Hearing Closing Statement

Hearing 18: Rural Zone Subdivision

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1 Introduction

1. Following the hearing for the Rural Zone, I consider the following matters still remain in contention:

   a. The activity status for subdivision within the Urban Expansion Area (UEA) as contested by Hamilton City Council.
   b. The need for boundary relocation provisions in the UEA to enable the creation of larger land holdings, as discussed in the presentation from CDL Limited.
   c. Amending the prohibited activity status in PR2, PR3 and PR4 to non-complying.
   d. The size of the parent title and whether 40ha or 20ha is most appropriate.
   e. Consideration of the Rural Hamlet 40ha threshold for the balance allotment versus 20ha as notified.
   f. Consideration of the terminology "allotment" vs "Record of Title" as per further discussions with Peter Duncan and Mr Barrett on behalf of McCracken Surveys/Cheal Consultants.
   g. Rules restricting high class soils in relation to boundary relocations, rural hamlet and conservation lot subdivision.
   h. More enabling incentivised provisions for subdivision, particularly for wetlands and riparian planting.
   i. The introduction of provisions relating to transferable subdivision.

2. I address each of these matters in turn.

2 Comparison table of provisions

3. I have included as **Attachment 1** a comparison table showing the differences between the Operative Waikato and Franklin Sections, the Proposed Plan and the recommended rules as a result of submissions and evidence. Additionally I have also included as **Attachment 2** a diagram of Part 22 of the Franklin Section, which shows the provisions for Environmental Lots and transferable subdivision included in the Operative provisions and illustrates how they work both within the Environmental Enhancement Overlay Area (EEOA) and outside.

3 Revised drafting of provisions for rural subdivision

4. In response to questions from the Panel, I have reviewed the rule drafting for the Chapter 22 provisions and provided a revised track change version as **Attachment 3**, including additional changes in green text. The main reasons for these further amendments are to improve clarity, address any conflicting provisions and ensure consistency.

5. I have recommended the following key changes:

a. Rule 22.4.1.1 PR4 for Prohibited Subdivision has been amended to reflect my additional comments below in respect to Mr Rowe's concerns on behalf of Tripp Andrews Surveyors in relation to "double dipping" of donor titles which have previously utilised the transferable subdivision provisions. The revised provision provides a further exemption where the donor title has been the subject of an environmental lot subdivision where consented lots have been transferred to receiver sites from the donor site, as opposed to being created in situ.
b. Amend Rule 22.4.1.4 RD1(a)(i) to be consistent with Rule 22.4.1.5 RD1(a)(i) in respect to the records of title which would not be eligible for subdivision. This wording was included to reflect a previous definition of "viable record of title", however as the S42 author for the definitions hearing proposed to delete this definition it needs to be incorporated into the rules.
c. Consistent wording between Rules 22.4.1.4 RD1(a)(v), Rules 22.4.1.2(a)(v), 22.4.1.5 RD1(a)(vii), 22.4.1.6 RD1(a)(ix) and proposed Rule 22.4.1.6A D1(x) in respect to high class soils.
d. Addition of a new rule D2 in Rule 22.4.1.4 to respond to CDL's submission in respect to R2 of the Urban Expansion Area, as discussed below.
e. Amendments to Rule 22.4.1.6 RD1(a)(i) to include a new Table 3 enabling subdivision for legal protection of natural wetland. I have also recommended amendments to the title of Table 1 to make it clear that it also applies to natural wetland inside the Hamilton Basin Area.
f. Addition of Rule 22.4.1.6A for incentivised subdivision for riparian planting as discussed below.
g. All rules have been checked to ensure the terminology "record of title" and "allotment" are correctly used in respect to the concerns raised by Mr Barrett on behalf of McCracken Surveying/Cheal Consultants and any changes required to ensure the terminology is correct have been made.

4 Rural Hamlet Subdivision

6. Commissioner Cooney raised a question during closing in respect to the 40ha requirement for Rural Hamlets. He has asked me to consider why I thought that a 40ha balance lot size would achieve significantly different outcomes in terms of rural character and amenity by comparison to the proposed 20ha balance lot.

