

SUBMISSION ON THE PROPOSED WAIKATO DISTRICT PLAN (STAGE 1)

9 October 2018

TO: Waikato District Council

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By Email: districtplan@waidc.govt.nz

Name of submitter: Middlemiss Farm Holdings Limited

The submitter wishes to appear before the Committee to speak to its submission.

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1. INTRODUCTION

- 1.1 Middlemiss Farm Holdings Limited (Submitter) owns property at 95 Jericho Road and it is seeking both general relief to the issues, objectives, policies and rules, in the Proposed Waikato District Plan (Proposed Plan), and also site-specific relief.
- 1.2 The thrust of the submission is that the Proposed Plan appears to have been prepared without being informed by well-established jurisprudence from the Environment Court regarding the sustainable management of rural resources. The Court has found, after careful examination of the facts in several cases, that subdivision incentives, to achieve environmental and ecological enhancement, meets the Purpose of the Act. It has also found that this method not only addresses past degradation, but can be implemented while also achieving other key policy objectives for rural areas, including protecting and maintaining elite soils, rural production, rural character and amenity values.
- 1.3 It is submitted that while the proposed provisions for Significant Natural Areas (SNAs) are a step in the right direction to protect biodiversity in the district, the current policy is a narrow piecemeal approach, that is fixed in time, and will not ensure the enhancement and expansion of biodiversity over time.

Therefore, the Proposed Plan does not give effect to higher order documents, including the Waikato Regional Policy Statement (WRPS), and nor does it meet the requirements of Part 2 of the Act.

2. STATUTORY REQUIREMENTS

Resource Management Act 1991:

- 2.1 In general terms it is submitted that the Proposed Plan does not:
- a) Promote the sustainable management of natural and physical resources as required by s 5 of the Act;
 - b) Sustain the potential of the natural and physical resources of the Waikato District to meet the reasonably foreseeable needs of future generations that will be reliant on rural resources;
 - c) Safeguard the life supporting capacity of soil, water, and ecosystems;
 - d) Avoid, remedy and mitigate the significant adverse effects of farming, and other primary industry activities, on rural natural resources;
 - e) Enable people and communities to provide for their social, cultural and economic well-being, by living, working, recreating, and undertaking ecological restoration activities in rural areas;
 - f) Adequately protect areas of significant indigenous vegetation, habitats, and fauna, to meet the requirements of s 6(c) of the Act;
 - g) Demonstrate the principles of kaitiakitanga and stewardship regarding the protection and enhancement of biodiversity and water resources, especially the degraded Waikato River and its tributaries (s 7(a)(aa));
 - h) Acknowledge the intrinsic values of ecosystems other than if they qualify as SNAs (s 7(d));
 - i) Maintain and enhance the quality of the environment in rural areas. The background s 32 ecology reports highlight significant environmental degradation and loss of biodiversity values since 1840. However, the regulatory framework in the Proposed Plan is only focussed on protection/maintenance of existing areas and not on “enhancement” more broadly as required by s 7 (f);
 - j) Adequately taken into account the principles of the Treaty of Waitangi because the methods adopted, for the use and development of natural physical resources in the District, will not substantially assist to restore the mauri of the Waikato River and indigenous biodiversity taonga valued by Maori (s 8);

- k) Meet the functions of the Council under s 31(1)(a) of the Act to achieve the integrated management of the effects of the use, development and protection of land and associated natural and physical resources. The Proposed Plan does not recognise the importance of re-establishing lost indigenous vegetation and wetlands to that overall sustainability of ecosystem services and the relationships/linkages between habitats;
- l) Provide a robust regulatory framework to manage the adverse effects of some rural activities on surface water and lakes and rivers, including the Waikato River. For example, by not incentivising the protection and restoration of riparian margins and managing stock access to waterways, indigenous vegetation, and erosion prone land, that should be permanently retired (s 31(e));
- m) The s 32 analysis undertaken has not properly evaluated incentive subdivision as an objective, policy, and method, to enhance biodiversity in the District, and achieve environmental outcomes that meet the Purpose of the Act. Monitoring is a requirement of s 35 and such mechanisms are efficient and effective, provide significant benefits, and will general economic growth and conservation jobs. For example, the Rural Capacity study undertaken by Market Economics, and the s 32 Report for Rural Areas, did not assess the ecological benefits that would be achieved by incentivised enhancement/restoration subdivision;
- n) Considered all the relevant matters that are quired under s 74 of the Act or have not given them sufficient weigh and emphasis in the Proposed Plan; or
- o) Give effect to key higher order regulatory instruments as required by s 75, and as explained further below.

