provides a pathway for undersized features to gain a subdivision entitlement where it meets the Section 11A criteria of the WRPS as contained in Appendix 2 of the Proposed District Plan.

149. Similarly, in respect to wetlands, I have asked Mr Turner if he thinks there is merit in dropping the size threshold down to 0.5ha, as recommended in Mr Hartley's evidence. He has indicated that he does think that there is some merit in doing this as wetlands are a particularly diminished resource within the Waikato District. However he has also made a comment in respect to the issue of defining constitutes a significant wetland. I agree with his comments and that subdivision should only be granted for wetlands that are dominated by native plant species and/or provide regular or permanent habitat for native wetland flora. Significant wetland features that are under-sized can certainly be considered through the discretionary activity pathway also in respect to restoration and enhancement.

150. While having separate provisions for wetlands (Table 3) and indigenous revegetation planting (Rule 22.4.1.6B) as set out in Mr Hartley and Mr Keesing's evidence would enable smaller areas of wetland to be protected, I struggle to see how my recommended Discretionary activity provision does not already provide a pathway for restoration and enhancement planting, with the exception of the thresholds for generating additional lot yield.

Economic Evidence supporting Mr Hartley's provisions

151. Mr Thompson's evidence submitted as part of the Middlemiss Farms Limited package, addresses Mr Hartley's provisions from an economic perspective. I have asked Mr Fairgray to review this evidence, which is attached at Appendix 4 to this rebuttal evidence. While Mr Fairgray's response relates to the whole subdivision package and those proposed provisions for transferable subdivision provided in Mr Hartley's evidence, which are discussed further below in section 16.

152. I consider that the in order for the Panel to adopt the Conservation Lot subdivision rules as proposed by Mr Hartley, that a more comprehensive economic assessment would need to go into the proposed options before any confidence could be gained in respect to the economic consequences of the provisions. Similar to Mr Fairgray's conclusions, I would anticipate these to be supported by a more robust s32AA evaluation and show a comparison with the recommended conservation lot provisions which I have included in the S42A report.

Cabra Developments v Auckland Council Environment Court Decision

153. As I was preparing this evidence, the Cabra Decision[9] from the Environment Court was released on 16 September 2020. I have attached this as **Appendix 5** to my rebuttal

evidence, as it may assist the Panel and submitters who are not familiar with this case. This decision discusses the proposed Auckland Unitary Plan rural subdivision provisions in respect to both in-situ and transferable subdivision provisions as a result of protecting Significant Environmental Areas (SEAs). Similar to Mr Hartley's approach, the rules separate out provisions for SEAs, wetlands and revegetation planting, which all apply different thresholds for qualification. Generally these provisions have a much higher starting point, with the exception of wetland areas and generates a significant number of lots where they are being transferred off the subject property.

154. My view on these provisions discussed in the Environment Court decision are that firstly relate to the Auckland area which covers an extensive and diverse area of land from Rodney in the north to Franklin in the south, with much higher densities of development than the Waikato District. Secondly their provisions are responding to a different Regional Policy framework to the Waikato District; and thirdly, if the Waikato District were to take a similar approach, the consequences on the rural environment could be potentially detrimental. I have not had time to compare what their provisions would generate in terms of potential lot yield, but imagine the figures to be significantly more than what I have demonstrated through my S42A report and rebuttal evidence.

Already covenanted features

155. Evidence from Ms Walker for Federated Farmers states that they still want landowners who have already covenanted their features without benefiting in terms of subdivision to benefit from the Conservation Lot subdivision provisions. While I understand Ms Walker's point, I disagree that subdivision should be available where a feature is already protected. My view in this regard is that where a feature is already legally protected, this is not incentivised subdivision and there is no "trade-off" in exchange for subdivision opportunities. I consider subdivision within the rural zone must be well balanced between providing opportunities for rural landowners and protecting rural land for primary production activities. As demonstrated in my s42A report, the number of titles that can potentially be generated both inside and outside of the Hamilton Basin is considerable. If the Panel were of a mind to enable existing covenanted areas to benefit from the conservation lot subdivision provisions, this would increase the figures I have presented. As Council has no data in respect to the number of covenanted areas where subdivision has not occurred as a result of the protection, it is difficult to provide an indication as to the consequences of allowing this to occur.

Implementation of restorative/enhancement planting

156. Ms Addy for The Surveying Company [746] has indicated that the requirements to implement the planting 12 months prior to an application to Council being made is extremely risky for a landowner in terms of the cost of the planting and time delays. My response to this point is that in my experiences I have seen several examples of planting work that a landowner undertaken that has either been in the ground for less than 6 months or areas which have died from drought conditions within the first year if not planted during the correct season. I have also sought advice on this point from Council's monitoring staff who monitor the covenanted areas. Their advice is to ensure that the area that is already well established, otherwise the risk is on Council (who are taking on the covenant in perpetuity) and enforcement action is then required to ensure the covenanted area is well managed into the future. For these reasons I disagree with Ms Addy's suggested changes to the rule.