7. My response to this question is that I consider the 40ha balance lot size would achieve far better outcomes than 20ha because as highlighted in my closing statement at the hearing, out of **16,679** rural titles across the Waikato District, there are potentially **14,465** rural titles over 5,000m^2 in area which could apply to utilise the rural hamlet rule if the title configuration could achieve the proposed 40ha minimum balance area.

8. While this number may be a worst case scenario, the potential for uptake of the rural hamlet rule is more likely if a 20ha balance title is used, therefore generating a greater cumulative impact on rural character and amenity over time than if the balance as proposed was amended to 40ha. By increasing the balance lot size from 20ha to 40ha, naturally less rural titles would be eligible to qualify for this form of subdivision which is effectively a boundary relocation of existing titles. To be clear, the rule does not generate additional titles, it only enables a re-configuration of existing titles into rural residential lifestyle sized titles. In my view this is the consequential impact that needs to be carefully managed.

9. While I understood the concerns raised by Mr Upton in his presentation, which illustrated a shortfall in terms of meeting the rural hamlet criteria; my impression from the map shown at the hearing of his properties, was that there are additional titles across Saulbrey Road. These could be utilised as part of the hamlet subdivision. While I understand the issue in respect of the 4,000m^2 title, this is an existing rural lifestyle title in its own right and in my view could be incorporated into a subdivision proposal. Further, my understanding from previous engagement with Mr Upton in respect to his property is that many of his titles are pre-1997 titles, therefore in my view there are alternative options for subdivision in his case.

10. Should the Panel be minded to revert back to the 20ha balance size threshold in the rule, there is a potential risk that rural hamlet subdivision could become an easier way of achieving rural residential lifestyle blocks across the District, given that this subdivision pathway involves existing titles, which most larger farming units would have, meaning title dates would not be a restriction in the same way as they are with the general subdivision provisions. My view is that this could have significant consequences on the protection of rural character and amenity, fragmentation of rural land, effects on high class soil and reverse sensitivity.

5 John Rowe – Tripp Andrews Surveyors

11. Mr Rowe on behalf of Tripp Andrews Surveyors is seeking the deletion of Rule 22.4.1.1 PR4, which relates to Records of Title used for transferable rural lot right subdivision.

12. As I raised in my verbal closing statement, I did not agree with the point raised by Mr Rowe in respect to PR4 that the scenario is not double-dipping of lots. My view is that PR4 is deliberately worded to prevent titles which have previously benefited from transferable subdivision from re-applying for a general subdivision and for this reason should be a prohibited activity.

13. While Mr Rowe used an example of a Transferable Rural Lot Right scenario to demonstrate his concerns, upon further reflection on this matter, I note that there may be some unintended consequences of this prohibited rule, which go beyond Mr Rowe's example, particularly where an Environmental Lot subdivision has been applied for at the donor property and then subsequently utilised by way of the Transferable Rural Lot right provisions to transfer the consented lots to a receiver property elsewhere in the District.

14. Often, there are historic situations where consented Environmental Lots at the donor property are transferred to receiver lot locations, as opposed to being created in-situ. If the title where these in-situ lots were to land is an older title (i.e. prior to 6 December 1997 and meets the parent title size threshold), they would then be unable to make any application for a general subdivision as a result of PR4. I recommend some alternative wording to the rule to exempt this particular circumstance and cannot think of any additional circumstances where an exemption needs to apply to this prohibition.

15. I have therefore amended my draft provisions to reflect this change, by inserting the following wording into PR4: "except where the historical transfer of any consented environmental lots has not resulted in-situ."

6 Phillip Barrett - Mccracken Surveyors/Cheal Consultants

16. As discussed at the hearing, Mr Barrett raised concerns in respect to the use of the terminology "allotment" and "Record of Title" and how they are used in the proposed rule framework. Property law specialist, Peter Duncan, outlined that the term "allotment" is derived from the Resource Management Act, with the proposed plan adopting the definition of the term substantially from the provisions of section 218 of the Act. In addition, he indicated that the National Planning Standards for district plans also make significant use of the term "allotment", utilising the RMA definition.