3. Degraded Rural Resources a Significant District Wide Issue

3.1 Based on analysis undertaken by consultants engaged by the Council to report on SNAs, there is a much broader and significant issue with environmental degradation than just SNA protection itself. The work undertaken by Kessels Ecology for both the Waikato Regional Council (TP 2017/36), and the District Council (SNAs – Summary of Inputs from the Community Consultation Process – 22 Dec 2016), records some alarming facts about the loss of natural habitat since 1840 (as determined by Leathwick – Landcare 1995) including:

- a) Indigenous vegetation is “highly underrepresented” with only 10.72 % of primary forest and wetland remaining – down from 53.6% Primary Forest, 28.5% secondary forest scrub and 15.8% wetlands.
- b) In the LINZ “Threatened Environment Categories” 77.96% of the land area is between “Critically Unprotected” and “Acutely Threatened”.

- c) The Franklin part of the District, where the Submitters land is located, once had 84.5% primary indigenous cover, 7.2% secondary and 5.9% wetlands.
 - d) In the “Hill Country Management Zone”, that the Submitters land is located in, the Report concludes that: “...there is little indigenous or riparian vegetation remaining” (p 14).
 - e) The Report also highlights the need for “stepping stones” to connect different large hill areas and that also sustain indigenous populations themselves (p 15).
- 3.2 Based on the Council’s own evidence there is no doubt that a significant resource management issue for the District is biodiversity loss. Furthermore, the integrity and sustainability of what remnants exist continues to be risk due to;
- a) Vegetation clearance
 - b) Stock intrusion
 - c) Animal and pest degradation
 - d) Degradation of the margins for estuarine wetlands by stock (p 16).
- 3.3 Turning next to the Proposed Plan response to this issue, the submitter is concerned that this is largely focussed on only protecting existing SNAs, and when the maps are viewed, the green SNA areas comprise almost entirely of small isolated and disbursed pockets across the District. The Proposed Plan largely ignores the potential for restoring, linking, and significantly expanding, indigenous biodiversity that does not qualify to be an SNA at this point in time.
- 3.4 It is not disputed that SNAs are required to be protected under s 6(c) of the Act as the Council has attempted to do. However, the requirements of the Act for sustainable management are broader and more encompassing than just responding to a limited number of SNAs. There is a significant gap between the Council’s own research, and its policy response, that is most starkly illustrated by the Map on page 2 of the Kessels Report. Most of the District is coloured red or orange because it is either “Acutely Threatened” or “Chronically Threatened”. The Council current primary response to this significant issue is to only protect a limited number of SEAs. For example, there is no regulatory framework to;
- a) Increase indigenous vegetation and wetlands from approximately 11% of the District to a higher percentage.
 - b) It is noted that the Court has accepted a report in Auckland, based on a consensus of ecologists, that a target indigenous vegetation cover is approximately 30% to achieve sustainability. The District is 434,000 ha so 30% would be 130,000 ha;

- c) Actively manage areas that do not currently qualify as SEAs, because, for example, their canopy is not contiguous due to stock access, so that they could become future SEAs;
- d) Increase indigenous vegetation on areas of steep and erosion prone land that should be permanently retired for water and soil conservation;
- e) Encourage and incentivise the fencing of riparian areas to prevent stock access, improve instream biota, improve water quality, and help restore the mauri of the Waikato River;
- f) Encourage and incentivise the creation of new corridors to connect existing isolated and vulnerable pockets of indigenous vegetation/habitats, or to establish “stepping stones” for species to move between exiting habitats thereby fostering genetic resilience; or
- g) Encourage and incentivise, in areas other than SEAs,;
 - Animal and weed pest control;
 - Enrichment planting; and
 - The establishment of habitats to restore past representativeness e.g. wetlands.

3.5 The Council is required to be much bolder, to meet the Purpose of the Act, in its approach to the maintenance and enhancement of biodiversity than in the Proposed Plan. At the time of writing this submission, two significant announcements have a bearing on this issue;

- a) The Government, supported by experts such as Dr Mike Joy, is going to make significant regulatory changes to require improvements in water quality due to pollution and sediment discharges, including reviewing the National Policy Statement for Freshwater Management.
- b) The Intergovernmental Panel on Climate Change released a report indicating that to hold global climate change to 1.5 degrees NZ (and other countries) have to make radical changes to land use and management, including reducing inappropriate intensive animal farming practices, and increasing carbon sinks through land retirement and revegetation.

3.6 It is noted that in the s 32 Report it is alleged that rural residential subdivision increases transport emissions. This is a complex issue and in terms of green house gas emissions, a holistic assessment would also need to take into account the reduction of emissions if animal pasture landuse is replaced by permanent native vegetation (reduced methane and increases carbon absorption etc). We are also on the cusp of a sea-change to electric vehicles for transportation.

- 3.7 Therefore, unless the Proposed Plan is substantially revised to address current biodiversity loss, and recognise inevitable future landuse and transportation changes, it will not be fit for purpose now, or in its expected 10-year life.
- 3.8 There are also other changes that provide a context for the Proposed Plan, including the Treasury broadening its traditional GDP measure to a well-being measure based on 4 indicators;
- Natural Capital;
 - Human Capital;
 - Social Capital; and
 - Financial / Physical Capital.

