

SECTION 42A REPORT

Opening Statement

Hearing 18: Rural Zone – Landuse

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Date: 28/09/20



I Introduction

1. Good morning Chair, Commissioners and Submitters. My name is Jonathan Clease and I am the writer of the original s42A report for Hearing 18: Rural Zone – Landuse. I am also the author of the rebuttal evidence in relation to land use matters concerning the Rural Zone. Referencing to provision numbering in this opening statement are to the provisions as recommended in Appendix 2 of my rebuttal statement. Ms Overwater has prepared a separate statement and associated reports regarding rural subdivision matters.
2. The Rural Zone is both geographically extensive, and likewise has received submissions that cover a wide range of planning issues. As such I will focus on what I see as being the key themes and matters where submitters hold a diversity of views.

Background to the Rural Zone

3. As with most of the urban zones, the Rural Zone provisions have their origins in the Franklin and Waikato sections of the Operative Plan. In my view the Franklin framework is generally more enabling than the Waikato section. The Proposed Plan as notified sought to bring these two sections together into a single set of provisions that cover the full extent of the Rural Zone across the District, with the notified provisions generally reflecting a ‘roll-over’ of the Operative Plan’s Waikato section. The move to a single Rural Zone, combined with the geographic extent and wide range of landscapes and farming systems in the District, mean that the zone’s policies and rules must ‘stretch’ to cover diverse environments and activities that have legitimately established in the zone over previous decades.

Purpose and function of the Rural Zone

4. The Proposed Plan begins the Rural Zone policies with a focus on the need to retain the productive potential of soils, and particularly high class soils, as the resource which underpins productive farming activities. There was wide-spread support in submissions for the need to appropriately recognise and protect the soil resource, albeit with some differences in view regarding the detailed mechanics of the subdivision policies and rules relating to properties containing high class soils.
5. Farming is the predominant activity in the Rural Zone, and therefore the provisions need to appropriately provide for it, subject to appropriate management of its environmental effects. Whilst there is general support for the need to recognise and provide for farming activity (however that might be defined), there are a range of views as to the extent to which the zone should provide for other activities that are both common in the rural zone and that support farming activities and rural communities. These activities range from rural industry and rural commercial activities, extractive activities, and infrastructure, through to a range of community facilities and existing long-established ‘one-off’ activities such as retirement villages, private schools, Meremere Dragway, and specialist health facilities.
6. In my view the Rural Zone encompasses a diversity of activities that have a functional (and historic) need to locate within rural areas. In short, the rural environment legitimately includes a wide range of activities that are not just farming. These activities should be anticipated at a policy level, with the recommended rule framework still requiring that they be assessed on a case-by-case basis through a resource consent process to ensure that their effects are adequately mitigated and their scale and location is appropriate. I do not see this framework as ‘opening the door’ to activities that would be better located within townships, as I consider there is a role for a range of non-farming activities in rural areas. Conversely the recommended framework does not anticipate or provide for general industrial or commercial activities that have no functional need for a rural location¹. The notified Plan has a ‘default’

¹ Rule 22.1.5 (NC5)

activity status for non-listed activities as non-complying², with this activity status recommended to be retained given the wider urban growth direction of the Plan that activities that do not require or functionally link to a rural environment begin located in urban areas. The retention of a default non-complying status is part of the reason why I have recommended that a broader range of activities that typically occur in rural areas be identified and listed in the activity tables, such as the bundle of rural commercial and community activities. The recommended approach of listing more activities means that there should be far fewer activities defaulting to non-complying because they are 'not otherwise listed'.

7. Resolution of the purpose of the zone, and the degree to which it should or should not provide for non-farming activities, is therefore a key decision which then ripples through the policy and rule framework.
8. It is revealing that the majority of submissions are not related to farming activity, but instead relate to subdivision (and in particular the ability to create small lifestyle lots), the provision and protection of infrastructure and industry, provision for community activities, and extractive industry. The volume of submissions on these 'non-farming' topics illustrates the reality that the Rural Zone is home to much more than just agriculture.