17. In contrast, the term "Record of Title" is derived from the Land Transfer Act 2017. The term is defined in section 5 of that act as:

    a record of title created under section 12 for an estate or interest in land

18. Section 12 of the Land Transfer Act 2017 lists the many types of record of title that might be created; they include

    - Freehold estates
    - leasehold estates
    - Strata estates under the Unit Titles Act 2010
    - any other state or interest in land that are or may be registered under the Land Transfer Act or for which a record of title as required by another act
    - a proclamation or notice published in the Gazette and registered under the Land Transfer Act pursuant to another act

19. Section 14 of the Land Transfer Act goes further to include the ability for any person to obtain a separate title for an undivided share in any estate in land.

20. Mr Barrett's concerns in respect of the subdivision rules appear to arise from the fact that a record of title may comprise more than one allotment. Those concerns are accepted by Mr Duncan and I along with the examples that Mr Barrett has shown would appear to demonstrate unintended consequences of the proposed plan.

21. However, Mr Duncan and I think it is equally important to acknowledge that it is clearly possible for a single allotment to be comprised in more than one Record of Title. The Land Transfer Act does not concern itself with planning matters, and clearly contemplates a situation where a single parcel of land may be the subject of multiple records of title.

22. In these circumstances, unexpected consequences could arise in the subdivision provisions. One such example is a boundary relocation scenario. Prior to making an application for subdivision consent, multiple owners of a single allotment could each apply for and obtain records of title in respect of their undivided shares in the property. Therefore all of the conditions of Rule 22.4.1.4 (a) could be met so long as the total area of each lot created was at least 5000 m^2, could accommodate a suitable building platform, and did not contain more than 15% in area of high-class soils.

23. Similarly, under the rural hamlet subdivision Rule 22.4.1.5, five undivided share titles could be obtained for an existing allotment prior to subdivision consent application. This would allow an additional three or four new allotments to be created.

24. All parties agree that there are potentially two ways of resolving the above-mentioned issues. The first is to amend the definition of "Record of Title" to reflect that S14 of the Land Transfer Act 2017 does not apply. However our concern with this approach is that it would apply across the entire plan and have consequences for subdivision in other zones. The second option is to simply amend the rule to provide clarity that titles created by using S14 of the Land Transfer Act 2017 are not intended to be used for the rural subdivision rules.

25. Mr Barrett in his discussions with Mr Houlbrooke and Mr Wood from CKL Surveyors have provided some suggested changes to the rules for general subdivision (Rule 22.4.1.2), boundary relocations (Rule 22.4.1.3) or rural hamlet subdivision (Rule 22.4.1.4) which clarifies that titles created by S14 of the Land Transfer Act are not intended to be used. Both Mr Duncan and I consider Mr Barrett's suggested changes to be the most appropriate option in order to resolve the issue.

26. To confirm Mr Barrett's acceptance of this matter, I have provided a draft version of the track changed rules, which are included as **Attachment 3** and he has provided some additional changes to ensure the terminology used in the rules has been correctly applied. Following this exchange of emails, Mr Barrett, Mr Houlbrook, Mr Wood and I are now in agreement on this matter.

7 CDL Limited

27. CDL Limited proposed more lenient provisions to undertake boundary relocations in the UEA to enable creation of larger properties which can then be comprehensively planned and developed when this area is eventually serviced for development. I understand the situation that they raised regarding landowners wanting to sell their farms for future development but remain in their existing homes until such time as the development occurs (or potentially beyond).

28. I accept that Hamilton City Council has a provision for this in their District Plan, specifically for the Peacocke Character Zone and that it has worked in the past to provide a boundary relocation of a title where an existing dwelling is located.

29. I consider there may be some opportunity for landowners to undertake a boundary relocation and the boundary relocation rule could be modified to provide for a boundary relocation. It seemed as though R2 in the UEA was the main area of interest for CDL. I have given some thought as to whether a new rule should be broadened to the entire UEA area and have sought feedback from Mr Houlbrook who represents CDL on this aspect. I am concerned that a broader application of such a rule could have unintended consequences, but am equally aware that there may not be any planning justification for limiting the new rule to R2, except that this area is likely to be ready for urban development sooner due to the revised agreement which is currently underway between both Council's and the imminent completion of the Expressway within proximity to this area.

