WAIKATO DISTRICT COUNCIL

Hearings of Submissions on the Proposed Waikato District Plan

Report and Decisions of Independent Commissioners

Decision Report 18: Country Living Zone

17 January 2022

Commissioners

Dr Phil Mitchell (Chair)

Mr Paul Cooney (Deputy Chair)

Mr Dynes Fulton

Ms Linda Te Aho

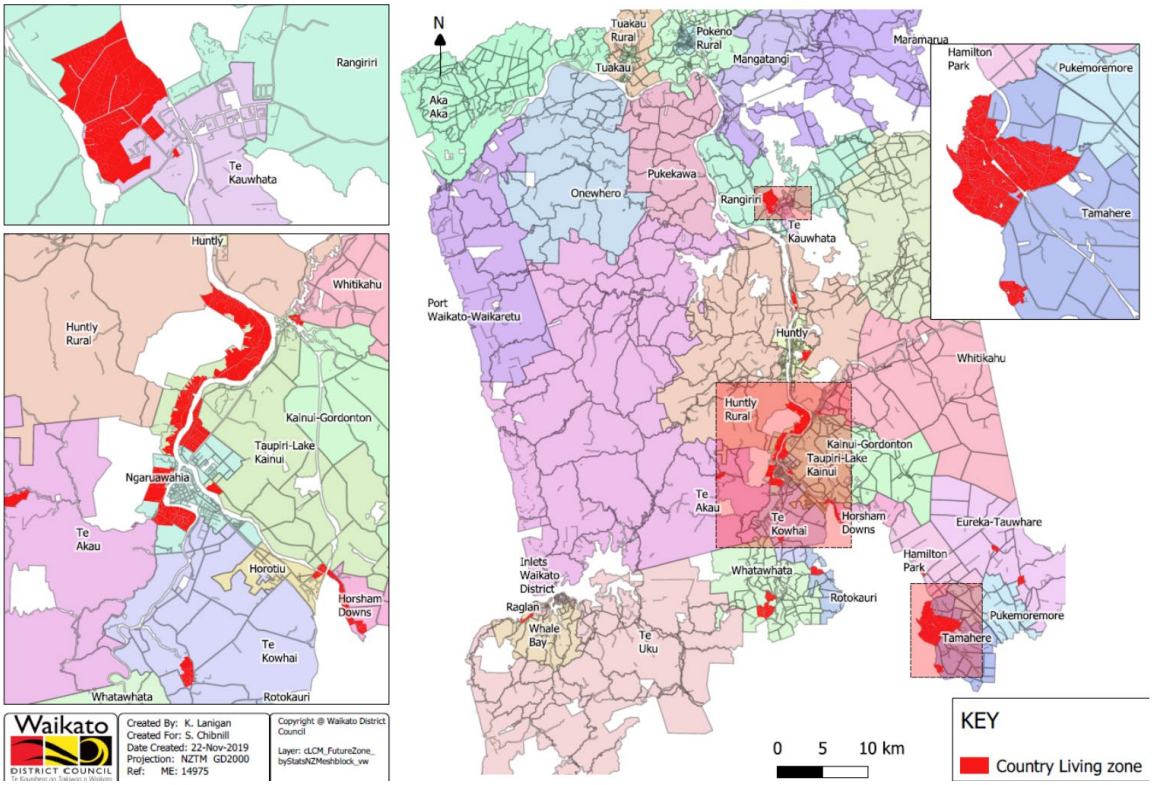
Contents

1 Introduction

1. Hearing 12 related to all the submissions received by the Waikato District Council (Council) on the provisions of the Country Living Zone (CLZ) within the Waikato Proposed District Plan (PDP). This hearing specifically related to objectives, policies, land use activities, land use effects, building and subdivision within the CLZ.

2. The PDP was notified prior to the implementation of the National Planning Standards, which standardise planning provisions. We have explained below in our Decision that in order to implement the National Planning Standards, the CLZ will be renamed as the 'Rural Lifestyle Zone'. We highlight to plan users that when searching for the CLZ provisions, they must instead look for the 'Rural Lifestyle Zone'. We have however continued to use 'CLZ' in this Decision for consistency with Hearing 12.

3. The CLZ provides for low density living at specific locations in rural areas and is intended to provide rural-residential living opportunities to alleviate the pressure for the subdivision and development of rural land. The CLZ is generally located near an urban town or village, but can also be in isolated rural areas. Substantial areas of the zone are located at Te Kauwhata and around Ngaruawahia, extending north towards Taupiri. Tamahere is the largest area of CLZ and is in close proximity to Hamilton City.



Gordonton Road which will transfer into Hamilton City Council's jurisdiction at some point and will eventually be urbanised. The purpose of the UEA is to ensure that development in the meantime does not compromise the future ability to urbanise. The provisions limit the subdivision and land uses that can establish in order to allow more efficient urban development in the future.

2 Hearing Arrangements

5. The hearing was held on Tuesday 7 April 2020 via Zoom. All of the relevant information pertaining to this hearing (i.e., section 42A report, legal submissions and evidence) is contained on Council's website.

6. We heard from the following parties on the CLZ provisions of the PDP:

Submitter	Attendee at the hearing
Council	Susan Chibnall (author of section 42A report)
Hamilton City Council	Laura Galt
Middlemiss Farm Holdings	Peter Fuller
The Buckland Country Living Zone Landowners Group	Peter Fuller and Shane Hartley
Mark Chrisp	In person
Ethan Findlay	In person
Jason Howarth	In person
Bowrock Properties	Hannah Palmer
NZ National Fieldays Society Inc	Peter Nation
Waikato Regional Airport Ltd	Kathryn Drew
Derek Hartley	In person
Godfrey Bridger	In person

Auckland/Waikato Fish and Game Council NZ	Ben Wilson
Tamahere Community Committee	Sue Robinson

7. Although these parties did not attend the hearing, evidence was filed by:

    a. Leigh Robcke;

    b. Philip Barrett for William Hodgson and Leo Koppens;

    c. Pam Butler on behalf of KiwiRail;

    d. Teina Malone on behalf of First Gas Ltd;

    e. Sir William Birch on behalf of CSL Trust and Top End Properties;

    f. Tim Lester on behalf of Blue Wallace Surveyors Ltd;

    g. Pauline Whitney on behalf of Transpower NZ;

    h. Vance Hodgson on behalf of HortNZ;

    i. Carolyn McAlley on behalf of Heritage New Zealand Pouhere Taonga;

    j. Vanessa Addy on behalf of The Surveying Company;

    k. Alec Duncan on behalf of Fire and Emergency New Zealand;

    l. Tanya Running on behalf of New Zealand Transport Agency; and

    m. Alec Duncan on behalf of the Ministry of Education.