The relief that the submitter is seeking will help restore ecosystem services and grow natural capital in the District which will also contribute to social, cultural and economic well-being. This will help “future proof” the plan and avoid the need for review in the near future.

- 3.9 The Kessels SNA Consultation Report does indicate a willingness on behalf of many owners of indigenous remnants to voluntarily maintain and protect them. However, the economic reality is that enhancement and restoration work requires significant human and financial resources, over extended periods, to be successful at the scale required to respond appropriately to the significant degradation in the District. There is reference in the Report to a contestable Council fund of \$30,000/annum, but at current establishment costs, that would fund less than 1 ha of new planting.
- 3.10 The Kessels Report, while not going into a lot of detail, does note that there has been some incentive-based planting in the District, but this was not favoured because it was alleged that it is sporadic, ad hoc, and that the dispersal of countryside living in rural and coastal areas is undesirable. No comprehensive research is provided to support this claim and, as will be covered in the next section, these bald claims are incorrect according to the jurisprudence that has been built up by the Environment Court, over many years, and most recently confirmed in appeals on the Auckland Unitary Plan (subject to a HC appeal).

4. Jurisprudence of the Environment Court on Rural Growth Management and Incentive Enhancement Subdivision.

- 4.1 The Proposed Plan has largely removed the limited Qualifying Natural Feature and Ecological Corridor riparian protection, and indigenous planting subdivision incentive opportunity, in the Operative Plan. There appears to be no robust analysis of the success or failures of the limited amount of enhancement subdivision that has previously been undertaken in the Franklin part of the District that had these provisions.

- 4.2 This section is intended to highlight key findings of the Environment Court over many years that support incentive subdivision objectives, policies and rules, in response to degraded erosion prone land, lost wetlands and water quality and hydrology issues.
- 4.3 The Submitter acknowledges that the Proposed Plan was drafted without the Waikato District Council planners having the benefit of the *Cabra and ors v Auckland Council* [2018] EnvC 90 decision (under appeal to the High Court). If the *Cabra* findings on the facts and law had been able to be fully incorporated into the Proposed Plan, it is submitted that the plan would be quite different to the notified version. However, this submission process is an opportunity to bring the Proposed Plan into line with current best practice to meet the requirements of Part 2 of the Act.

Di Andre

- 4.4 Nearly 22 years ago in *Di Andre Estates Ltd v Rodney District Council*, W187/96 Judge Treadwell found that enhancement subdivision can meet the Purpose and requirements of Part 2 of the Act.

“It can therefore be seen that any subdivisional design based on replanting and restoration of areas by means of native revegetation planned and/or supervised by Mr Scott deserves a great degree of respect and attention particularly as s 5 directs us to consider promoting sustainable management. That includes development of natural resources while sustaining the potential of such resources to meet the reasonably foreseeable needs of future generations. That primary concept of the Act is of course allied to the provisions of s 7 also contained in Part II which is a section relating back to the main purpose of the Act.”

- 4.5 Regarding the methodology, the Court found that the catchment based concept “...works on the basis that the sustainable management of natural and physical resources if possible should be associated with the opportunity to repair and enhance landscapes and to maintain such landscapes for the future. This underlying philosophy forms the basis for establishing the lot layout and lot size was supported by the appellant.” The Court noted that “... subdivision provides an opportunity to encourage and initiate positive landscape changes has also been implemented successfully on Waikeke Island.” Twenty years later the Waikeke examples of planting are but one example of many successful subdivision/restoration projects. Judge Treadwell was so impressed with the method that he suggested that if a district did not contain enhancement incentive subdivision provisions, it should be amended to include them because they meet the Purpose of the Act.

Arrigato

- 4.6 The next significant cases were the high profile *Arrigato Investments v Auckland Regional Council* 2001 cases. An important finding from the

primary case, upheld in subsequent appeals, is the question of what a “productive” use of rural land is. The councils submitted that lifestyle/residential use was not “productive” but this was rejected by the Court, preferring economic evidence that a residential use in a rural area can generate a significant amount of productivity per annum.

- 4.7 It is clear from the way that “production” is used in the Proposed Plan that it has been interpreted in a very narrow way to predominantly mean “primary production”, presumably dairy, sheep, beef, horticulture and forestry etc and associated servicing and processing industries. The Act does not prefer one form of economic activity over another and is an effects-based statute. As the Court did, in the two cases cited above, the effects are to be assessed without bias regarding certain forms of economic production. Otherwise, for example, a teacher living on a lifestyle block and teaching in a rural school is deemed to be “unproductive” and this is not an outcome that is intended by the Act.