30. Bevan Houlbrooke provided feedback from CDL and stated that their preference would be to have consistency across all UEA as they face the same challenges in terms of aggregating

land for future development. However he has indicated that if this approach was not palatable, then CDL would accept limiting to R2. As shown in **Attachment 3** I have recommended a discretionary activity rule (D2) which would ensure tight restrictions are kept on any boundary relocation within R2. Taking on board the concerns that Hamilton City Council have expressed, a thorough assessment would be required of the boundary relocation to ensure any potential effects on future development are well considered. This would also take into consideration the revised drafting of Policy 5.5.2 as discussed in Mr Clease's closing statement, which is to *"avoid subdivision, use and development within Hamilton's Urban Expansion Area that will compromise coordinated future urban development."* The rule largely adopted from Mr Houlbrooke's evidence and drafted with his assistance, also requires the provision of an encumbrance or covenant to be registered on the balance title to prevent any additional dwellings from being established.

31. In my view a new discretionary activity would provide a pragmatic way forward for landowners within this discrete area of identified UEA. I have deliberately recommended the rule only apply to area R2, as opposed to the entire UEA areas (HT1 and WA) for the reasons I have already identified in my rebuttal evidence. In terms of setting area R2 apart from the other areas, this area may progress to be included within the Hamilton City boundaries before areas HT1 and WA, given that area R2a has already been taken over by Hamilton City Council.

32. Should the Panel be minded to extend this rule to the entire UEA area, I wish to re-emphasise my concern regarding the implications, whereby landowners could take advantage of this subdivision pathway therefore potentially creating a large number of lifestyle sized properties within the zone, which could potentially become difficult for Hamilton City to plan around in the future.

8 Conservation Lot Subdivision/Riparian Planting

33. Further to the presentation from Mr Forrester on behalf of the Surveying Company and Middlemiss Farms Limited, I have reviewed my position in respect to providing further provisions for incentivised subdivision through riparian planting and the incentivised protection of wetlands.

8.1 Protection of Wetlands

34. In respect to the protection of wetlands, both Mr Turner and I agree that there is benefit in making provisions for natural wetlands and have therefore included Table 3 in Rule 22.4.1.6 to enable subdivision in exchange for legal protection of wetlands outside of the Hamilton Ecological Basin area with a minimum threshold of 5,000m^2 total area of wetland to be protected. This is the same as the provision which I have already recommended within the Hamilton Ecological Basin given Table 1 already has a starting threshold of 5,000m^2. However, I have added reference to the inclusion of natural wetlands in the heading of Table 1 and in RD1(a)(i).

35. In respect to the new Table 3, I have only enabled up to 3 additional lots in-situ, for consistency with the other Conservation Lot subdivision provisions, which is one more additional lot than presented in the Middlemiss Farms evidence, which includes a maximum of 2 located in-situ. I

note that in the *Cabra*[1] decision, the court agreed that the number of in-situ allotments should be limited where a wetland exists. I would agree with this approach and should the Panel prefer to limit the number to only a maximum of 2 lots, I would support this.

36. I note that wetlands are not defined in the Proposed District Plan. However should the Panel be minded to include a definition, I would recommend using the definition of "natural wetland" as included the National Policy Statement for Freshwater Management 2020, which took effect in August 2020, and reflects the RMA definition. The definition is as follows:

> **Natural wetland** means a wetland (as defined in the Act) that is not:
>
> a. a wetland constructed by artificial means (unless it was constructed to offset impacts on, or restore, an existing or former natural wetland); or
> b. a geothermal wetland; or
> c. any area of improved pasture that, at the commencement date, is dominated by (that is more than 50% of) exotic pasture species and is subject to temporary rain derived water pooling.

8.2 Riparian Planting of Waterways

37. As indicated verbally during my closing at the hearing, I advised that I support an additional provision in the Plan for the riparian planting of waterways. At present, the Proposed District Plan only allows incentivised subdivision for an *existing* SNA, rather than incentivising planting in an area that is not a SNA. I recommend a new Rule 22.4.1.6A, separate from the Conservation Lot subdivision rule.