3 Overview of issues raised in Submissions

8. In the section 42A report, Ms Susan Chibnall set out the full list of submissions which Council received relating to the CLZ provisions. In brief, the key matters of relief sought by the submitters relate to:[1]

    a. Objectives and policies to recognise non-residential activities;

[1] Section 42A Report Hearing 12: Country Living Zone, 3 March 2020, paragraph 31.

b. Provisions to support the establishment and operation of emergency services facilities;

c. Inclusion of Crime Prevention Through Environmental Design (CPTED) in new development;

d. Provisions to manage the impact of Homestays (inclusive of Airbnb and Bookabach);

e. Provisions to enable childcare facilities and management of home occupations;

f. More enabling provisions for earthworks;

g. Better recognition and minimisation of reverse sensitivity;

h. Less restrictive standards for setbacks, height, daylight admissions and site coverage;

i. Amendments to the setback rules from waterbodies;

j. Decreasing the minimum lot size below 5,000m^2;

k. Deleting the prohibitive subdivision rule for subdivision in the Airport Subdivision Control Boundary (ASCB);

l. Decreasing the minimum lot size below 1.1ha in the ASCB; and

m. The prohibitive subdivision framework in Hamilton's UEA.

3.1 Overview of evidence

9. Ms Galt presented evidence on behalf of Hamilton City Council (HCC) which addressed two main matters in the context of the UEA. Ms Galt sought to limit the commercial activities that can establish in the UEA to maintain the primacy of existing commercial centres by confining commercial activities to Business Zones. She explained this is a critical issue for HCC, as almost all of the CLZ is located near Hamilton City or main towns. Accordingly, HCC seeks to ensure that any commercial activities that establish within the CLZ are limited to providing a local service at a scale that provides for the day-to-day needs of a community. She considered that larger commercial activities should be directed to and located in existing business zoned land, so as not to adversely impact on existing centres. Ms Galt stated that while a discretionary activity status is an appropriate activity status for commercial activities in the CLZ, the current policy framework does not achieve the outcome sought by HCC.[2] Ms Galt therefore supported the recommendations of the section 42A report in terms

[2] Statement of Evidence of Laura Galt on behalf of Hamilton City Council, 17 March 2020, paragraphs 10 and 11.

of retaining Policy 5.6.8 Non-residential activities so long as it was strengthened to better protect existing centres from inappropriate commercial activities establishing in the CLZ.

10. Ms Galt also sought retention of the prohibited activity status for subdivision in the UEA to protect the land resource which will be transferred to HCC in the future. While Ms Chibnall recommended a discretionary activity status in her section 42A report, Ms Galt considered that any further fragmentation of the land will degrade the resource and HCC's ability to retrofit the land for future urbanisation purposes. She considered a prohibitive approach to subdivision in the UEA provides HCC with the best chance to urbanise the land in the most effective and efficient manner, and thus achieve the outcomes of the Strategic Agreement between Waikato District Council and Hamilton City Council.[3]

11. HCC was also a further submitter on a number of primary submissions and Ms Galt expressed support for the following recommendations in the section 42A report:
    a. the retention of Policy 5.6.3 (i) Subdivision within the Country Living Zone, as notified;
    b. the retention of the notified minimum lot size of 5000m^2 for the CLZ; and
    c. the retention of Policy 5.6.8 Non-residential activities and the definition of "rural activity".

12. Mr Peter Fuller filed legal submissions on behalf of The Surveying Company and the Buckland Group, although recognised that the Buckland Group arguably did not have direct standing in this hearing due to the absence of submissions.[4] The legal submissions were complimented by planning evidence from Mr Shane Hartley on behalf of The Surveying Company. Mr Hartley agreed with the section 42A report recommendations on the following matters[5]:
    a. Increasing the maximum volume of earthworks as a permitted activity from 250m^3 to 500m^3, and retaining the other standards for earthworks;
    b. Retaining minor household units as a permitted activity; and
    c. Adding a rule requiring buildings to be set back a minimum of 10 metres from the bank of a perennial or intermittent stream (named or unnamed).

13. The main area in contention was the minimum site size for subdivision, where Mr Hartley sought a minimum area of 3,000m^2 and an average of 5,000m^2. He considered that having a strong objectives and policy framework would enable Council to decline

[3] Statement of Evidence of Laura Galt on behalf of Hamilton City Council, 17 March 2020, paragraphs 13 and 14.

[4] The Buckland Group of submitters sought rezoning of property between Tuakau and Pukekohe as Country Living Zone.

[5] Statement of Primary Evidence of Shane Hartley on behalf of The Surveying Company, 16 March 2020, paragraph 2.1.

non-complying activities where subdivision did not maintain the outcomes intended for the zone. He outlined the advantages of an averaging approach such as enabling larger lots to be used for productive rural activities; reducing extensive maintenance and requirements for smaller lots; creating more flexible and design-led subdivision patterns; and providing for a range of lot sizes offering more choice.

14. Mr Fuller considered that expanding and reinforcing the restricted discretionary activity amenity assessment criteria would address the concerns expressed in the section 42A report, including loss of rural character, clustering houses near a road, and views from public places.[6] Mr Hartley considered that the proposed policies clearly direct how to determine and reject subdivision proposals for subdivision that do not meet the averaging approach requirements which he sought.