Intensive farming

9. There is widespread acknowledgement in submissions that intensive farming is a normal and anticipated activity in rural areas. There is also general acknowledgement that such activity can generate effects that may extend beyond the site boundaries. As such the Waikato Section of the Operative Plan has long-contained setback requirements both for new intensive farming activities and for new sensitive activities seeking to be located near existing intensive farming operations. These setbacks have been rolled over into the notified plan and are recommended to be retained.
10. The challenge with intensive farming is first defining when an activity is intensive, and secondly if so what an appropriate rule framework might be. I have recommended a definition that turns on three 'tests' namely whether the livestock are housed in buildings or enclosures, wherever feed is predominantly brought to the livestock, and whether vegetated ground cover is to be maintained (where housed outside).
11. Submitters have sought that free-range farming be permitted. I agree that free-range systems that meet the above tests should be permitted, and in my view the recommended rule framework achieves exactly that, with no setbacks from boundaries being required. I therefore agree with the submitters regarding the outcome that the rules should be implementing. Several submitters³ have preferred an approach where there is an explicit definition of 'free range' and a specific permitted activity rule, that goes beyond the general permitted activity rule for farming.

Reverse sensitivity

12. As noted above, the rural zone includes a wide range of activities that require a rural setting. In addition to normal pastoral farming activities, intensive farming, extractive industry, infrastructure, and industry (whether located in or immediately adjacent to the rural zone), can cause effects that extend beyond the site boundary. Whilst such effects should be contained on site as far as practicable, the reality is that especially for existing, long-established, facilities this may simply not be possible.
13. A balance therefore needs to be struck between requiring activities to reasonably manage their effects, not unduly impinge on the legitimate development expectations of neighbours, but also recognise the significant sunk capital costs and community benefits that derive from

² Rule 22.1.5 (NC6).

³ Mainland Poultry [833], Combined Poultry Industry Representatives [821], The Surveying Company [746]

these activities. The management of reverse sensitivity, perhaps more than any other issue, attracted the most evidence from a range of submitters.

14. The policy approach for reverse sensitivity (and indeed for infrastructure matters in general) is shared between the Infrastructure Chapter 6 and Chapter 5 on the Rural Zone policies. Whether policy direction on infrastructure matters ultimately sits just in the infrastructure chapter will determine how much (or little) additional direction needs to be provided in the Rural Chapter. Until this is known, submitters have sought appropriate provision for infrastructure in the Rural Zone policies. I think either approach can work, with infrastructure policy direction either contained within a single chapter with explicit direction that it applies across all zones, or with zone-specific policy direction provided on a zone-by-zone basis. In the event that policy direction on the one theme is located in several chapters the key of course will be to ensure that the policy direction dovetails and does not create any internal conflicts within the Plan. As an aside, I note that similar cross-chapter direction arises in regard to Significant Natural Areas and how best to incentivise their protection, with the conservation lot tool (and policy) located in the Rural Chapter and the need to incentivise their protection located in Chapter 3⁴.
15. In my view the District Plan needs to appropriately manage reverse sensitivity risks. The notified Plan included a number of setbacks, with the distance varying from 25m for buildings in 'normal' rural contexts, through to much larger setbacks from intensive farming, existing extractive industry, and specified infrastructure. A number of submitters⁵ have sought that additional rules be added to require setbacks from their specific infrastructure or facilities. I agree in principle that the use of setbacks is a legitimate tool. Setback rules can however place potentially onerous restraints on what neighbours can do, depending on the size of the setback and the geographic extent of the infrastructure (and therefore the setback) in question.
16. Due to the potentially onerous restraint it places on neighbours, in my view the need for setbacks, and a full understanding of both the number of properties affected and the degree of disablement that might result needs to be carefully considered. This balance between the protection of existing assets and restrictions on neighbours will of course vary depending on the geographic extent of the infrastructure in question. It is generally easier to justify a setback from a geographically discrete facility, especially if it is located in an area with few neighbouring properties. The Meridian Te Uku wind farm is a good example of such a context⁶. Conversely network infrastructure such as Frist Gas' pipe network, or the Waikato coal fields (with an associated setback) sought to be identified by Bathurst⁷, extend across extensive areas and affect potentially hundreds of property owners. This is not to say that such a setback could never be justified, but rather in order for the setback to be justified in terms of s32 RMA requirements there would need to be a robust assessment of both the need for the setback, and the costs that the setback might impose on hundreds of landowners. In the absence of such assessments I have generally not recommended new setbacks be imposed.
17. I would note that setbacks from existing Heavy Industrial zones (Synlait Milk⁸ and Hynds Pipe Systems⁹ plants in Pokeno and Huntly Power Station) do have the benefit of covering relatively discrete areas. I am aware that there are several submissions¹⁰ seeking rezoning of land in