Omaha Park

- 4.8 *Omaha Park* is an important case, as noted in the recent *Cabra* decision (see below), because it shows that incentive subdivision development may not always be appropriate, and meet the Purpose of the Act, and can be declined. This is likely to be more of an issue in coastal environments containing outstanding landscapes and features or high natural character values. Checks and balances are appropriate, and it is a council’s function to have a planning system of assessment to determine what applications are granted, subject to conditions, and what applications are refused. In *Cabra*, the Auckland Council was found by the Court to be wanting a simplistic binary “red light or green light” when the Act required assessment and judgement of “orange light” factual scenarios (*Cabra* p 92 par 335).

Cabra v Auckland Council

- 4.9 It is submitted that the relatively recent *Cabra* case is of considerable importance to the Proposed Plan because the Court heard evidence and submissions on essentially the same resource management issues as are identified in the Waikato District. The findings of the Court are relevant and provide a compelling precedent for the Council. It is arguably a misuse of resources and effort to re visit, and potentially relitigate, essentially the same arguments in this plan review.
- 4.10 It is acknowledged that the decision has been appealed by the Auckland Council and the appeal has not yet been heard. However, it is submitted that the following factual findings by the Court are unlikely to be disturbed by any findings of the High Court, even if the Auckland Council was successful on points of law:
- 4.11 The Issues:

- a) The Auckland region, like the Waikato District, has suffered significant loss and degradation of indigenous biodiversity and wetlands etc which are now only approximately 10% (p 94);
- b) There needs to be intervention to arrest the depauperate nature of indigenous vegetation and biodiversity generally including wetlands;
- c) Ecologists agreed that a target of 30% of land set aside for habitats of various types was appropriate (p 94 and based on the Auckland Ecology Report);
- d) There is a demand for rural residential and lifestyle living, and if not provided for with incentive subdivision, this is likely to be provided without any justified ecological or environmental benefits and this was a risk of not acting (p 93 par 338); and
- e) With issues such as climate change, and kauri dieback, encouraging enhancement and providing other protected areas could be critical for future resilience and sustainability (p 94);

4.12 Monitoring of Past Enhancement Subdivision in the Auckland Region

- a) The method had successfully increased the area of protected and managed indigenous vegetation in the region;
- b) The take up had been less than the council had feared, which meant that the expansion of residential dwellings into rural areas was modest, and therefore so were also the areas of land protected;
- c) However, notwithstanding the current low numbers, the Court found that “...it [the incentive provisions] *may see us gradually climb up to and above 10% of the original natural vegetation.*”
- d) Projects throughout the region were generally successful (the Court visited and inspected a number of sites – some of which it was already familiar). While a challenging exposed coastal site, that had poor quality initial planting (not undertaken by Mr Scott), the Court was satisfied that after 15 years the once controversial *Arrigato* site was successfully rehabilitating;
- e) The Council could not use the fact that there may be issues with weeds, or poor fencing (in protected areas), as a reason to oppose the inclusion of incentive provisions in the Plan, because it had the authority and responsibility to monitor consent conditions. Further to this finding, there are of course a range of enforcement mechanisms available to a council, and the ability to recover costs from a consent holder, that mean managing compliance in these areas should not be onerous for a council;

- f) In appropriate circumstances consent had been refused, for example where other values should prevail, such as not introducing houses to an outstanding coastal landscape;
- g) Market Economics, and planning evidence on growth in rural areas, because of the provisions, was rejected as overstating the numbers of new dwellings and the risk they posed to the overall growth management strategy for the Region of containment and intensification. While not cited in the decision, over 90 % of new dwelling consents are in the existing urban area. There are powerful economic and social factors that mean most people prefer to be conveniently located to jobs, services and facilities, and the feared “floodgates” of rural residential development is often over stated; and
- h) Any effects on rural character and amenity values, raised by the Council in evidence from Landscape Architect Stephen Brown, were able to be addressed by appropriate design layouts and consent conditions. The benefits of ecological restoration could be realised while also maintaining and enhancing rural amenity values.

4.13 Objectives, Policies, and Rules in the Auckland Unitary Plan (AUP)

- a) There was a preference for transferrable development rights as an incentive in rural areas to relocate titles and encourage development in preferred locations such as countryside living zones;
- b) However, there were issues with the TDR mechanisms in the AUP particularly regarding the linking of donor and recipient sites spatially, and temporarily;
- c) Well drafted objectives, policies and rules, could provide a regulatory framework that assessed different values to meet the Purpose of the Act, and providing in situ incentive subdivision, to achieve important ecological benefits, was compatible with other objectives such as;
 - Protecting high class soils;
 - Maintaining and enhancing amenity values and rural and natural character;
 - Protecting primary production activities from reverse sensitivity effects;
 - Provision of infrastructure; and
 - Protecting mineral resources in rural areas.
- d) The Court rejected the attempt by Auckland Council to manipulate rural subdivision by lot size qualification restrictions to try and achieve growth management limits.