High Class Soils rule

157. Ms Addy for The Surveying Company [746], supports the proposed rule RD1(a)(ix) however does raise concerns that there are two competing issues, both of national importance – the

protection of biodiversity versus protection of high class soils. Ms Addy indicates that where consent is triggered by clause (ix) she considers this to be overly stringent, particularly when protection of significant indigenous biodiversity is at stake and maintenance and enhancing natural ecosystems is a key objective under the proposed plan Policy 5.2.1(a)(ii)). I disagree with this statement, as a balance needs to be struck between the two competing issues. While the draft National Policy Statement for Highly Productive Land is not finalised, this will require the same level of scrutiny to be applied where subdivision is located on high class soils. From my experiences processing conservation lot subdivisions for Council, there will be some sites where high class soils are present and finding a new lot location may be a challenge, but for most properties containing features, there is generally always a location that is not on high class soils. My view is that the non-complying activity process, ensures those competing matters are considered against each other to determine whether subdivision is in fact appropriate for the site.

158. Further at paragraph 57 of the evidence from Ms Addy, she supports my recommendations to include a restoration and enhancement planting provision in Rule 22.4.1.6 D1. However she disagrees in respect to undertaking revegetation or enhancement planting on high class soils. She has therefore provided amendments which would prevent restoration planting on high class soils.

159. My response to this point is that the rule is about the placement of the proposed lot gained from the subdivision proposal as opposed to where the restoration or enhancement planting takes place. As Ms Addy had already highlighted, these are competing issues and are best determined through the discretionary activity pathway, which I have recommended for restoration and enhancement planting.

160. Further to Ms Addy's evidence, in discussion with Dr Hill on the matter of the high class soil rule, I have noted some changes that are required to the proposed Conservation Lot rules in RD1 (a)(ix) and D1(i)G in respect to ensuring that the rule is consistent with other rules in the provisions as previously addressed in the boundary relocation and rural hamlet rule sections of this report.

Non-Complying activity status

161. Ms Addy for The Surveying Company [746] does not consider the non-complying activity status to be appropriate. She has requested that a discretionary activity status is applied in respect to the when the criteria listed in Rule 22.4.1.6 RD1(a) is not met. This criteria relates to existing dwellings and associated curtilage along with established rural activities which need to meet the minimum or maximum lot sizes and ensure lots are not located on more than 15% high class soils.

162. I disagree with these exemptions, as I consider all of these aspects need to be considered with careful consideration. In my opinion, the activity status of non-complying is reflective of the level of scrutiny which should be applied to these situations. In terms of Ms Addy's point in respect to current issues, all of these exceptions she has provided are the types of activities that can lead to inappropriate rural-residential subdivision. I consider this must remain tightly controlled in order to give effect to the higher order directives, such as National Policy Statements, the WRPS and the objectives and policies of the proposed district plan.

9.2 Recommendations

163. Having considered the points raised in evidence and rebuttal evidence, I am not persuaded by the evidence from Middlemiss Farms Limited or the Buckland Landowners group. Therefore, the only changes I am recommending to Rule 22.4.1.6 are in relation to the high class soils rules in RD1 (a)(ix) and D1(i)G .

9.3 Recommended amendments

164. I am therefore recommending the wording of Rule 22.4.1.6 RD1 (a)(ix) be amended, as follows:

(ix) Where the land to be subdivided contains high class soil (as determined by a property scale site specific Land Use Capability ~~Assessment~~ Classification prepared by a suitably qualified person), the proposed ~~additional~~ new individual allotments created by the conservation lot subdivision, exclusive of the balance area, must not contain more than 15% ~~of high class soil~~ of the allotment area as high class soils.

165. Further, I recommend the wording of Rule 22.4.1.6 D1(i)G be amended as follows:

G. Where the land to be subdivided contains high class soil (as determined by a property scale site specific Land Use Capability ~~Assessment~~ Classification prepared by a suitably qualified person), the ~~additional~~ new individual allotments created by the conservation lot subdivision, exclusive of the balance area, must not contain more than 15% of ~~the total land~~ allotment area as high class soils ~~within the allotment~~.

10 Title Boundaries – Rule 22.4.3

10.1 Analysis

Rule 22.4.3(a)

166. Evidence received from KCH Trust [437] sought to delete Rule 22.4.3(a)(i) in relation to Significant Natural Areas remaining within one title. Their evidence supported my recommendation to amend the rule, which would mean that SNA no longer needed to be retained all within one title in order to retain restricted discretionary activity status.

167. Evidence received from Ms McAlley on behalf of Heritage New Zealand Limited [559] seeks further amendments to Rule 22.4.3 in addition to the recommended amendments that I made in my s42A report. Ms McAlley has suggested including the words "in their entirety" to the end of RD1(a). Ms McAlley's reasoning for this is that the wording provides a clearer trigger point for when these items, areas, sites or trees are not contained in their entirety within one allotment.

168. I agree with Ms McAlley's further recommendation that including this wording does provide a better trigger point for determining when the rule triggers a discretionary activity status. I consider this approach is consistent with other zone chapters, including for SNA areas. This would have the same effect as the rule initially intended, which was to not divide these areas, items, sites or trees.