⁴ I note that Middlemiss Farm Holdings [794] seek a Transferable Development Rights pathway in the Rural Zone as an alternative method for implementing the Chapter 3 policies

⁵ Horticulture NZ [419], Bathurst Resources Ltd [771], NZ National Fieldays [280], First gas [9455], KiwiRail [986], Meridian [945], Genesis Energy [924], NZTA [742], Transpower [576]

⁶ See Meridian Noise Management Plan evidence, Figure 13.

⁷ See Bathurst evidence Annexure C

⁸ Synlait [581]

⁹ Hynds Pipe Systems [983]

¹⁰ Havelock Village [862], S&T Hopkins [451]

close proximity to these plants, and that in my view the need for a setback is best left until the rezoning submissions and ultimate land use patterns near these facilities is resolved.

Residential density and worker accommodation

18. As with reverse sensitivity, issues concerning residential density and the associated subdivision pathways were a common theme in submissions. The subdivision pathways are addressed by Ms Overwater. In my view the recommended Rural Zone framework is very enabling in terms of residential provision compared with most district plan rural zones that I am familiar with. The parent/ child lot mechanism in particular enables small lots to be created, which combined with the recommended ability to locate up to three residential units on large Records of Title¹¹, and the associated ability to construct a minor unit¹² in association with each residential unit is enabling. As noted in Ms Overwater's s4A report, rural lifestyle dwellings have made up a significant proportion of new units consented in the District over the past decade. In my view it is internally inconsistent to have a District Plan that has as strategic framework for managing growth through consolidation in and around existing townships, twinned with a rural zone framework that readily enables small lot subdivision and a proliferation of residential units in rural areas.
19. I consider that the rural zone does provide for 'worker accommodation', it just doesn't call it that. Rather the combination of enabling residential units on any existing Record of Title regardless of size¹³, combined with the child lot pathway and the minor unit pathway does provide for workers. Of course agricultural workers can also be accommodated in any of the District's towns and villages which are conveniently located throughout the rural area. Several submitters have sought a further pathway for worker accommodation. In my view the provision of housing needs to be seen as a package, and the adequacy (or not) of the existing multiple pathways considered before yet another pathway is provided.
20. The subdivision rules are considered by Ms Overwater, along with consideration of whether or not to include a transferable development right pathway. I would simply note that from a policy perspective, if the Panel do determine that there is merit in a transferable rights pathway, then there will need to be policy direction as to how that pathway might work.

Hamilton Urban Expansion Area

21. The Hamilton UEA is a discrete series of growth areas located immediately adjacent to Hamilton City. The long-term intention is that these growth areas will transfer to Hamilton City through amendments to the territorial boundaries. The intention of the rural zone policy and rule framework for these areas is to preserve their potential for urbanisation in the interim through preventing subdivision and new activities from establishing that would undermine future urban growth.
22. I agree with the purpose of the UEA and the merit in having a tool in the District Plan that identifies future urban growth areas and seeks to avoid activities that would undermine logical and efficient urban growth. I am mindful that a similar discussion arose in relation to the Village Zone hearings concerning large growth areas adjacent to Te Kowhai and Tuakau. I am likewise mindful that following that hearing the Panel expressed a desire that further consideration be given to how 'Future Urban Zones' might be used as a tool in the district plan, with further consideration of this matter to form part of the officer reporting on the rezoning hearings in early 2021.
23. In my view the recommended approach of a directive policy framework, combined with non-complying activity status for most landuses¹⁴, and a fully discretionary activity status for a small