- 4.14 The following conclusions of the Court in *Cabra* are instructive regarding the veracity of the method and the most appropriate activity status:

[327] We do not consider that the IHP provisions would allow for fragmentation or inappropriate subdivision. Any application for in-situ development outside the Countryside Living zone must be scrutinised, and will require detailed evidence addressing a number of significant issues in terms of the various supporting documents. As we have noted, this is already occurring as non-complying activities, with the majority of those having been granted.

.....

[329] We have concluded that the use of the approach under the restricted discretionary activity will assist Council in focusing on the critical issues we have identified relating to overlays, elite soils, rural production, rural character and amenity and provision of infrastructure. Overall, we have concluded that the IHP provisions, with a modification to staging, are more efficient in achieving the outcomes of the Plans in that:

- (a) they are focused on achieving the outcomes in respect of overlays and rural character and amenity we have discussed;*
- (b) there is the potential for increases in indigenous biodiversity through the region;*
- (c) enhancement of connection between existing biodiversity sites, pathways and ecotones is supported; and*
- (d) long-term protection of significant indigenous biodiversity can be achieved.*

[330] Provided subdivisions can be achieved without affecting the overlay or rural production character and amenity issues, they should be considered on their merits. In our view, this is a more efficient process than relying on applicants preparing extensive applications for non-complying use in circumstances where most, but not all, of those applications are granted (often subject to modification or additional conditions).

- 4.15 Furthermore, the Court stated at page 93:

“We have concluded that the incentivisation within Rodney, and to a lesser extent in the Manukau area, has at least reduced the level of reduction in significant indigenous vegetation, and has improved the existing stands of indigenous vegetation and resulted in wetland gain.”

- 4.16 It is clear from the Proposed Plan that, unfortunately, it has adopted a similar approach to Auckland Council by rejecting non-SNA ecological incentive subdivision opportunities. The Auckland Council decision was overturned by the Environment Court and unless the Proposed Plan is amended to include appropriate provisions it is likely to be found to not meet the Purpose of the Act in the future. The Auckland Unitary Plan is a very relevant recent precedent, and in terms of the key issues and principles, including growth pressure in rural areas, the Waikato District is very similar the Auckland Region.
- 4.17 There is also a disconnect in the Proposed Plan between on the one hand, limiting subdivision to supposedly maintain parcel sizes to be economically viable for primary production, yet on the other hand limiting subdivision to only the largest sized blocks, rather than encouraging it to occur on smaller lots that are allegedly already compromised for rural production.
- 4.18 A further issue is that subdivision is often necessary and appropriate to raise the capital for horticulture and more intensive landuse to be viable. E.g. the transition from dairy farming to kiwifruit would not be possible, but for a few large corporate operations, unless blocks of approximately 10-15 ha can be created. Therefore, the subdivision opportunity for primary productive purposes in the Operative Plan, or a similar mechanism, should be reintroduced.
- 4.19 It is respectfully submitted that the Court in the *Cabra* case has taken a far sighted and future orientated approach to the maintenance and enhancement of biodiversity. It was not satisfied with only protecting existing SEAs (SNAs) that qualify. It was persuaded on the scientific and planning evidence, and by its own site inspections of examples from the last 25 years, that viable new SNAs can be created by subdivision incentives. It is submitted that this is the very essence of what s 5 requires because it is ensuring that the foreseeable needs of future generations for ecosystem services are more likely to be met. NB: as indicated above, this section is qualified subject to the outcome of the *Cabra* appeal(s).

5. Higher Order Instruments Not Given Effect To

New Zealand Coastal Policy Statement

- 5.1 The Proposed Plan does not give effect to the NZCPS, including;
- a) Policy 7 (often overlooked) that contemplates appropriate subdivision in the coastal environment and requires the Proposed Plan to identify where and how this can occur.
 - b) Incentive subdivision, with appropriate rules and assessment criteria, can help to achieve the outcomes of Policy 11 (indigenous biological diversity), Policy 13 (preservation of natural character) and Policy 14 (restoring natural character); and
 - c) If public access is included as an incentive for subdivision, the approach in this submission could also help achieve Policy 18 (public open space) and 19 (walking access).

National Policy Statement for Freshwater Management

- 5.2 As indicated above, the Government on 8 October 2018, in response to significant public concern about degraded water quality, announced a review of this NPS to essentially give it more teeth about issues such as sedimentation arising from landuse. In the *Cabra* case the Environment Court heard evidence that the Hoteo River in Rodney has one of the highest sediment loadings in NZ because of inappropriate rural landuse activities.
- 5.3 Regarding the current NPS, it is submitted that the Proposed Plan does not give effects to objective C1, and policies C1 and C2 that are intended to achieve integrated management of fresh water and land management.

Waikato River Settlement Act

- 5.4 Schedule 2 of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 (Waikato River Settlement Act) contains Te Ture Whaimana o Te Awa o Waikato – the Vision and Strategy for the Waikato River.