38. As indicated, I have reviewed the riparian planting rules provided in the Auckland Unitary Plan for the Whitford Precinct (I441). I have also evaluated the rules for Ecological corridors in the Waikato District Plan – Franklin Section, which relate to the Environmental Enhancement Overlay Area (EEOA), which I believe was used in the example demonstrated by Mr Forrester at 95 Jericho Road.

39. I have specifically targeted waterways because planting of these areas would provide a higher environmental benefit to the District. Following advice from Mr Turner and as discussed in the evidence of Mr Ian Boothroyd in respect to the Plan Change 14 appeals from September 2012, attached as **Attachment 4**, I have recommended the proposed provision only relates only to permanent (or perennial streams) and intermittent streams, not ephemeral streams. As discussed in Mr Boothroyd's evidence[2], perennial streams are those watercourses that flow for all of the year and are typically contained within defined or meandering low and flood flow channels respectively. Intermittent streams are those watercourses that cease to flow for parts of the year but are typically retained within defined or meandering low and flood flow channels respectively. Mr Turner's view is that intermittent streams have a significant role to play in respect to ecological values, particularly for some rare species (i.e. mudfish). He considers that the aquatic values of ephemeral streams are usually very limited and often negligible due to the short duration of the period when they are wet. Given this, he considers it sensible to focus restoration on permanent and intermittent streams where the ecological benefits will be significantly greater.

[1] *Cabra and ors* v *Auckland Council* [2018] EnvC90

[2] At section 3.3, page 5 of Ian Boothroyd's evidence dated 21 September 2012

40. In addition to the waterway requirement, in order to be eligible for subdivision, I have proposed that a parent title of at least 40ha is required to ensure the effects of the additional lots can be appropriately accommodated. Additionally, the riparian planting strip is recommended to be at least 10m in width and must achieve a minimum size of 2ha (similar to the Conservation Lot provisions) in order to qualify for 1 additional allotment. At 5ha, a second additional allotment can be achieved, and at 10ha a third allotment. Three is the total number of lots that can be achieved through these provisions, similar to a Conservation lot subdivision and must be created in-situ.

41. I have taken the 10m minimum recommended width from the Auckland Unitary Plan, which applies the same requirement. The 10m width is also referenced in Mr Boothroyd's evidence at section 6.19 on page 17, where he suggests that

    "a planted riparian width of at least 10m is generally recommended for the purpose of ensuring that adverse effects of landuse and developments on water quality and aquatic ecosystems are adequately avoided, remedied or mitigated, rather than providing for significant environmental benefits."

42. Mr Turner has also provided the Waterway planting technote from DiaryNZ, which I have attached as **Attachment 5**, which states the following at page 4:

    "Where possible link your planting areas to other areas of existing native vegetation such as forest remnants. If you want your riparian plantings to become a self-sustaining area of native bush where weed management is minimal, you will need to make your planted area at least 10 metre wide.

    Riparian plantings can provide habitat and food for a range of bird and insect species. Insects living in the riparian vegetation provide food for fish and birds. Select tree species native to your area that are known for attracting birds. Some examples include flax, kowhai, titoki, karamu, kahikatea and cabbage."

    [My emphasis added]

43. Mr Turner also added that a 10m wide riparian margin will certainly provide habitat for terrestrial bird species that are found within the farmland areas within the Waikato as well as long-tailed bats and lizards, once established. A 10m minimum therefore represents an appropriate threshold at which significant ecological benefits start to accrue on a sustainable basis.

44. My recommended provision for riparian planting requires a re-vegetation plan and programme prepared by a suitably qualified person to ensure the planting is appropriate for the site and reaches a "self-sustaining" state. It envisages that the applicant can either have existing planting in the ground before subdivision application is made or be in the early stages of the process. The 8 year timeframe between consent being obtained from Council and titles being issued pursuant to S224(c) can provide sufficient time for the planting to reach a self-sustaining state. I have also recommended that a bond could be applied where there is uncertainty in respect to planting being fully established.