15. Mr Fuller outlined an alternative option if we were not minded to adopt an averaging approach, which is to further strengthen the rural character criteria of discretion in the assessment of an averaging application.[7]

16. Mr Mark Chrisp sought that the minimum lot size be reduced to 3,000m^2 and considered that in reality the CLZ is a Large Lot Residential Zone in terms of the National Planning Standards, rather than the Rural Lifestyle Zone as recommended by Ms Chibnall.[8] He considered that any notion that the CLZ still enables primary production largely relates only to the land that has yet to be subdivided into large residential lots or is otherwise constrained in terms of its lot size by virtue of being located within the ASCB (i.e., where there are larger lot size requirements).[9] He observed that the vast majority of properties in the CLZ do not undertake rural production activities; rather it is an environment that is dominated by large houses surrounded by large areas of mown lawn and perimeter plantings. He considered that the 5,000m^2 minimum lot size is a grossly inefficient use of land; and given that the majority of the sites are in lawn, he considered that a similar level of amenity is achievable with a minimum lot size of 3,000m^2.[10]

17. Mr Chrisp identified the benefits resulting from a minimum lot size of 3,000m^2 as a more efficient use of land, enabling a reconfiguration of existing lots, and reducing pressure on productive Rural Zone land being used for residential purposes. He considered that the outcomes sought to be achieved by the objectives and policies of the CLZ can be achieved by a minimum net site area of 3,000m^2.

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[6] Legal submissions on behalf of The Surveying Company and Buckland Group, 3 April 2020, paragraph 21.

[7] Legal submissions on behalf of The Surveying Company and Buckland Group, 3 April 2020, paragraph 16.

[8] The Chair took no part in matters relating to this submission – see the Hearings Panel's Register of Interests.

[9] Statement of Evidence of Mark Chrisp, 23 March 2020, paragraph 4.3.

[10] Statement of Evidence of Mark Chrisp, 23 March 2020, paragraph 4.8.

18. While the primary submission of Mr Ethan Findlay was not clear as to the relief he was seeking, his further submissions supported primary submissions seeking a reduced minimum lot size. His evidence clarified that he sought that the CLZ be extended to a number of lots in Matangi. Alternatively, his evidence sought that the Rural Zone provisions be amended to facilitate reclassification and subdivision of segmented rural land that in practical terms is being used as 'country living'. He considered this will allow better use of land that is already fragmented and no longer of rural use. We understand that residential subdivision to lot sizes of 3,000-3,500m^2 would address the relief he sought. We wish to advise Mr Findlay that although we received his evidence in Hearing 12, we have considered the matters he raised in the context of Hearing 18 Rural Zone and Hearing 25 Zone Extents.

19. Mr Jason Howarth presented evidence primarily on the ASCB, particularly on the larger 1.1ha minimum average lot size for subdivision within that overlay. He did not consider that there is any need for a special rule to control subdivision within the ASCB and observed that there is no practical correlation with the ASCB and aeronautical operations i.e., there is no obligation for a pilot to conduct aircraft operations within the ASCB. He also noted that the operation of the Waikato Regional Airport (the Airport) has changed since Plan Change 19 which introduced the ASCB and limited future subdivision within that overlay. He mentioned that there are no longer scheduled jet operations at the Airport and there has been a reduction in scheduled domestic services.[11] He did not believe there to be a significant issue relating to reverse sensitivity and considered that the Airport's operations have a minor effect on the properties. He observed that more restrictive controls have largely failed to control the number of sections and dwellings as demonstrated by significant development within Tamahere over the past 10-15 years.[12]

20. Ms Hannah Palmer presented planning evidence on behalf of Bowrock Properties Limited and outlined her support for a more flexible approach to subdivision. She sought amendments to Policy 5.6.3, the key policy guiding subdivision within the CLZ, to avoid the creation of undersized lots except where it can be demonstrated that productive capacity of land can be retained.[13] Ms Palmer did not seek any further amendments to objectives, policies or rules, and considered that should her amendment be accepted then retaining a non-complying activity status for undersized lots is appropriate. Ms Palmer considered that the amendment serves to better accommodate the productive capacity of land within the zone by providing flexibility in subdivision design, whilst still seeking to retain the character and amenity of the

[11] Statement of evidence by Jason Howarth, paragraph 3.

[12] Statement of evidence by Jason Howarth, paragraph 4.

[13] Statement of Evidence of Hannah Palmer for Bowrock Properties Limited, 16 March 2020, paragraph 6.4.

zone.[14] She considered that the rigidity in Policy 5.6.3 would contribute to fragmentation of potentially productive land by taking a one size fits all approach, and therefore would not adequately give effect to the Waikato Regional Policy Statement (RPS). We questioned her about the ability to undertake productive uses and she considered that clustering would result in larger lots that were more capable of productive uses.

21. Mr Peter Nation appeared at the hearing representing the NZ National Fieldays Society Inc. He provided the background to the noise overlays which sit over the Fieldays site at Mystery Creek, which was established following an Environment Court order 23 years ago. Although the Fieldays site is located entirely within the Waipa District, Mr Nation considered that the noise overlay should be extended into the PDP to reflect the Environment Court's decision and ensure that any future landowners are aware of the venue and the noise generated by activities on the site.

22. Ms Kathryn Drew appeared on behalf of Waikato Regional Airport Ltd (WRAL). Ms Drew explained the genesis of the ASCB and the 1.1ha average minimum lot size within that overlay, then outlined her support for retaining this approach.[15] She considered that removing the ASCB would undermine the existing integrated cross-boundary approach developed by the three councils (i.e., Hamilton, Waikato and Waipa) to manage the effects of the Airport's operations on the receiving environment. She considered that there is a need to control reverse sensitivity effects that may arise due to potential noise to limit the number of people exposed to those adverse noise effects. Ms Drew thought that the most effective way to achieve this outcome is by limiting the potential for new dwellings to be built within the ASCB through the retention of the larger average lot size.[16] She agreed with a non-complying activity status for subdivision with an average lot size smaller than 1.1ha within the ASCB, provided that Policy 5.6.3 Subdivision within the CLZ was amended to ensure that policy protected the Airport as regional significant infrastructure from reverse sensitivity effects. Without the change to Policy 5.6.3, she considered that the prohibited status for subdivision that does not comply with the averaging requirement should be retained.[17]

23. Mr Derek Hartley is a landowner at Newell Road, Tamahere, which is located on the eastern side of the Airport. He sought to remove the rules applying to the Airport noise area and to allow discretion for thoughtful subdivision of Tamahere of lots less than 5,000m^2.

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[14] Statement of Evidence of Hannah Palmer for Bowrock Properties Limited, 16 March 2020, paragraph 7.1.

