

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of hearings regarding submissions to the proposed Waikato District Plan relating to **Hearing 5: Chapter 13 Definitions**.

**STATEMENT OF PRIMARY EVIDENCE OF SHANE ALEXANDER HARTLEY ON
BEHALF OF MIDDLEMISS FARM HOLDINGS LTD (SUB 794 and FS1330)**

Dated 21 November 2019

1 INTRODUCTION

- 1.1 My name is Shane Alexander Hartley. I have been a Director of Terra Nova Planning since establishing the consultancy in 2001. I hold the qualifications of Bachelor of Arts in Political Studies and History, and Bachelor of Town Planning. I am a Member of the NZ Planning Institute.
- 1.2 I was actively involved in policy and resource consent processes while employed by the Rodney District Council, holding from 1981 the various positions of Planner, Senior Planner, Planning Manager, and Forward Planning Manager, and as a consultant since 1999, have been involved in plan policy processes, applications for development and subdivision proposals.
- 1.3 My professional experience has substantially been in the area of strategic and district plan land use. My extensive experience with statutory processes and documents includes the Auckland Regional Policy Statement, Auckland Regional Growth Strategy, Waikato Regional Plan, and Manawatu-Wanganui One Plan; the Auckland Unitary Plan, the Thames Coromandel District Plan, district structure planning, district plan resource management, including plan preparation and processing, and multiple urban and rural land use and subdivision resource consent applications and private plan changes.

2 SCOPE

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

lodged by Middlemiss Farm Holdings Ltd (Middlemiss) seeking amendments and additions to Chapter 13 Definitions of the Proposed District Plan (PDP), with reference to other submissions by Middlemiss to objectives and policies and other provisions which will be the subject of separate evidence statements when submissions to those chapters is heard.¹

- 2.2 Middlemiss' submission seeks deletions, amendments, and additions to several sections of the PDP, including Chapter 13 Definitions, to introduce incentivised subdivision to achieve environmental and ecological enhancement for biodiversity, water quality and elite soils protection.

3 CODE OF CONDUCT

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

4 SUBMISSIONS

- 4.1 The overall thrust of Middlemiss' submissions to the PDP is that it does not fully identify or include appropriate methods that address the important biodiversity issues within the District and unnecessarily restricts rural residential activity.
- 4.2 My evidence addresses the primary and further submissions made by Middlemiss that relate to the Definitions chapter of the PDP (with the submission adding the qualifying statement relating to the track changes Middlemiss provided to assist the Council that "*the changes are not comprehensive and there will be other changes required to implement the concerns outlined in the relief sought*"²). The Submission and accompanying track changes do not specify definition changes but consequential amendments are sought to the more specific policy and rule changes sought³.
- 4.3 For context I also refer the Panel to my evidence concerning Chapter 1 Issues, dated 16 September 2019 as support for the following proposed definition amendments and additions. I further note that my future evidence for later Hearings concerning objectives, policies and rules will assist with the approach to

¹ Refer Middlemiss Submission #794 and FS #1330.

² Para 6.3 Middlemiss Submission

³ Para 6.8 Middlemiss Submission

the definition changes I propose here.

- 4.4 The definitions I propose to be included are set out below, with a brief explanation. My approach is to include definitions only where they add to understanding of key terms and methods, and to avoid the need for either lengthy rule explanations or potentially frequent reference to dictionary meanings or to other higher order documents (e.g. National Policy Statements, RMA or the Waikato Regional Plan) while avoiding unnecessary duplication of those.

(a) Conservation Planting

- 4.1 I propose the following definition, sourced from the Auckland Unitary Plan (AUP) which provides certainty as to what constitutes conservation planting (provided for as a permitted activity in the AUP).

Conservation planting: means planting principally for:

- soil and water conservation;
- waste water disposal or purification;
- landscape preservation or enhancement;
- preservation for particular historic or archaeological value; and
- conservation for scientific or ecological value.

Includes:

- planting trees; and
- tending trees.

Excludes:

- growing trees for timber production.

- 4.2 This definition may prove helpful when the biodiversity enhancement rules sought to be included in the Plan by the Middlemiss submission are addressed in later Hearings, although the term would also be applicable to planting undertaken without associated subdivision.

(b) Ecosystem services

- 4.3 Middlemiss submissions seek additional reference to ecosystem services, which I addressed in my evidence on Chapter 1 Issues⁴. As I set out there, the term already appears in the PDP⁵, is used and defined in the Waikato Regional Policy Statement (WRPS) and is referenced in the *Cabra v Auckland Council and Ors* 2018 Decision. Rather than PDP readers having to source a meaning from the

⁴ Paras 4.17 – 4.21; 190916 - Shane Hartley Evidence for Middlemiss S794 and FS 1330 Chapter 1 WDC Submission Hearing October 2019

⁵ Chapter 22 Rural Zone - Rule (Table) 22.2.8 Indigenous Vegetation clearance outside a Significant Natural Area RD1 (b)(ii); and Chapter 23 Country Living Zone – Rule (Table) 23.2.9 Indigenous Vegetation Clearance Outside a Significant Natural Area RD1 (b)(ii); PWDP

WRPS or other locations with the same or similar definitions, I consider that this is a case where replication of the WRPS definition is in order. This is;

Ecosystem services: means the benefits people obtain from ecosystems. These include:

- a) provisioning services (such as food and water);
- b) regulating services (such as flood and disease control);
- c) cultural services (such as spiritual, recreational, and cultural benefits); and
- d) supporting services (such as nutrient cycling); that maintain the conditions for life on Earth.