Activity status of the rule

169. Ms McAlley, through Heritage New Zealand Limited's further submission point, continues to support the retention of the non-complying activity status, as the rule originally provided for in the notified version.

170. On this point, I note a drafting discrepancy between my s42A report and Appendix 2, where my recommended change has not been made to the tracked change document.

171. My view is that a discretionary activity status is an appropriate activity status for a proposal where a feature cannot meet the requirement of the rule. There are often a number of reasons why an applicant cannot contain a feature entirely within an allotment. For example, a large Maaori site of significance may be partially located over a proposed allotment boundary, but subdivision would not result in any adverse effects resulting from where it is located.

172. In my opinion, a discretionary activity status would still ensure a rigorous assessment of these reasons and take into account any site-specific details. A discretionary activity status would also still enable Council to either grant or decline the application. While I agree with Ms McAlley's intent, and that it is important to ensure that proposed boundaries fully contain features, in my view a non-complying activity using s104D for proposals that do not meet this requirement seems onerous, particularly where a subdivision may comply as a Restricted Discretionary activity in all other respects.

10.2 Recommendations

173. Having considered the points raised in evidence and rebuttal evidence, I have changed my recommendations to reflect Heritage New Zealand's evidence, as follows:

22.4.3 Title boundaries – Significant Natural Areas, heritage items, Maaori sites of significance, ~~and~~ Maaori areas of significance and notable trees

RD1	(a) The boundaries of every proposed ~~lot~~ allotment ~~must not divide~~ containing any of the following in their entirety: (i) Significant Natural Areas; (ii) Heritage items as identified in Schedule 30.1 (Historic Heritage Items); (iii) Maaori sites of significance as identified in Schedule 30.3 (Maaori sites of significance); (iv) Maaori areas of significance as identified in Schedule 30.4 (Maaori areas of significance); (v) Notable trees. (b) Council's discretion shall be limited to the following matters: (i) Effects on Significant Natural Areas (SNAs); (ii) Effects on heritage items, including the context and setting of the heritage items and the extent to which the relationship of the heritage item with its setting is maintained; (iii) Effects on Maaori sites of significance; (iv) Effects on Maaori areas of significance; (v) Effects on Notable trees;
~~NC~~D1	Subdivision that does not comply with Rule 22.4.3 RD1.

174. Given the minor nature of these changes, it does not affect my recommendation contained in the S42A report in respect to Heritage New Zealand's submission point and given the changes are minor I do not consider a S32AA is justified.

11 Subdivision within identified areas - Rule 22.4.5

11.1 Analysis

175. Federated Farmers [680] raised a point in respect to Rule 22.4.5 D1. Their original submission point [680.244] sought deletion of extra subdivision rules applying to land with natural character and landscape overlays in Rule 22.4.5. This point was made on the basis that there were no identified layers on the notified planning maps for Outstanding Natural Character Areas or High Natural Character Areas, which would render the terms superfluous. This matter has been addressed in Hearing 21B for landscapes and it is recommended that schedules be introduced for Outstanding Natural Characters Areas and

High Natural Character Areas within the Waikato District. On this basis, Ms Walker has indicated that Federated Farmers would no longer advance this submission point.

Additional restricted discretionary activity rule

176. Evidence received from Hynds Pipe Systems Limited and Hynds Foundation [983] [*FS1341*] and [*FS1306*], sought a change to Rule 22.4.2, and considers that my recommended amendment would restrict the implementation of the Heavy Industrial Zone buffer through Rule 22.4.3. Ms Hargrave and Mr Chhima have therefore indicated that it is appropriate to implement the buffer through Rule 22.4.5 (Subdivision within identified areas) as a new restricted discretionary rule, which would restrict the subdivision of land within the Pokeno Heavy Industrial Zone buffer.

177. Rebuttal Evidence received from Sir William Birch and Mr Oakley for Steven and Teresa Hopkins [451] opposes the amendments sought by Hynds, and considers that it unnecessarily burdens affected landowners without providing any certainty that reverse sensitivity effects would be avoided. Sir William and Mr Oakley make a reasonable statement in their conclusion that Hynds own the bulk of the land between their industrial activities which forms a natural land buffer which they have control over to mitigate any adverse effects from their operations.

178. I am mindful of the discussion in Mr Clease's report in respect to the boundary setback. His view is that the first step will be determining the zoning of the adjacent land. He makes the point that if the land is rezoned for industrial purposes, as requested by Hynds, then the need for the Rural Zone buffer is rendered unnecessary and may generate an issue in respect to where the setback would be measured from if the industrial zoning is in fact extended.

179. I concur with Mr Clease's recommendation that no setbacks be introduced at this point in the District Plan process. Once Hearing 25 has considered the zoning which will apply to the adjacent land, the extent of the setbacks should be determined. On this basis I also recommend rejecting the proposed restricted discretionary rule for subdivision within the proposed buffer area.