¹¹ Rule 22.3.1(P1)(b)

¹² Rule 22.3.2

¹³ Rule 22.3.1(P1)(a)

¹⁴ Rule 22.1.5(NC4)

range of community-related activities¹⁵, does establish an appropriate framework for not unduly impeding logical urban growth, whilst also recognising that such growth within the UEA may not occur for another 25 years and therefore some activities and land uses may be appropriate in the long interim period, subject on a case-by-case assessment through a resource consent process.

Extractive industries

24. As noted above, extractive industries (primarily coal mining and aggregate extraction) are a normal and anticipated activity in the rural environment, indeed it is extremely uncommon for them to occur in any other zone. The rural provisions therefore need to recognise that such activities are anticipated and collectively form part of the rural character. Such activities do however have the potential to generate environmental effects, and therefore it is likewise appropriate that they be managed. The Proposed Plan seeks to do this through identifying geographic areas where such activities are currently occurring (Coal Mine Areas and Aggregate Extraction Areas). A small, discrete Extraction Resource Area is likewise identified south of Huntly where future activities is anticipated. I have recommended that extractive activities within these mapped areas be a restricted discretionary activity¹⁶, with extraction occurring outside these areas a fully discretionary activity¹⁷. I have likewise recommended that new sensitive activities be required to be setback from the boundaries of these areas¹⁸.
25. Bathurst have sought that the Waikato coal fields be mapped in the District Plan and identified in the planning maps as an extraction resource area. This would enable future coal mining in these areas a restricted discretionary activity, and would likewise require new sensitive activities to be setback from the boundary of these areas. When I drafted my s42A report I had not appreciated how widespread the Waikato coal resource was. With the benefit of Bathurst's evidence I have recommended in rebuttal that the coal fields not be identified as an Extractive Resource Area, as they are simply too extensive, and requiring new sensitive activities to be setback from these areas would affect potentially hundreds of properties.
26. I have however recommend in rebuttal that the mapping of the Coal Mining Areas be amended to better align with the extent of Bathurst's existing licenses and permits. These areas extend well beyond existing actively worked coal mines, and therefore do provide for future expansion, within areas that are subject to existing permits and where there is a reasonable expectation that mining may occur in the future. Conceptually, the unworked greenfield areas located within the revised boundaries of the Coal Mining Areas are similar to the Extractive Resource Area concept that is intended to cover areas where existing consents have yet to be implemented but where there is a reasonable expectation that mining may occur in the future.

Detailed rules

27. The rule package includes a series of rules relating to matters such as earthworks, signage, lighting noise, building height and site coverage. In general the amendments recommended in the s42A report is to make these provisions more enabling. Submitter evidence on these matters is generally in support of the recommended amendments, with further changes sought by submitters in the nature of refinement and clarification, rather than any major shifts in direction.

Conclusion

28. The Rural Zone takes in geographically diverse landscapes and contains a wide range of activities. It likewise makes up the majority if the district's land area and is both the home and workplace for many of the district's residents. The challenge is to design a zone framework

¹⁵ Rule 22.1.4(D5) (education); Rule 22.1.3(RD3)(c)(i) and 22.1.4(D1)

¹⁶ Rule 22.1.3(RD7)

¹⁷ Rule 22.1.4(D7)

¹⁸ Rule 22.3.7.2(P1)(a)(iv-v)

that articulates clear outcomes for this area, and then has effective rules to implement those outcomes and that strike an appropriate balance between enabling the outcomes that are desired and effectively controlling the activities and outcomes that are not anticipated.

29. I look forward to hearing from submitters over the course of the hearing as to how these outcomes and rule can be refined to provide an effective framework to guide land use over the coming decade.