[15] Statement of Rebuttal Evidence by Kathryn Drew on behalf of Waikato Regional Airport Limited, 24 March 2020, paragraphs 14-22.

[16] Statement of Rebuttal Evidence by Kathryn Drew on behalf of Waikato Regional Airport Limited, 24 March 2020, paragraph 30.

[17] Evidence Highlights of Kathryn Drew on behalf of Waikato Regional Airport Ltd, page 10.

24. Mr Godfrey Bridger presented to us around the need for the minimum lot size to be reduced from 5,000m^2 to 4,000m^2. He considered such a reduction would enable the supply of sections in the CLZ to transition to a slightly higher density housing. He considered that this is a very important issue that has not had adequate investigation. Mr Bridger suggested the minimum lot size is in conflict with Council's, the region's and New Zealand's policies to relieve the population pressures from growing urban centres and facilitate orderly planned development. He considered that maintaining density of the CLZ is not the outcome the PDP should be seeking.[18]

25. Mr Ben Wilson presented evidence on behalf of Auckland/Waikato Fish and Game Council and sought to exempt maimai (a gamebird shooting structure) from the building setback rules to waterbodies. He considered that building and using maimai is a fundamental part of gamebird hunting in New Zealand. He observed that a wide range of structures are used as maimai, many of which meet the definition of a building under the Building Act 2004.[19] He drew our attention to several areas where the CLZ adjoins the Waikato River, and the zone overlaps with the riparian margin. He considered that these areas already have long established maimai that have not caused any safety issues to date. He considered that the construction of a maimai is a safer approach than shooting occurring from any location.[20]

26. Ms Sue Robertson presented on behalf of the Tamahere Community Committee and covered a number of matters. She supported allowing a minor dwelling as a permitted activity and that it not be limited to accommodation for a dependant relative. She opposed the requirement for the minor dwelling to be within 20m of the principal dwelling, particularly as topography may not be conducive to the restriction of 20m.

27. While she supported home occupations, she expressed concern about the following standards:
    a. Machinery may be operated up until 9pm, this was previously 7pm;
    b. No limit on heavy vehicle movements per day, previously only 4;
    c. No limit on vehicle movements per day, previously 30, now up to 100 as set out in Chapter 14.12; and
    d. No longer requires that the activity does not interfere with neighbours' televisions, radios, telephones or electronic equipment.

[18] Verbal submission to Hearing 12 Country Living Zone by Godfrey Bridger, 7 April 2019.

[19] Summary of Submission of Benjamin Wilson on behalf of Auckland/Waikato Fish and Game Council, 7 April 2020, paragraph 2.3.

[20] Summary of Submission of Benjamin Wilson on behalf of Auckland/Waikato Fish and Game Council, 7 April 2020, paragraph 3.4.

28. She considered that the rules for home occupations may erode amenity values, and tight controls are required as the CLZ is not a business zone. She also considered that the provisions were not clear regarding the ability to build a non-habitable or accessory building within the 100m setback to the Tamahere Commercial Areas A and B.

29. Ms Robertson supported the analysis in the section 42A report regarding building coverage and the retention of the 5,000m^2 minimum lot size, although opposed the larger average lot size in the ASCB. She considered that as there are now only minimal parcels of undeveloped land remaining in the ASCB, it seemed redundant to maintain the subdivision restrictions and considered that the situation should be managed by a 'no complaints' covenant on new titles in the Airport Outer Noise Zone and within the SEL 95 Boundary.

30. Mr Leigh Robcke filed evidence to be tabled at the hearing on behalf of the estate of John Robert Robcke and Dinah Leigh Robcke. Mr Robcke's evidence focused on the subdivision standards including the minimum lot size and considered these as overly conservative when compared with the district plans of adjoining territorial authorities. He doubted that viable primary production could occur on such small areas of land, particularly given the common large size of the houses, recreation amenities, curtilage and so on. On this basis, he suggested that the National Planning Standards' Settlement Zone is more appropriate (by reference to Glen Massey).

31. Mr Philip Barrett filed evidence on behalf of William Hodgson and Leo Koppens. He addressed reverse sensitivity in the context of the ASCB where he considered that there had been a substantial change to the Airport environment from when the rule was first negotiated at mediation, and limiting subdivision was no longer appropriate. He considered that growth of the Airport and the Tamahere community could continue simultaneously and that future subdivision and residential development would not hinder that growth. Mr Barrett further considered there was no relevant and reliable evidence that reverse sensitivity is a factual issue that warranted maintenance of the rule, and to retain it was disproportionally favourable to WRAL.[21] He considered that an alternative solution to addressing any potential reverse sensitivity issues with WRAL would be to require the new activity enter into a "no complaints" covenant via a land encumbrance.

32. Ms Pam Butler filed evidence on behalf of KiwiRail expressing support for the amendments recommended in the section 42A report to the following provisions:

    a. Policy 5.6.16 Noise;

    b. Rule 23.2.3.1 P2 (a)(iv) Earthworks general;

[21] Submission Statement of Philip Barrett for William Hodgson and Leo Koppens, 20 March 2020, Paragraph 1.7.

c. Rule 23.2.6.2 P1 Signs – Effects on traffic;

d. Rule 23.1 Land Use;

e. Policy 5.6.3 Subdivision; and

f. Rule 23.4.2 General subdivision.

33. While KiwiRail sought inclusion of a new paragraph in Rule 23.2.1 P2(a) Earthworks – General to require earthworks to be setback at least 1.5m from any infrastructure, Ms Butler did not oppose Ms Chibnall's recommendation to reject this request, on the basis that there is already a setback requirement for earthworks from the property boundary. Ms Butler supported the inclusion of a new reverse sensitivity policy. The main area of disagreement was the 5m setback which KiwiRail sought for all buildings adjacent to the rail corridor, which Ms Chibnall recommended rejecting. Ms Butler considered such a setback was necessary to manage risks to human safety associated with the interface between rail operations and activities on all sites adjoining the rail corridor, and avoid or minimise the potential for objects or structures inadvertently and / or unexpectedly coming into conflict with moving trains within the rail corridor.[22]

34. Sir William Birch filed evidence on behalf of CSL Trust and Top End Properties and outlined his support for the following section 42A report recommendations:

a. The various changes to Rule 23.2.3 Earthworks;

b. Retaining the minimum net site area for Rule 23.4.2 General Subdivision at 5,000m^2. He considered that decreasing the minimum net site area would greatly increase the potential lot yield from properties zoned as CLZ throughout the district, which would not align with the intended function of the zone; and

c. The change to Rule 23.3.5 Daylight Admission to use 45 degrees, which would be consistent with other district plans and make calculation easier.