11.2 Recommendations

180. Having considered the points raised in evidence and rebuttal evidence, I have not changed my recommendations.

12 Esplanade Reserves and Esplanade Strips – Rule 22.4.7

12.1 Analysis

181. Evidence received from Philip Barrett on behalf of McCracken Surveys Ltd/Cheal Consultants Ltd [943] provides detailed discussion of Rule 22.4.7 RD1 (b) to include RMA s230(3) as a matter of discretion to enable a reserve to not be required in certain instances.

182. He makes the point that that matters of discretion currently included within RD1(b) only give Council the discretion (through a matter of discretion) to waive the width of the esplanade reserve or strip and not the esplanade reserve or strip altogether. He uses the example of reserves which are disjointed, often with no public access and unsupported by any council reserve management plan.

183. While I agree with some of the points Mr Barrett has raised, I have concerns with respect to including reference to s230(3) as a matter of discretion, given that the legislation already provides Council an option to waive the reserve if required. If the Panel were minded to

include Mr Barrett's proposed change, there is the risk that developers could use this matter of discretion to not provide reserves when they may in fact be necessary in time. Although the Rural Zone will have areas where it is not likely the public will want to gain access, the reverse argument is that there are areas where reserves which may stand alone now, may be required over time to connect esplanade reserve or strips . This is where Rule 22.4.1.7 can be used to create a reserve where it is identified in a Council Parks Strategy.

184. On this matter, I have sought some additional legal advice on this matter from property law specialist, Peter Duncan of Tompkins Wake who has advised me that when Council is considering an application for subdivision and determines that for good reasons, such as those suggested by Mr Barrett in his evidence, Council can waive the requirement for an esplanade reserve. However in terms of whether a rule should be provided or not, I consider that any application which does not meet RD1, would then be assessed as a Discretionary activity under D1. This would also include any applications where the applicant does not wish to provide an esplanade reserve or strip. I also note that there is in fact an internal conflict in respect to matter of discretion criteria RD1(ii) relating to the width of the esplanade reserve or strip, which should also be considered as a discretionary activity where a proposal cannot meet the requirements of RD1. I have therefore recommended that this matter be deleted.

185. Given that S230(3) provides Council an opportunity to waive the requirement for an esplanade reserve or strip at the time of subdivision application, I am not persuaded that S230(3) needs to be a rule in the district plan. This would then require any applicant who does not wish to meet the requirements of the rule to apply as a discretionary activity under D1..

12.2 Recommendations

186. Having considered the points raised in evidence and rebuttal evidence I have recommended the following amendment to Rule 22.4.7 RD1 (b).

(b) Council's discretion is restricted to the following matters:

(i) the type of esplanade provided - reserve or strip;

~~(ii) width of the esplanade reserve or strip;~~

(iii) provision of legal access to the esplanade reserve or strip;

(iv) matters provided for in an instrument creating an esplanade strip or access strip;

(v) works required prior to vesting any reserve in the Council, including pest plant control, boundary fencing and the removal of structures and debris.

(vi) Costs and benefits of acquiring the land.

13 Subdivision of land containing heritage items - Rule 22.4.8

13.1 Analysis

187. Evidence from Ms McAlley for Heritage New Zealand Pouhere Taonga [559] seeks the retention of Rule 22.4.8, which I have recommended to delete in my s42A report. Ms McAlley considers that the rules were not exactly the same, with Rule 22.4.3 focusing on the retention of the heritage item in one lot and Rule 22.4.8 focusing on the nature of the subdivision giving regard to setting and context.

188. Ms McAlley has indicated that if the Panel prefers my recommendation, then the matters of discretion from Rule 22.4.8 should be included within Rule 22.4.3.

189. In response, I am not persuaded that there needs to be a separate rule for heritage items, when Rule 22.4.3 assesses the effect of subdivision boundaries and their effect on items, sites, areas or trees. My view is that Rule 22.4.3 provides an assessment of the proposed boundaries and the effect that this will have on the items, sites, areas or trees. I do agree that there is merit in including the matters of discretion in regard to the matters of discretion which take into account the context and setting of heritage items and the extent to which the relationship with its setting is maintained. Should the Panel consider that there is scope to include these matters of discretion in Rule 22.4.3, I recommend that matters (ii) and (iii) be taken from Rule 22.4.8 RD1(b) and included in Rule 22.4.3 RD1(b)(ii).

13.2 Recommendations

190. Should the Panel consider that there is sufficient scope to include the additional matters of discretion from Rule 22.4.8 in Rule 22.4.3, I have recommended the incorporation of these in the existing matter of discretion which relates to heritage effects in RD1(b)(ii), as shown above in section 10.2 of this rebuttal evidence.

191. However, I note that this change does not change my overall approach to deleting Rule 22.4.8.

192. In respect to a S32AA evaluation, the addition of the matters of discretion from Rule 22.4.8 does not introduce new matters and therefore I consider it appropriate to include these matters where heritage items will be assessed by Council.