45. In respect to legal mechanisms used for protecting the riparian planting, I have left this tool unspecified, as a consent notice pursuant to S221 of the RMA may be a more effective mechanism than a conservation covenant under s77 of the Reserves Act 1997. In discussions with Council officers, a consent notice provides Council more powers in respect to charging fees and enforcement actions than Council has under the Reserves Act and in certain

circumstances if the planting is not of significant value a Conservation Covenant may not be the most effective mechanism to ensure the area is not dis-established, particularly when a subdivision has been achieved from Council.

46. In my view, the proposed provisions go some way towards to the objectives set out in the National Policy Statement for Freshwater Management 2020, which has just come into force on 3 September 2020.

47. I note that as part of the new NPS requirements, the Regional Council must identify and map every natural inland wetland in its region that is 0.05 ha or greater in extent or of a type that is naturally less than 0.05 ha in extent (such as an ephemeral wetland) and known to contain threatened species[3] and the fencing off of waterways has become a requirement of higher order documents, including the National Environmental Standard for Freshwater and Plan Change 1 to the Waikato Regional Plan ("Healthy Rivers") to achieve better water quality. Riparian planting also contributes as a way of achieving this along with many other positive environmental outcomes. In my opinion, this provision will assist towards meeting these key objectives.

48. Mr Riddell on behalf of the Department of Conservation discussed the draft National Policy Statement for Indigenous Biodiversity. This seems to be largely focused on significant natural areas (SNAs), although it does also provide for areas outside of SNAs and aims to restore and enhanced areas where the ecological integrity has been degraded and areas that provide important connectivity and buffering functions.

49. The new rule I have recommended for wetlands in Rule 22.4.1.6 Conservation Lot Subdivision, enables wetland areas of a minimum area of 5,000m^2 to be protected. I am mindful of the draft provisions provided with the legal submissions from Middlemiss Farms to only enable up to 2 additional lots to be generated on titles where a wetland area is being protected and have used the same thresholds for subdivision eligibility. It is my view that this provision will go some way towards meeting the NPS for Indigenous Biodiversity when it is eventually released in its final form and takes effect. Further, this approach aligns with the intentions of the Healthy Rivers Plan Change (Plan Change 1) of the Waikato Regional Council, which seeks to prevent stock from entering waterways and encourage riparian planting to increase water quality and restore environmental values.

50. Finally, I have been mindful of including provisions which are too lenient and have the potential to generate irreversible consequences on the rural environment. Given that the uptake of the provisions could be anywhere in the District provided the riparian planting is adjoining a key waterway, there is no way to determining what the consequences could be in terms of effects or location of those new lots. However I agree with the principle that riparian planting does have an environmental benefit and needs to be incentivised in order for landowners to undertake the work, particularly given the expense in undertaking quality riparian planting.

9 Transferable Development Right Subdivision

[3] Section 3.23(1) of NPS Freshwater

51. Three submitter parties presented their respective cases in favour of transferable development rights (TDR) subdivision at the hearing, those being Federated Farmers (FFNZ), The Surveying Company (TSC) and Middlemiss Farm Holdings (Middlemiss).

52. None of the evidence persuades me to alter my opinion that TDR subdivision should not be provided in the PWDP. As acknowledged in both my section 42A hearing report and rebuttal evidence, there are some benefits with TDR subdivision. 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.

53. As discussed, 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. There are also 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.

54. All of the statutory documents including the WRPS and the PWDP, and the non-statutory documents that include Future Proof and Council's own district growth strategies, make it 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. Unmanaged and sporadic development could undermine the outcomes sought by policy directives. No evidence was produced by any submitters seeking inclusion of TDRs that demonstrated how their approach is consistent with these directives.

55. Turning to more specific matters, the evidence from Federated Farmers does not respond to my opinion that it is not possible to secure any 'entitlement' unless resource consent is granted in terms of section 104 of the RMA. I disagree with their view that if a proposed in-situ subdivision is not considered appropriate, then 'entitlements' should be transferred elsewhere. This process does not accord with the subdivision process prescribed by the RMA and if a proposal does not satisfy the section 104 assessment, then consent should not be granted and no lot entitlement should ensue.