35. Mr Tim Lester filed evidence on behalf of Blue Wallace Surveyors Ltd and focused on the areas where Ms Chibnall recommended rejecting the submission points. Mr Lester considered that earthworks for accessways should be explicitly provided for as a permitted activity and should be exempted from the earthworks standards. While Mr Lester supported Ms Chibnall's recommendation to increase the permitted volume of earthworks to 300m^3, he remained concerned at the setback required for earthworks from the property boundary and sought this be reduced from 1.5 to 0.5m. He considered that structures on property boundaries will have already gone through an

[22] Evidence of Pam Butler on behalf of KiwiRail Holdings Ltd, 17 March 2020, paragraph 4.4.

assessment process, and any undermining of abutting boundary structures is a civil matter between parties. Mr Lester supported Ms Chibnall's recommendation to clarify setbacks from managed wetlands. He considered that the policy addressing subdivision (Policy 5.6.3) should not seek to "avoid" undersized lots, given the inflexible policy direction and hurdles of s104D in the Resource Management Act 1991 (RMA). He supported a less restrictive discretionary activity status for CLZ subdivision in the UEA as recommended by Ms Chibnall, as well as a discretionary activity status for subdivision in the Coal Mining Policy Area. He considered that a 500m^2 building platform requirement for subdivision provided flexibility and was more appropriate than 1,000m^2.

36. Ms Pauline Whitney filed evidence on behalf of Transpower NZ, which focused on whether the rules regarding subdivision near the National Grid should be replicated in each of the zone chapters or the infrastructure and energy chapter. Ms Whitney opposed the "zone by zone" approach and instead preferred a standalone set of National Grid provisions, for the reason it avoids duplication and provides a coherent set of rules which plan readers can refer to. She supported clear cross referencing in the zone chapters.

37. Mr Vance Hodgson filed evidence on behalf of HortNZ and addressed reverse sensitivity issues, as well as the need to enable farming. He sought inclusion of a new policy to address reverse sensitivity issues, to reflect Policy 4.4(f) of the RPS. He considered that where a building infringes a setback standard, an additional matter of discretion would be helpful that addressed reverse sensitivity effects.[23] Mr Hodgson supported an activity status cascade to discretionary where a building does not comply with Rule 23.3.7.2, which sets out setbacks for sensitive land uses.[24]

38. Mr Hodgson considered that an explicit permitted activity listing for farming in the CLZ would acknowledge that there are areas of farming activity including on highly productive land where the value of food production supports retaining and encouraging rural activities.[25]

39. Ms Carolyn McAlley filed evidence on behalf of Heritage New Zealand Pouhere Taonga and expressed concern that the submission points had largely been recommended to be rejected by Ms Chibnall in her section 42A report. Ms McAlley sought recognition of historic and cultural values in the following provisions:

[23] Statement of Evidence by Vance Hodgson on behalf of Horticulture New Zealand, 16 March 2020, Paragraphs 20-24.

[24] Statement of Evidence by Vance Hodgson on behalf of Horticulture New Zealand, 16 March 2020, Paragraph 27.

[25] Statement of Evidence by Vance Hodgson on behalf of Horticulture New Zealand, 16 March 2020, Paragraphs 16-19.

a. Policy 5.6.7 Earthworks;

b. Rule 23.2.6.1 Signs, in particular the inclusion of a restricted discretionary activity for signs on historic heritage sites or Maori Sites and Areas of Significance. Alternatively, if a $1m^2$ sign was enabled as a permitted activity, then Ms McAlley sought the inclusion of an additional standard regarding the location of the sign on the building and method of attaching the sign; and

c. Rule 23.4.5 Subdivision site boundaries and the correct translation of historic heritage into the new rule recommended by Ms Chibnall, and a non-complying activity status where historic heritage items are split across property boundaries.

40. Ms Vanessa Addy filed evidence on behalf of The Surveying Company and identified all the submission points which were recommended to be accepted by Ms Chibnall in her section 42A report, including an increase in the volume of earthworks, retention of the rule for minor dwellings, amendments to relax the daylight admission angle to 45º, 10m building setbacks from perennial or intermittent steams and the deletion of Rule 23.4.9 Subdivision creating reserves.

41. Ms Alec Duncan filed evidence on behalf of Fire and Emergency New Zealand and supported the inclusion of a policy enabling emergency services. She considered that Policy 5.6.2(e) – Country Living character should ensure sufficient water supply for firefighting, a matter which was rejected by Ms Chibnall in her section 42A report. Ms Duncan supported the controlled activity status for hose drying towers up to 15m but sought this height limit be applied to all emergency service facilities as well. She also considered that the subdivision standards in the CLZ should include a connection to water supply for firefighting purposes, and a matter of discretion in the same vein.

42. Ms Duncan expressed support for Ms Chibnall's recommended amendments of the following provisions:

a. Policy 5.6.8 Non-residential activities;

b. Policy 5.6.9 Existing non-residential activities;

c. New permitted activity for 'emergency services training and management';

d. New controlled activity for 'emergency service facilities';

e. Rule 23.2.1.1. Noise – General; and

f. Rule 23.3.7.5 Building setback – Waterbodies.

43. Ms Tanya Running filed evidence on behalf of Waka Kotahi New Zealand Transport Agency (Waka Kotahi) and addressed the following rules:

a. Rule 23.2.6.2 P1 Signs - effects on traffic, where she suggested alternative wording for clearer understanding and to align with Waka Kotahi's brochure, "Advertising Signs on State Highways";

b. Rule 23.3.7.1 RD1 Building setbacks – All boundaries, where she sought amendments to the wording to refer to "transport network safety and efficiency"; and

c. Rule 23.1.1 P4 Permitted Activities – Home occupations, where she sought the inclusion of a rule preventing the use of a heavy vehicle.