193. Further Ms McAlley for Heritage New Zealand has indicated that it is important to retain these matters to have regard to higher order policy direction, including the objectives and policies in the proposed District Plan, as well as the WRPS. I support this approach and therefore consider the change is the most appropriate option to ensure these matters are not lost from the subdivision provisions.

14 Building Platform – Rule 22.4.9

14.1 Analysis

194. Evidence received from Horticulture New Zealand [419] and The Surveying Company Limited [746] supports my recommended rule 22.4.9 RD1 (a) and matter of discretion regarding reverse sensitivity effects in Rule 22.4.9 RD1 (b)(iii).

14.2 Recommendations

195. No recommended changes are proposed to Rule 22.4.9.

15 Transferable Subdivision

15.1 Introduction

196. Before analysing the evidence received in respect to the topic of transferable development right (TDR) subdivision, it is helpful to briefly state the policy direction in the Waikato Regional Policy Statement (WRPS) and the PWDP as it relates to growth in the rural environment.

197. In broad terms, the focus of these statutory documents is to provide for most of the district's growth within existing urban areas (towns and villages). While growth must still be enabled within the Rural Zone, its scale needs to be much more limited. This is to ensure

that high quality soils are protected, rural character and amenity are maintained, and that network infrastructure can be efficiently serviced and funded.

198. Non-RMA district growth strategies sit alongside these policy directives, and these include Waikato 2070 (adopted by Council on 19 May 2020) and the Franklin District Growth Strategy 2007 (the latter of which still remains live by virtue of Policy 6.12 in the WRPS). These growth strategies are a response to high growth demands, particularly in areas that are close to Auckland, Hamilton and nearby villages.

199. Throughout all these documents, it is made clear that subdivision, use and development within the district needs to occur in terms of agreed spatial patterns where there is a clear delineation between rural and urban areas, rather than unmanaged and sporadic development which would otherwise undermine the outcomes sought by policy directives.

15.2 Evidence received

200. Three sets of evidence have been lodged by the following parties in respect to the matter of TDR subdivision:

(a) Federated Farmers of New Zealand [680]
(b) The Surveying Company [746]
(c) Middlemiss Farm Holdings Limited [794]

201. I address this evidence in the order shown above.

15.3 Federated Farmers of New Zealand (FFNZ)

202. I have set out paragraphs 29.12, 29.14 and 29.15 of FFNZ's evidence below, noting that their evidence does not contain any paragraph numbered 29.13.

> 29.12 A further point made in the submission relates to other methods to encourage the protection of suitable natural features through incentives such as additional subdivision rights that can be transferred to another location, if the locality where the natural feature in question is situated, is too sensitive to allow conservation lots in that location. In such cases, FFNZ submit that it should be feasible to enable some form of Transferable Development Right

to create one or more qualifying conservation lots elsewhere in exchange for the protection of a natural feature, by way of introducing a new clause into 22.4.1.6 RD1 as follows:

> Rule 22.4.1.6 Conservation lot subdivision new clause (b)
>
> b) Where subdivision to create a conservation lot may be inappropriate due to the sensitive nature of the location, or unsuitability due to natural hazard risk or traffic safety hazard risk or inability to service the lot with on-site potable water and fire-fighting water supply or on-site domestic sewage treatment and disposal, landowners may apply to transfer an entitlement for a qualifying conservation lot to more appropriate location.

29.14 The S42A report does not respond directly to the submission point though it is recorded as being recommended for rejection at section 12.8, para 469.

29.15 FFNZ retains the position that the amendments sought for clause 22.4.1.6(a)(iii) and new clause (b) are appropriate and introduce a more equitable planning approach.

15.4 Analysis

203. It is only the second part of FFNZ's submission [680.240] that concerns TDR, where they have requested a new clause (b) be added to Rule 22.4.1.6 for conservation lots.

204. FFNZ's requested new clause (b) sets out circumstances where a landowner is able to transfer an 'entitlement' if an in-situ conservation lot may be inappropriate. It is assumed that FFNZ means for the matters of discretion in notified (b) in Rule 22.4.1.6 to remain the same, but identified by a new clause (c).

205. I do not support FFNZ's request. It is not possible to secure any 'entitlement' unless a subdivision approval in terms of section 104 of the RMA is obtained. The term 'entitlement' is problematic in the context of subdivision as it is not used in Rule 22.4.1.6, nor is it defined in the Proposed Waikato District Plan. Furthermore, if a proposed in-situ subdivision is not considered appropriate in that it does not satisfy the section 104 assessment in the RMA, then consent should not be granted and no lot entitlement should ensue. Subdivision consent is therefore the only way that 'lot entitlements' can be recognised.

206. As discussed in Section 22 of my section 42A, I accept that there are some benefits with TDR subdivisions. However, these are significantly outweighed by the costs which involve poor environmental outcomes that have already been experienced by Council within the existing Franklin Section. I consider these poor environmental outcomes include ad hoc rural development, gradual changes in rural character and amenity that are not anticipated by existing residents in the receiver locations, or Council, and the difficulties for Council in forecasting population growth, implementing district-wide and sub-regional growth strategies, and planning for infrastructure through Annual Plan and Long Term Plans. FFNZ's evidence does not address these matters or the opposition to TDR subdivisions from further submitters, including Auckland Council and Hamilton City Council, whose jurisdictions adjoin Waikato District.