Schedule 2

Vision and strategy for Waikato River

1 Vision

1. *Tooku awa koiora me oona pikonga he kura tangihia o te maataamuri. The river of life, each curve more beautiful than the last.*
2. *Our vision is for a future where a healthy Waikato River sustains abundant life and prosperous communities who, in turn, are all responsible for restoring and protecting the health and wellbeing of the Waikato River, and all it embraces, for generations to come.*
3. *In order to realise the vision, the following objectives will be pursued:*

- a) *the restoration and protection of the health and wellbeing of the Waikato River:*
- b) *the restoration and protection of the relationships of Waikato-Tainui with the Waikato River, including their economic, social, cultural, and spiritual relationships:*
- c) *the restoration and protection of the relationships of Waikato River iwi according to their tikanga and kawa with the Waikato River, including their economic, social, cultural, and spiritual relationships:*
- d) *the restoration and protection of the relationships of the Waikato Region's communities with the Waikato River, including their economic, social, cultural, and spiritual relationships:*
- e) *the integrated, holistic, and co-ordinated approach to management of the natural, physical, cultural, and historic resources of the Waikato River:*
- f) *the adoption of a precautionary approach towards decisions that may result in significant adverse effects on the Waikato River and, in particular, those effects that threaten serious or irreversible damage to the Waikato River:*
- g) *the recognition and avoidance of adverse cumulative effects, and potential cumulative effects, of activities undertaken both on the Waikato River and within the catchment on the health and wellbeing of the Waikato River:*
- h) *the recognition that the Waikato River is degraded and should not be required to absorb further degradation as a result of human activities:*
- i) *the protection and enhancement of significant sites, fisheries, flora, and fauna:*
- j) *the recognition that the strategic importance of the Waikato River to New Zealand's social, cultural, environmental, and economic wellbeing requires the restoration and protection of the health and wellbeing of the Waikato River:*
- k) *the restoration of water quality within the Waikato River so that it is safe for people to swim in and take food from over its entire length:*
- l) *the promotion of improved access to the Waikato River to better enable sporting, recreational, and cultural opportunities:*
- m) *the application to the above of both maatauranga Maaori and the latest available scientific methods.*

5.5 The Vision is adopted into the WRPS by law (s 12) and the Vision takes precedence if there is any conflict with the WRPS. It is submitted that the Proposed Plan does not sufficiently give effect to the Vision as quoted above, for reasons including;

- a) There is a strong emphasis in the Vision on “restoration”, but the Proposed Plan does not adequately require and incentivise ecological restoration. It is primarily focussed on “protection” of existing SNA habitats and has overlooked the Court endorsed incentive subdivision method to achieve restoration of the values of the Waikato River and catchments;
- b) The Proposed Plan does not adopt an integrated and holistic approach to the management of landuses to achieve the health and well-being objectives for the river, including safe swimming and food gathering. For example, there are insufficient incentives to retire erosion prone land in upper catchments (LENZ 4 land), and to reduce the significant adverse effects of non-point pollution from animals/fertilizer, by incentivising the permanent protection and restoration of degraded stream margins.

Waikato Regional Policy Statement

- 5.6 The Proposed Plan does not give effect to the Waikato Regional Policy Statement (WRPS) as required by s 75 of the Act, as demonstrated by the following examples.
- 5.7 **Soils;** the most relevant WRPS policy is 14.2
 - a) *Avoid a decline in the availability of high class soils for primary production due to inappropriate subdivision, use or development.*
- 5.8 The Proposed Plan prohibition does not give effect to this policy because the RPS requires avoidance (as defined in the *King Salmon* decision) from inappropriate subdivision, not all subdivision.
- 5.9 The s 32 on Rural Areas relies on a paper by Andrew and Dymond that highlights the growth of lifestyle and small holder blocks in the Waikato District. However, this paper is not a comprehensive analysis and does not justify the Proposed Plan approach for high class soils. For example, the paper does not acknowledge that:
 - a) Many conventional farming and horticulture practices themselves are destroying the life supporting capacity of soils, by, for example, the loss of organic matter, sediment, structure, and the build-up of cadmium from phosphate fertilizers;
 - b) The causal link between subdivision and lower production has not been made – nationally horticultural and agricultural production are increasing to record levels, which is a contra indication of the threat that rural subdivision allegedly poses;

- c) A very narrow view of “rural production” is assumed, and many of the practices of lifestyle landuse increase soil fertility, biodiversity, and water quality. Ecosystem services are “productive” and provide necessary inputs, to sustain primary production, and capacity to assimilate pollutant outputs;
- d) There are vulnerable, degraded and eroded areas, within high class soil zones, that could benefit from being protected through enhancement subdivision;
- e) There is an undeniable demand for rural living and there is nothing to prevent purchasers from acquiring large economically viable (for primary production) blocks and then managing them as “lifestyle blocks” anyhow. This outcome is more likely if the supply of small lots, that could be provided with tangible environmental gains, is throttled; and
- f) The high fossil fuel dependent/greenhouse gas emitting, rural production systems at a large scale, on large parcels of land, arguably have a limited future. Consumers are demanding change and there is a transition occurring to more sustainable, and in some cases more intensive production, on smaller lots (e.g. from animals/pasture to horticulture).