44. Ms Alec Duncan filed evidence on behalf of the Ministry of Education, which sought a restricted discretionary activity status for education facilities, rather than the notified discretionary activity status. Ms Chibnall agreed with the request in her section 42A report, and thus Ms Duncan's evidence focused on the matters of discretion. Ms Duncan preferred the matters of discretion contained in the Ministry of Education's submission relating to bulk and location of buildings to those recommended by Ms Chibnall.

4 Panel Decisions

45. We note that 342 primary submission points were received on the CLZ and these were considered in a comprehensive section 42A report, rebuttal and closing statement prepared by Ms Chibnall who recommended a number of changes. We have therefore focused our decision on the areas of contention and where we have an alternative view to the recommendations of Ms Chibnall. We have summarised our decisions on all the CLZ provisions but to varying degrees of detail depending on how contentious the subject matter was.

46. Given the overlap between submitters on a number of outstanding issues before the Panel, the following sub-sections have been grouped by issues.

4.1 Implementation of the National Planning Standards

47. Ms Chibnall considered the range of zones available in the National Planning Standards and concluded that "Rural Lifestyle Zone" was the most appropriate.[26] We note that the zone is described in the National Planning Standards as:

> *Areas used predominately for a residential lifestyle within a rural environment on lots smaller than those of the General rural and Rural production zones, while enabling primary production to occur.*

[26] Hearing 12: section 42A Report on Country Living Zone, Susan Chibnall, 3 March 2020, paragraph 43.

48. We agree that Rural Lifestyle Zone is the most appropriate translation of the zone, and although we accept that many sites will not be used for primary production, primary production is enabled within the zone albeit on a small scale.

49. We also consider there is value in the inclusion of a descriptive statement to provide clarity on the purpose and character of the zone.

4.2 Purpose of the Zone

50. Objective 5.6.1 essentially establishes the overall purpose of the CLZ, however the only submission seeking amendments to the objective was Horticulture New Zealand who sought inclusion of "avoids compromising rural production land or activities" at the end of the objective. We do not consider Objective 5.6.1 to be a particularly effective over-arching objective for the zone and indeed reads more as a policy. We have included an additional clause which better describes the outcome for the zone, which is that residential living is enabled in a rural setting.

4.3 Crime Prevention Through Environmental Design

51. Counties Manukau Police sought a number of changes to the policies in particular to require activities and structures to conform to the CPTED principles. We do not consider that CPTED principles are particularly relevant to the CLZ given the open and semi-rural character of the zone, so we have not made the amendments sought. We agree with Ms Chibnall that the low housing density, prominence of a rural form of development, very mature vegetation, large setbacks and absence of footpaths in the CLZ would make it difficult to meaningfully implement such a policy.[27]

4.4 Policies

52. The CLZ as notified had 17 policies which covered a range of topics. We have summarised our decision on each one below:

Policy 5.6.2 Country Living character

53. We have not added in the reference to water for firefighting, as the focus of this policy is on the supply of water rather than the uses for it. We have addressed the issue of water for firefighting more holistically later in this decision. We have not added references to specific activities as requested by submitters as we consider that the rules are the most appropriate location for that level of detail rather than policies.

Policy 5.6.7 Earthworks

54. Auckland/Waikato Fish and Game Council sought to delete clause (a)(iii) which relates to managing earthworks where there are natural water flows and drainage paths. We agree with Ms Chibnall that it is important that during any development involving

[27] Hearing 12: Country Living Zone section 42A report, Susan Chibnall, 3 March 2020, paragraph 78.

earthworks that councils have the ability to manage the effects, especially when there is potential to affect the natural direction of water flows, as this may result in adverse effects on waterways.[28] We therefore have retained clause (a)(iii). Heritage New Zealand Lower Northern Office sought additional wording to the policy to address historic and cultural values, but we consider this is most appropriately addressed in the chapters focused on historic heritage and cultural values.

Signs Policies

55. In the CLZ, there are three policies managing signs within the zone, being Policies 5.6.12-14. Waka Kotahi sought amendments to Policy 5.6.14 to simplify the policy and focus it on avoiding adverse effects on the safety of road users. We agree with Ms Chibnall that the notified version of the policy provides greater clarity as to the effects which are being managed, and have therefore only amended clause (a) to broaden the application of the policy to include signs being visible to road users.

Policy 5.6.15 Artificial Lighting

56. We have not made any changes to Policy 5.6.15. While we appreciate the concerns of Andrew and Christine Gore, we consider any large project that does not meet the permitted activity rules in an ecological area will be effectively managed through the PDP objectives and policies relevant to the natural environment (Chapter 3) rather than the CLZ policies.

Policy 5.6.16 Noise

57. Three submissions were received on this policy, two of which sought amendments to recognise the interface between residential activities and the rail corridor and state highways. We have not made the amendments sought by Waka Kotahi and have addressed the issue of development near the Waikato Expressway holistically in our Infrastructure decision. We have amended the references in the policy to “noise” sensitive activities to better align with the definitions for that term.

4.5 Non-residential activities

58. Ms Galt expressed concern that if a discretionary activity status was retained for commercial activities in the CLZ, the policies were not strong enough to prevent undermining of the role of the business centres and protect against inappropriate commercial activities. We are mindful that commercial activities may be appropriate in the CLZ to support the needs of the community, and thus we consider that a discretionary activity status is appropriate. We then considered the policy framework for non-residential activities in the CLZ, particularly Policy 5.6.8 Non-residential activities. The policy seeks to “limit” the establishment of commercial and industrial

[28] Hearing 12: Country Living Zone section 42A report, Susan Chibnall, 3 March 2020, paragraph 96.

activities in the CLZ unless they have a functional need to locate in the CLZ or provide for the health and well-being of the district. We consider that a stronger directive is needed, so have replaced the word “limit” with “avoid”. Exemptions apply from this directive but we note that there may still be a consenting pathway in particular circumstances. This policy is not intended to apply to home occupations as these have their own policy (Policy 5.6.10).

59. Three other submissions sought amendments to Policy 5.6.8 but we have not made the changes requested. We have not included references to specific activities in Policy 5.6.8, as the rules are a more appropriate approach for that level of detail rather than policies.

4.6 Development in the Hamilton Urban Expansion Area

60. The UEA control on development was the subject of a number of submissions seeking to enable increased levels of subdivision. On the other hand, HCC sought to retain the UEA and the more restrictive rules and policies. We considered Objective 5.5.1 and Policy 5.5.2 and agree with Ms Galt that future urbanisation of the CLZ within the UEA would be compromised if development opportunities were liberalised.