56. I accept that the subdivision examples discussed by Mr Craig Forrester on behalf of TSC have resulted in environmental benefits. However, these do 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. Council's evidence 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.

57. I remain in agreement with Mr Forrester's opinion that the receiver properties "are almost always closer to towns and settlements with essential services" compared to the donor properties. 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 and my rebuttal evidence sets out the objectives and policies in the PWDP which direct the outcomes.

58. Mr Forrester supports the nomination of receiver areas for TDR subdivision as a method to manage the distribution of growth. In my opinion, this would be akin to zoning in that it provides certainty for the location of future growth and Council's infrastructure planning. Rules for receiver areas/zones then facilitate growth by specifying minimum lot sizes and servicing requirements.

59. However, I do not support such receiver areas/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.

60. Even if the hearings panel were to conclude that such an approach has merit, I remain 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.

61. Lastly, the evidence from Middlemiss advocates a similar approach where receiver areas could be identified around particular schools that are not within an urban settlement, and alongside sealed arterial and collector routes. Mr Hartley's evidence is that TDR subdivision should be enabled within a 2km distance of these locations and assisted by the introduction of a schedule into the PWDP that sets out zones, titles and geo-references.

62. Appendix A of Mr Hartley's evidence illustrates 29 'school circles' whereas his Appendix D lists 37 schools. On the basis of his suggested 2km radius, each 'school circle' represents an area of 1256ha. In some cases, these circles contain a mixture of Rural, Residential and Village zoning.

63. Based on the more conservative number of 29 (rather than 37), this means that the 'school circles' shown on Mr Hartley's map represent a total land area in excess of 36,400 hectares. The 2km strips that Mr Hartley has illustrated alongside arterial and collector routes contain a total land area in excess of 161,500 hectares. Therefore, the total land area nominated as a receiver area for TDR subdivision would be just short of 198,000 hectares.

64. In my opinion, this 198,000 hectare receiver area is extraordinarily excessive and unjustified. To provide some meaningful comparison, this calculates out to be a 67-fold increase on the 2955 hectare area in the Country Living Zone, about 45% of Waikato District's land area (440,378 hectares), about 64% of Waikato District's Rural Zone (310,815 hectares), and about 8% of the 2,390,000 hectare area within the Waikato Region. While I accept that this whole area is not going to be taken up with new "recipient lots" from transferable subdivision, and that they would be somewhat dispersed; my view is that more consideration would need to go into such areas to be certain as to the planning outcomes that may eventuate from such a rule framework.

65. I remain of the view that the evidence from Middlemiss illustrates exactly the opposite of what Council intends for the district. In particular, my rebuttal evidence noted that their evidence

does not demonstrate how 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]***

66. 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.

67. 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.

68. The identification of these receiver areas is also 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 TSC.

69. 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.

70. The evidence from Middlemiss also referred to the Environment Court's findings in respect to *Cabra and ors* v *Auckland Council* [2018] EnvC90 (Cabra) and Mr Hartley suggested (at his paragraph 6.32 of his evidence) that those 'are transportable "in fact" to Waikato, subject to modification where there are good reasons for those.'

71. I remain of the opinion that it is neither appropriate nor helpful to draw parallels with the Cabra decision because that involved 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. The response from Ms Parham (legal counsel for WDC), which was requested by the hearings panel, helpfully supports my view that the Cabra case is different and that the Court's findings are not 'transportable "in fact" to Waikato'.

72. I also remain of the view that if the panel were to consider there is merit in Mr Hartley's proposed amendments, there is potentially an issue with scope. This is because the original submission from Middlemiss [794] does 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.

73. Despite the potential issue of scope in respect to the Middlemiss submission, I remain opposed to a TDR mechanism in the Proposed District Plan for the reasons discussed above.

10 Summary

74. This concludes my closing statement for the rural subdivision topic. I wish to thank the Panel for the opportunity to provide the above closing statement and trust that it assists with the Panel's decision-making process.