207. Accordingly, no aspect of FFNZ's evidence persuades me to change my overall opinion that TDR subdivisions should not be supported. This is primarily because the dispersed and ad hoc nature of receiver lots throughout Waikato District's extensive Rural Zone does not accord with the logical spatial pattern of development directed by the statutory policy framework.

208. For these reasons, my section 42A recommendation to reject FFNZ's submission [680.240] remains unchanged.

15.5 The Surveying Company (TSC)

209. Mr Craig Forrester has provided evidence on behalf of TSC in support of TDR subdivisions. His evidence contains a number of examples of environmental lot/TDR subdivisions which have been designed by his surveying company which, he says, (at paragraph 7.1) are "on the ground' examples that have had a positive impact on the district.

210. I agree that those particular subdivision examples have resulted in environmental benefits. However, in my opinion, this does not illustrate the wider issue of dispersed and ad hoc rural development that has been experienced within the district (in the Franklin Section) over the last decade, as evidenced in the donor/receiver maps contained in Section 22 of my section 42A hearing report.

211. In Mr Forrester's opinion, the receiver properties "are almost always closer to towns and settlements with essential services" compared to the donor properties. I agree that this is the more likely trend because of the response to market demand, which consequentially supports my view that the distinction between urban and rural zones has become increasingly blurred. This is because it becomes less clear where the urban limits of towns and villages are when receiver lots locate in close proximity to urban zones. The lack of a clear delineation between urban and rural areas does not accord with the spatial pattern that is directed by the statutory policy framework.

212. I consider that the nature of this growth trend, as stated by Mr Forrester, is inconsistent with the following PWDP objectives and policies:

> *Objective 5.1.1 The Rural Environment*
> *(a) Subdivision, use and development within the rural environment where:*
> *(i) high class soils are protected for productive rural activities*
> *(ii) productive rural activities are supported,* ***while maintaining or enhancing the rural environment*** **[my emphasis in bold]**
> *(iii) urban subdivision, use and development in the rural environment is avoided*
>
> *Objective 5.3 Rural Character and Amenity*
> *(a) Rural character and amenity are maintained.*
>
> *Policy 5.3.4 Density of dwellings and buildings within the rural environment*
> *(a) Retain open spaces to ensure rural character is maintained.*
>
> *Policy 5.3.8 Effect on rural character and amenity from subdivision*
> *(a) Protect productive rural areas by directing urban forms of subdivision, use and development to within the boundaries of towns and villages*
> *(b)* ***Ensure development does not compromise the predominant open space, character and amenity of rural areas***
> *(c)* ***Ensure subdivision, use and development minimise the effects of ribbon development*** **[my emphasis in bold]**

213. I also do not consider that the nature of this growth trend gives effect to this policy and associated implementation methods, or the development principles in the WRPS:

> ***Policy 6.1 Planned and coordinated subdivision, use and development***

*Subdivision, use and development of the built environment, including transport, occurs in a **planned and coordinated manner** which: **[my emphasis in bold]***

a) has regard to the principles in Section 6A
*b) **recognises and addresses potential cumulative effects of subdivision**, use and development **[my emphasis in bold]***
c) is based on sufficient information to allow assessment of the potential long-term effects of subdivision, use and development; and
d) has regard to the existing built environment

Implementation Methods

*6.1.1 Local authorities shall have regard to the principles in Section 6A when preparing, reviewing or changing regional plans, district plans and development planning mechanisms such as structure plans, town plans and **growth strategies**. **[my emphasis in bold]***

6.1.5 District plan provisions for rural-residential development

*Rural-residential development **should be directed to areas identified in the district plan** for rural-residential development. **[my emphasis in bold]***

6.1.6 Growth strategies

***In areas where significant growth is occurring or anticipated, territorial authorities should develop and maintain growth strategies** which identify a spatial pattern of land use and infrastructure development and staging for at least a 30-year period.*

[my emphasis in bold]

…

General development principles 6A

1. New development should:
2. …

(b)occur in a manner that provides clear delineation between urban and rural areas

Principles specific to rural-residential development

New rural-residential development should:

a. be more strongly controlled where demand is high
b. *avoid open landscapes largely free of urban and rural-residential development*
3. …
d. *avoid ribbon development and, where practicable, the need for additional access points and upgrades, along significant transport corridors, and other arterial routes.*

214. Mr Forrester considers that it is possible to write subdivision rules to actively control where TDR are allowed to be used through zoning or overlays. He states (at paragraph 7.3) that this would provide a method to achieve many of the objectives and policies of the district plan, including the protection and enhancement of productive soils and ecological values, and the sustainable management of the district's resources.