5.10 The Submitter supports appropriate protection of high-class soils were practicable and where there are alternatives to using this land. However, sustainable land management may mean that subdivision on these soils is not always “inappropriate”. The Auckland Unitary Plan distinction between the management of “elite” and “prime” high class soils is preferred over the approach in the Proposed Plan.

5.11 **Environmental Enhancement:** the most relevant policy is Policy 11.1 - Maintain or enhance: indigenous biodiversity

Promote positive indigenous biodiversity outcomes to maintain the full range of ecosystem types and maintain or enhance their spatial extent as necessary to achieve healthy ecological functioning of ecosystems, with a particular focus on:

aa). working towards achieving no net loss of indigenous biodiversity at a regional scale;

a). the continued functioning of ecological processes;

ab). the re-creation and restoration of habitats and connectivity between habitats;

b). supporting (buffering and/or linking) ecosystems, habitats and areas identified as significant indigenous vegetation and significant habitats of indigenous fauna;

- c). providing ecosystem services;*
- d). the health and wellbeing of the Waikato River and its catchment;*
- e). contribution to natural character and amenity values;*
- f). tāngata whenua relationships with indigenous biodiversity including their holistic view of ecosystems and the environment;*
- g). managing the density, range and viability of indigenous flora and fauna; and*
- h). the consideration and application of biodiversity offsets.*

Policy 11.1 of the RPS guides Waikato Regional Council and territorial authorities to maintain indigenous biodiversity wherever it occurs. An important component of the policy direction is to work towards no net loss for all indigenous biodiversity at a regional scale. The policy is also important where ecosystems have been depleted and fragmented, such as coastal and lowland ecosystems, and where maintaining indigenous biodiversity in the long term requires enhancement and restoration. The Policy will be implemented through a combination of both regulatory and non-regulatory mechanisms. This provides the flexibility to manage the varying local contexts and take into account the positive effects that some activities may have on indigenous biodiversity. Examples of this include positive effects from riparian planting. (Emphasis added)

- 5.12 The Proposed Plan does not give effect to this policy because, for example, there are inadequate objectives, policies, and rules that are focused on;
- a) Achieving no net loss of biodiversity;
 - b) Enhancement and expanding biodiversity compared to just protecting existing remnants through SNAs;
 - c) Recognising the need to restore lost ecosystem types at scale that are representative spatially;
 - d) Connecting and integrating isolated ecological resources; and
 - e) Realising the significant contribution that enhancement subdivision could make (no longer in doubt after the *Cabra* decision) to ecosystem services including the mauri of waterways and the health of the Waikato River.
- 5.13 Policy 11.2 Protect significant: indigenous vegetation and significant habitats of indigenous fauna is partly given effect to by the SNA protections but there are questions regarding;
- a) The criteria used to select sites being too conservative;
 - b) Only isolated small pockets are protected with no provision for linkages and questionable long-term viability; and

- c) Whether the provisions are sufficiently generous to be taken up by landowners.

6. Relief Sought to the General Provisions

- 6.1 Without derogating from the planning law principles established by the Environment Court in several cases, and general objectives, policies and rules, outlined above, this section outlines relief sought to the Proposed Plan.
- 6.2 Some track changes are provided in **Appendix One** to assist the Council and other submitters to understand how the relief sought in the submissions would affect the provisions in the Proposed Plan.
- 6.3 However, the changes are not comprehensive and there will be other changes required to implement the concerns outlined in the relief sought. The submitter will further clarify the provisions to be deleted, amended and added to, as the process unfolds and there is interaction with the Council planners and technical advisers and with other submitters and interested parties.

Proposed Plan

- 6.4 The submitter seeks deletions, amendments, and additions, to the following main sections of the Proposed Plan in response to the submission points identified:

Chapter 1 and Section 1.4 - Issues

Chapter 3 – Natural Environment

Chapter 5 – Rural Environment

Chapter 13 – Definitions

Chapter 22 – Rural Environment

Chapter 23 - Country Living Zone

AUP Provisions.

- 6.5 The Submitter is familiar with the Objectives, Policies and Rules in the Auckland Unitary Plan (Operative in Part) and relies on some of those provisions to be introduced into the Proposed Plan for the following reasons:
- a) The natural and physical environments of the Auckland Region, particularly in the southern part, and the Waikato District are reasonably similar;
- b) Issues such and the protection of high-class soils, SEAs, the need for ecological enhancement, and the need to manage growth in rural areas, is common to both jurisdictions;

- c) The AUP provisions were developed by an expert Hearings Panel with the benefit of a substantial amount of expert evidence and legal submissions. They have been recently tested in several appeals to the High Court and the Environment Court and have generally been found to be robust and to meet the Purpose of the Act. E.g. in the *Shelf* case (Crater Hill) high class soils were protected from urbanization when the Court applied the AUP objectives and policies;
- d) As indicated above, the *Cabra* case (under appeal to the High Court) is particularly instructive on the most appropriate planning approach to the maintenance and enhancement of ecological values under the Act.