(c) Land containing elite soil

4.4 As I set out more fully in my evidence in Chapter 1 Issues⁶, I agree with the protection of High-class soils to protect their productive potential. However, as I said there (in summary):

- these soils may have minimal productive potential as they are regularly flooded (within the 1% AEP flood plain); or
- the loss of some areas of prime soils (Class 2 & 3) will have less than minor effects on the productive potential of the district if threatened ecosystems are restored or enhanced on these sites. This would have significant positive benefits for regional and national biodiversity enhancement.
- It is my understanding that this definition includes soils mapped as high class but will be within the 1% AEP flood plain and where investment in intensive agriculture (cropping) or horticulture would be a risk to that investment. Essentially, these soils within the 1% AEP flood plain may have severely limited productive potential and Regional Policy 13.2.6 (Control of development within a floodplain or coastal hazard area) seeks to avoid earthworks and stop-banking on these sites as it is likely to increase flood risk on other properties.
- the remnants of Indigenous ecosystems on these same high class soils and those on the 1% AEP flood plain are extremely rare and most have been classified as critically endangered (Singers & Rogers 20147). These ecosystems (mainly flood plain forests) provide an opportunity for WDC to meet WRPS Policy 11.1.1 (Maintain or enhance indigenous biodiversity) which requires the WDC to include positive indigenous biodiversity outcomes

⁶ Paras 4.1 – 4.16 190916 - Shane Hartley Evidence for Middlemiss S794 and FS 1330 Chapter 1 WDC Submission Hearing October 2019

within its district plan.

- 4.5 I consider that it would be appropriate to amend the definition of High-class soils in the PDP to exclude flood plain soils as follows (additional proposed words underlined and in italics);

High class soils: means those soils in Land Use Capability Classes I and II (excluding peat soils and soils within the 1% AEP flood plain) and soils in Land Use Capability Class Ille1 and Ille5, classified as Allophanic Soils, using the New Zealand Soil Classification.

- 4.6 I acknowledge that this may be considered to make the PDP slightly inconsistent with the WRPS and, if this is considered to be a significant legal issue, an alternative would be to ensure that the relevant policies and methods in the next Hearing phases reflect the lesser weight to be applied to flood plains soils.

(d) Productive rural activities

- 4.7 The HR proposes that the term “productive rural activities”, instead of being defined, is changed to “primary production”⁸, defined as;

Primary production: means any aquaculture, agricultural, pastoral, horticultural, mining, quarrying or forestry activities; and

- a) includes initial processing, as an ancillary activity, of commodities that result from the listed activities in a);
- b) includes any land and buildings used for the production of the commodities from a) and used for the initial processing of the commodities in b); but
- c) excludes further processing of those commodities into a different product.

- 4.8 I agree with this change to the extent that it is a generic and less exclusive term than “productive rural activities”, as well as being sourced from the Definition Standards. This wording creates less room for future debate (especially if carried down into objectives and policies without amendments to those) as to whether a proposed activity is ‘productive’ or not and is therefore less likely to lead to inappropriate environmental and social outcomes.

- 4.9 This approach also enables objectives, policies and methods to be appropriately worded to seek and achieve a wider range of intended outcomes for the rural environment.

⁷ In Leathwick J 2016 Integrated biodiversity ranking and prioritisation for the Waikato region. Waikato regional Council 2016/12

⁸ Para 837 Definitions S42A Hearing Report

(e) Wetland

4.10 The Draft 2019 National Policy Statement for Freshwater Management (NPSFM) has a definition of “natural wetlands” which (on the assumption that it will in force before decisions on the PDP are made, or the Plan becomes operative) would be more appropriate than that proposed in the S42A Hearing Report.

4.11 This definition is:

Natural wetland: means a wetland as defined in the Act, dominated by indigenous vegetation and including habitat of threatened indigenous fauna in exotic wetland vegetation, except that it does not include:

- a) wet pasture or paddocks where water temporarily ponds after rain in places dominated by pasture, or that contain patches of exotic sedge or rush species;
or
- b) constructed wetlands;
- c) or geothermal wetlands

4.12 However, there is a potential issue with this definition in that it may inadvertently exclude enhanced wetlands established primarily for ecological and biodiversity purposes rather than those established primarily for wastewater and stormwater treatment purposes.

4.13 I propose the amended wording as underlined and in italics.

Natural wetland: means a wetland as defined in the Act, dominated by indigenous vegetation and including habitat of threatened indigenous fauna in exotic wetland vegetation, except that it does not include:

- a) wet pasture or paddocks where water temporarily ponds after rain in places dominated by pasture, or that contain patches of exotic sedge or rush species;
or
- b) constructed wetlands for wastewater and stormwater treatment;
- c) or geothermal wetlands

(f) Transferable Development Right

4.14 The transferable development right (TDR) option is an appropriate method in some situations for achieving significant environmental benefits, as was recognised by the Environment Court in the *Cabra v Auckland Council* and *Ors 2018 Decision*.

4.15 The TDR option is within the rule amendments sought by Middlemiss, and to be addressed in later Hearings. I consider that it is important to include a definition of the term, rather than relying on inference from the rules proper and propose the

following be included in the Plan.

Transferable Development Right: means a subdivision mechanism to provide for the transfer of qualifying biodiversity protection or enhancement title rights to separate (rather than in-situ) locations, circumstances or zones identified in the Plan.

Shane Hartley

November 2019