215. It is acknowledged that the subdivision examples provided by Mr Forrester achieve the objectives and policies relating to productive soils and ecological values. However, these are just a few examples which are not representative of a district-wide analysis. It is my opinion that evidence gathered by Council in the form of the donor/receiver maps indicates that, at a

more strategic level, TDR subdivision is not achieving the sustainable management of the district's resources and is inconsistent with the required spatial pattern directed by the statutory policy framework.

216. In my opinion, zoning is by far the preferred method that provides certainty for the location of future growth and Council's infrastructure planning. Zone rules then facilitate growth by specifying minimum lot sizes and servicing requirements. I do not support these zones being developed on the basis of importing rural TDR to them. There would be no incentive for a landowner within a 'receiver zone' to subdivide in that manner, unless there was more to gain than simply carrying out an in-situ subdivision. In this regard, any suggestion of 'bonus/incentive' lots within a receiver zone as a result of TDR subdivision still creates uncertainty for Council's planning in terms of where they might land within a zone, the rate of uptake and how lots are to be serviced within budgetary constraints.

217. I am also concerned that nominating particular receiver areas at this stage of the statutory process would create a situation of prejudice for affected landowners by denying them an opportunity to lodge submissions on those proposed receiver areas.

218. For these reasons, my section 42A recommendation to reject The Surveying Company's submission [746.65] remains unchanged.

15.6 Middlemiss Farm Holdings Limited (Middlemiss)

219. Middlemiss has provided the following sets of evidence in support of their request for TDR provisions:

(a) Mr Steve McCowan (Director of Middlemiss)
(b) Mr Adam Thompson (economist and Director at Urban Economics Limited)
(c) Mr Vaughan Keesing (ecologist and partner at Boffa Miskell Limited)
(d) Mr Rob Pryor (landscape architect and director at LA4 Landscape Architects)
(e) Mr Myles Goodwin (ecologist and director at Cato Bolam Consultants)
(f) Mr Shane Hartley (consultant planner and director at Terra Nova Planning).

220. Firstly, it is important to note that some sets of evidence indicate that that they are representative of The Buckland Landowners Group (TBLG), in addition to Middlemiss. The original submission from TBLG [682] contains maps that identify various rural properties located in between Buckland village and Pukekohe (around Logan, Harrisville and Golding Roads) and requests that these be rezoned from Rural to Country Living. No further submission was lodged by TBLG to any original submission on the notified PWDP. TBLG does not therefore have scope to seek a TDR mechanism in the PWDP. As such, TBLG's evidence is only to be treated as evidence in support of the submission by Middlemiss.

221. The evidence listed above collectively supports incentives being provided to rural landowners so that there are gains in terms of ecological protection and enhancement, and financial wellbeing. I accept that these are beneficial outcomes.

222. However, I remain of the opinion that these outcomes need to be considered more broadly in the context of the district's growth (i.e. lot yield and intensification within all zones) and where most growth is expected to occur (i.e. Residential and Village zones). In my opinion, none of the evidence solves the concern with rural development occurring in an ad hoc manner, which is illustrated by the maps contained in Section 22 of my section 42A hearing report. These maps are based on data from approved TDR applications and it is therefore important not to downplay these, which Mr Hartley may have done when he refers (in his paragraph 7.17) to some poor environmental outcomes being "anecdotal".

223. Paragraph 30 of Mr Thompson's economic evidence includes this statement:

'The Middlemiss submission would enable several significant economic benefits. In particular, if 25% of all new rural subdivisions in the district over the next decade are the result of TDRs created by the Middlemiss submission, then 150-175 lifestyle blocks would be created on land that does not have high class soils that would otherwise have been created on land that does have high class soil.'

224. In my opinion, such an outcome is speculative and it still does not address the concern of rural lots being developed in an ad hoc manner. If there is no demand for in-situ rural-residential lots on a donor property which contains high class soils, a landowner will not go to the expense of a subdivision process. In many instances, TDR subdivisions create a market where one would not otherwise exist.

225. Mr Hartley's evidence sets out new rules for TDR subdivisions that expand on the provisions for conservation lots and rural hamlets. From my recent discussions with Mr Hartley, he explained that the tables within the new rules provide for the calculation of lot yields on a 'cumulative' basis (i.e. by adding the lot numbers from the sequence of rows). However, I do not consider that the calculation of lot yields or any subsequent transfer of approved lots to another property, are clearly understood. I therefore invite Mr Hartley to explain at the hearing how his new rules are to be interpreted and applied.

226. Mr Hartley's evidence now requests that receiver sites be identified around local sealed arterial and collector roads, existing urban settlements, and local schools that are not located within an urban settlement. He states (at his paragraph 79) that this would avoid and mitigate potential adverse effects on rural infrastructure such as demands for sealing metal roads, and the greater reverse sensitivity issues that arise in the more remote rural areas, as opposed to those close to more 'urban' activities. He therefore now proposes that such development should be enabled within a 2km distance of arterial and collector roads and that determining these receiver areas would be assisted by introducing a schedule that sets out zones, titles and geo-references. This detail is set out in Appendices A, B and D of his evidence.