61. We agree with Ms Chibnall’s analysis and have included industrial activities and rural industry as non-complying activities in the UEA. We consider these activities have the potential to compromise the eventual urban development of this area and should have a non-complying activity status.

62. Turning to subdivision in the UEA, Policy 6.17 of the RPS recognises the pressure for rural-residential development particularly in areas within easy commuting distance of Hamilton. Implementation method 6.17.1 of the RPS requires “strictly limiting rural-residential development in the vicinity of Hamilton City”. A range of activity statuses were open to us to consider for subdivision in the UEA. The activity statuses included prohibited (which was the notified activity status and supported by Ms Galt), non-complying (which the submission from Blue Wallace Surveyors Ltd sought), and discretionary activity status (as recommended by Ms Chibnall in her section 42A report and supported by Mr Lester). Having considered the number of properties in the UEA large enough to contemplate subdivision, we consider that a non-complying activity status, supported by directive objective/policy provisions to be appropriate.

4.7 Emergency Services

63. We acknowledge the critical role of emergency service facilities and the need for them to be located in the communities they serve. We therefore wish to enable these facilities and training activities while managing adverse effects on the surrounding character and amenity.

64. We started by considering the policy framework and agree with Ms Chibnall that an enabling policy framework for emergency services in the CLZ is required, and see the value in including a new specific policy. We do not see the need for an objective specifically for non-residential activities as sought by Fire and Emergency New Zealand, as we are satisfied that Objective 5.6.1 suffices.

65. Turning to the activity status, we agree that emergency services training and management activities should be a permitted activity, with reasonable limits on the timing / duration of training activities. In terms of the construction of the physical structures for emergency service facilities, we have made this a restricted discretionary activity consistent with the approach for other zones, allowing consideration of effects on amenity, character, site layout etc. We understand the concerns of Ms Duncan about the height limit for the building, but given that the height limit of the surrounding properties will be 7.5m, we consider that a maximum height of 9m for the building and 15m for the hose drying towers is appropriate. This will be sufficient to accommodate tall vehicles such as fire appliances while not being inconsistent with the scale of other development in the zone. We agree with Ms Chibnall that new definitions will be required to provide clarity for the emergency services activities and facilities.

66. The third issue was water supply in terms of Policy 5.6.2(e), the subdivision standards and matters of discretion for subdivision. Because much of the CLZ has no reticulated for water supply, a requirement to connect to a water supply with sufficient volume and pressure to meet firefighting standards is unlikely to be practicable. Ms Duncan considered that development could provide water supply through alternative means such as water tank storage, bores or, if required, a sprinkler system to compensate for an inability to connect to some form of water supply that will meet the requirements set out in the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008 (Code of Practice).[29] We do not consider reference to the Code of Practice is necessary, given the rural characteristics of the zone. We agree with Ms Chibnall that it is not practical for water to be protected for firefighting purposes (particularly in times of low rainfall) and instead the focus of the matters of discretion should be on the water supply being *accessible* for firefighting.

4.8 Management of noise generated by National Fieldays

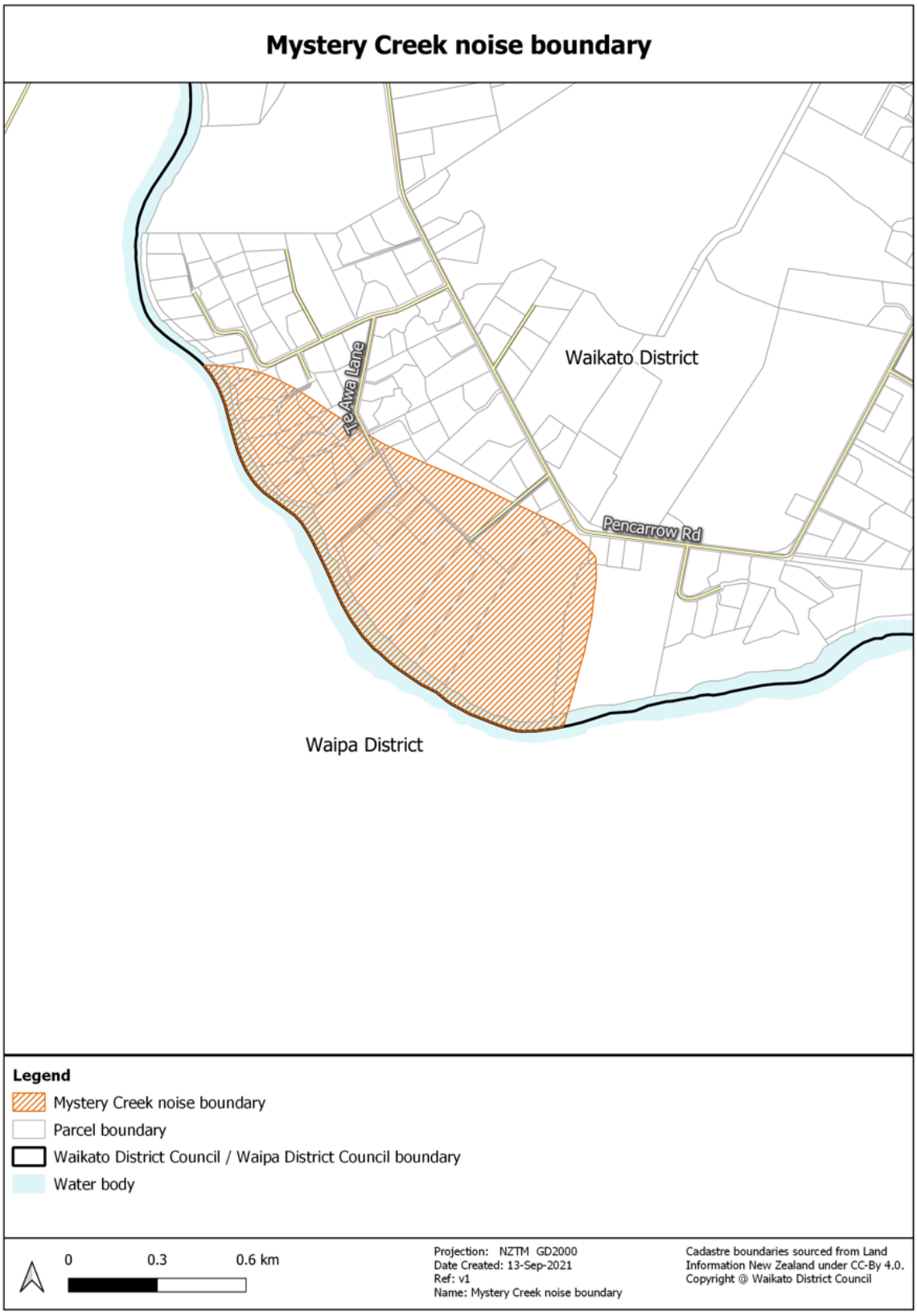
67. Both Waipa District Council and New Zealand National Fieldays Society Inc sought to add provisions to the general noise rule to mirror the operative Waipa District Plan with respect to the Mystery Creek Events Centre. The management of noise generated from Mystery Creek Events Centre is a complex issue because the source of the noise (being Mystery Creek Events Centre) is entirely located within the Waipa District jurisdiction. Ms Chibnall recommended rejecting the submissions because the