6.6 Incentivised Subdivision Rules for the General Rural Area for Ecological Benefit

- a) Restricted Discretionary Activity Status (see *Cabra* decision)
- b) In situ opportunity available in all rural zones but subject to overlay rules for outstanding landscapes and features etc
- c) Lot yields:

Restoration Planting	1 new lot for every 2 ha minimum
Retirement Succession	1 new lot for every 4 ha minimum
Wetland Establishment	1 new lot for every 0.5 ha establishment (excluding buffer areas)
Riparian Protection	1 new lot for every 1.5 ha minimum (minimum width of 10 m and an average minimum of 15 m either side of the stream bank or wetland)
- d) The submitter is further considering the issue of whether a cap should apply.
- e) Lot sizes to be created are to be between 5000 m² and 1.5 ha.
- f) Clustering of lots is encouraged, but not required as is a design response issue and very site dependent.

6.7 RD Assessment Criteria:

- a) Site specific design led approach to the identification of protection/enhancement areas, lot boundaries and building platforms;
- b) Priority provided for the LENZ 4 most at-risk land, wetlands and streams;
- c) Opportunity for linkages to other existing or future ecological areas;
- d) The qualities and features of the resources to be protected/enhanced;
- e) Locating accessways and building platforms, where practicable;
 - off elite soils;

- where reverse sensitivity risk is managed;
 - to maintain rural production (broadly defined); and
 - to maintain and enhance rural amenity values.
- f) The ecological and other benefits of the enhancement; and
- g) Legal long-term protection and maintenance mechanisms.
- 6.8 The Submitter also requests alternative and consequential amendments and additions to the proposed provisions above, and in Appendix 1, to achieve the broader policy intent of the first part of this submission, and therefore meet the Purpose of the Act.

7. Site Specific Relief Sought for 95 Jerhico Rd

- 7.1 The Submitters site at 95 Jericho Rd was recently granted a subdivision consent (SUB0262/18) under the Operative Plan provisions for the protection of some stream margins shown as Ecological Enhancement Overlay Area (EEOA), and Ecological Corridor on the planning maps, for the property and the Qualifying Natural Feature Rule 22B.11.1.3(c)(ii). The Submitter originally sought an additional lot (to the 2 eventually granted) for the protection of 3 ha of riparian areas on the property, to the East of the gas pipeline, that were not shown as an Ecological Corridor on the Operative Plan planning maps.
- 7.2 It is submitted that the Ecological Corridors identified in the Operative Plan, being based on the Strathler Stream Order tool, rather than an ecology measure, are not a robust method. Therefore, it is appropriate that the method to identify appropriate areas for stream restoration are reviewed in the Proposed Plan. However, the submitter is concerned that the Ecological Corridor overlay now appears to have been largely removed in the Proposed Plan and is no longer shown on the property.
- 7.3 The submitter has already fenced the areas to be protected under the current consent and has undertaken the main tranche of planting this winter. The plants are establishing successfully, and the work has been undertaken to a high standard, but at significant capital cost.
- 7.4 The submitter would like to extend the planting over the rest of the property to exclude stock from accessing the waterways. The area proposed to be protected and restored is approximately 3 ha and an ecology report has been prepared to support this work. The intended plantings will link through to indigenous vegetation and stream catchments on other properties and a plan of the subject areas is **attached as Appendix Two**.
- 7.5 However, fencing and planting is expensive around streams and it is a challenging task with flooding risk and accounting for the movement of livestock etc. The fencing and planting of the 4 ha area protected this year

has cost over \$200,000 (excluding owner time) and there will be significant on-going maintenance costs for the coming years.

- 7.6 Therefore, the submitter believes that a subdivision incentive mechanism is appropriate and necessary to afford the degraded stream the protection it requires. The following relief is requested;
- a) The inclusion of the riparian areas shown in Appendix Two into the planning maps as an Ecological Corridor, or similar layer;
 - b) Appropriate rules allowing the creation of up to 2 additional lots at 95 Jericho Rd for a minimum of 3 ha of restoration/protection, as a restricted discretionary activity; and
 - c) The size of the new lots could be between 5000 m² to 1.5 ha.
- 7.7 The submitter also supports any subdivision opportunity for 95 Jericho Road that is available under any other rules, including for sites with older titles and larger than 20 ha, in the Proposed Plan.

Signature:

Middlemiss Farm Holdings Limited by their authorised agent:



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