227. In my opinion, the map in Appendix A of Mr Hartley's evidence illustrates exactly the opposite of what Council intends for the district. In particular, I consider that this map, which shows receiver locations concentrated around rural schools and along the major transportation routes, demonstrates that such development would be contrary to the following clauses (b), (c) and (e) in Policy 5.3.8 of the PWDP:

Policy 5.3.8 Effects on rural character and amenity from rural subdivision

…

(b) Ensure development ***does not compromise the predominant open space character and amenity of rural areas***

(c) Ensure subdivision, use and development ***minimise the effects of ribbon development***

(e) Subdivision, use and development opportunities ensure that ***rural character and amenity values are maintained.*** ***[my emphasis in bold]***

228. Similar to my earlier analysis of the evidence received from FFNZ and TSC, it is my opinion that such development would be contrary to Policy 6.1 and associated implementation methods, and the development principles that I have identified in the WRPS.

229. Allowing growth to occur in terms of Mr Hartley's proposition would undermine the Council's growth strategy for the district, whereby most urban growth is to occur in identified towns and some (but not all) villages through the application of Residential and

Village Zones, and a lesser proportion of growth through dedicated Country Living Zones. Mr Hartley's evidence has not addressed these matters.

230. The identification of these receiver areas is not supported by any section 32AA evaluation to demonstrate the most appropriate ways to achieve the PWDP objectives and give effect to the WRPS. This includes the PWDP's objectives and policies, and the 6A development principles (such as avoiding ribbon development and additional access points along significant transport corridors) that I have identified in responding to evidence from The Surveying Company.

231. I am unclear as to the planning rationale for a 2km radius and the effect of this on any balance area when the depth of a property extends beyond that. Furthermore, no reports have been provided to address landscape, traffic, archaeology, geotechnical constraints, and servicing requirements for Mr Hartley's requested receiver locations, which I consider necessary, given the type and scale of development now proposed.

232. Mr Hartley has referred to the Environment Court's findings in respect to Cabra and Ors v Auckland Council [2018] EnvC90 (Cabra), and suggests (at his paragraph 6.32) that those 'are transportable "in fact" to Waikato, subject to modification where there are good reasons for those.' This is a decision on an appeal to the Auckland Unitary Plan's objectives relating to the fragmentation of productive land, particularly prime and elite soils, and subdivision to achieve other objectives such as securing Significant Ecological Areas, Outstanding Natural Landscapes and Outstanding Natural Character Areas.

233. The Environment Court's decision on Cabra was appealed to the High Court and then directed back to the Environment Court. The Environment Court's final decision was recently issued on 16 September 2020 and is included in **Appendix 5**. However, I do not consider that it is either appropriate or helpful to draw parallels with this final decision because it involves an objective and policy framework for Auckland Council's jurisdiction which is different from that proposed for Waikato District. Of note, the notified Auckland Unitary Plan specifically identified the existing Country Living Zones as receivers of TDR generated in the Rural Zone, and rules were designed to enable that outcome. Significantly, the Auckland Unitary Plan does not identify receiver locations in the Rural Zone which are now being promoted in Mr Hartley's evidence.

234. Overall, I do not support the amendments proposed by Mr Hartley. If the panel consider there is merit in them, I consider that there is nevertheless an issue with scope. This is because the original submission from Middlemiss [794] did not contain the details for TDR subdivision now set out in Mr Hartley's evidence. I consider that their original submission was focused mainly on their request for provisions that enabled greater lot yields in exchange for the protection and enhancement of ecological features (similar to the existing Franklin Section provisions for ecological corridors). I do not consider that any person reading that submission would have reasonably contemplated the type of rules or receiver locations now promoted in evidence. In my opinion, this creates a situation of prejudice where affected parties have been denied an opportunity to lodge a submission. At best, I consider that Mr Hartley's provisions would require a variation to the PWDP to enable a robust assessment and an opportunity for the public to be involved through the lodgement of submissions. However I remain opposed to a TDR mechanism in the PWDP.

15.7 Recommendations

235. For these reasons, my section 42A recommendation to reject the Middlemiss submission [794.27] remains unchanged.

16 Conclusion

236. Given the evidence received in respect to rural subdivision, the main points of contention which are likely to be addressed at the hearing are:

a. Activity status for subdivision within the Urban Expansion Area (UEA) and more lenient boundary relocation provisions.

b. Amending the prohibited activity status in PR2, PR3 and PR4 to non-complying.

c. Amending the 40ha parent title size from 20ha.

d. Rules restricting high class soils in relation to boundary relocations, rural hamlet and conservation lot subdivision.

e. More enabling provisions using the Conservation lot subdivision pathway.

f. Amendments to the title boundaries rule (Rule 22.4.3), which also relates to subdivision of land containing heritage items (Rule 22.4.8).

g. Amendments to subdivision within identified areas (Rule 22.4.5).

h. Amendments to the esplanade reserves and esplanade strips (Rule 22.4.7) to provide a matter of discretion reflecting s230(3) of the RMA.

i. The introduction of provisions relating to transferable subdivision.

237. As a result of the evidence I have recommended changes which are shown in Appendix 1 to this rebuttal evidence.