[29] Statement of evidence of Alex Duncan on behalf of Fire and Emergency New Zealand, 16 March 2020.

Environment Court Consent Order from 1997 did not specifically require Waikato District Council to align their noise rules with those of Waipa District Council.[30] Having heard from Mr Nation and read Ms Chibnall's closing statement,[31] we have determined that the noise contours should be included on the district plan maps as an alert layer, as this will alert any prospective landowners to the increased noise levels associated with Mystery Creek Events Centre via Land Information Memorandum reports.

[30] Hearing 12: Country Living Zone section 42A report, Susan Chibnall, 3 March 2020, paragraphs 293-298.

[31] Hearing 12: Country Living Zone closing statement, Susan Chibnall, 20 April 2020, paragraphs 52-67.



4.9 Management of reverse sensitivity effects

68. As discussed above, the matter of reverse sensitivity was addressed by Ms Drew in relation to the Airport. Mr Hodgson addressed reverse sensitivity in the context of farming and sought inclusion of a new policy that reflected the language of the RPS. We are mindful of the direction from the RPS to:
    a. Minimise land use conflicts, including minimising potential for reverse sensitivity (Objective 3.12(g);
    b. Avoiding or minimising the potential for reverse sensitivity (Policy 4.4);
    c. Avoid or minimise the potential for reverse sensitivity effects (Implementation Method 4.4.1); and
    d. Discourage new sensitive activities (Implementation Method 6.1.2).

69. We agree with Mr Hodgson and have included a new Policy 5.6.19 as follows:

> 5.6.19 Policy- Reverse Sensitivity
>
> (a) Avoid or minimise the potential for reverse sensitivity through:[32]
>
> (i) the use of setbacks, the design of subdivisions and development
> (ii) limiting subdivision near the Waikato Regional Airport Urban Expansion Area

70. We also agree that reverse sensitivity effects should be included as a matter of discretion in Rule 23.3.7.1.

71. Horticulture New Zealand also sought a setback of 100m from any boundary adjoining a Rural Zone where the sensitive activity is not a residential activity. The current setback in the CLZ is 12m, and we consider that anything larger would unreasonably constrain use of the site, particularly given that the minimum lot size is 5,000m^2. We therefore have rejected this submission point.

72. The setbacks from the rail corridor could also be considered in the context of reverse sensitivity as Ms Butler supported the inclusion of a reverse sensitivity policy, but also sought a 5m setback for all buildings from the rail corridor. Given that the setbacks are in excess of 12m for sites larger than 1,000m^2, we agree with Ms Chibnall that this will only be an issue for sites less than 1,000m^2 where the yards are 1.5m. KiwiRail has sought a 5m setback in all zones across the district.

73. We were not persuaded by the evidence of Ms Butler in respect of the CLZ and consider it is more appropriate that the setback rule remain located in Rule 23.3.7.2, which requires new buildings for sensitive activities to be located 5m from the designated boundary of the rail corridor.

74. We have not added a clause to Policy 5.6.4 as requested by KiwiRail which seeks to manage reverse sensitivity through setbacks, and instead have included this concept

[32] Horticulture New Zealand (419.66).

in new Policy 5.6.19 which addresses reverse sensitivity. We have added specific matters of discretion where buildings for sensitive land uses are closer than 5m from the designated boundary of the railway corridor. We consider that the amendments will be effective at helping achieve Objective 6.1.1 Development, operation and maintenance of infrastructure and Objective 6.5.1 Land transport network. The additional clauses will ensure that the effects of a sensitive land use on the rail corridor can be considered in the event dispensation is sought from the rule.

4.10 Land use activities

75. Section 23.1 sets out the activities and their status. We have added the following to the permitted activities:
    a. Emergency services training and management activities;
    b. Farming;
    c. Childcare facility;
    d. Visitor Accommodation; and
    e. Construction, demolition, additions and alterations to a structure or building.

    We consider these activities are all appropriate in the CLZ and will not adversely affect the character or amenity of the zone.

76. We have added two restricted discretionary activities being educational facilities (other than childcare) and childcare for greater than ten children.

77. We agree with Ms Chibnall that a rule for establishing a residential or sensitive activity in close proximity to the gas transmission line is not appropriate in the CLZ rules, and we have addressed this issue in more detail in our Decision Report 13: Infrastructure.

78. Consistent with our decisions across the other zones, we have assigned a discretionary activity status to activities which have not been specifically listed, rather than non-complying as notified.

4.11 Home occupations

79. Ms Robertson outlined her concerns with the standards for home occupations. We do not see the need to restrict the size of the building and consider there are other standards in the CLZ which more effectively manage this, such as site coverage and impermeable area. Given the progression in technology, we consider there is not the same risk of electrical interference, and we have not heard any evidence to make us think otherwise. The matter of heavy vehicles associated with home occupations was also addressed by Ms Running. Given that the standards in Chapter 14 Infrastructure and Energy allow 100 vehicle movements per day in the CLZ and no more than 15% of these vehicle movements are heavy vehicle movements, we cannot see the value in having a more restrictive rule applying to home occupations. We agree with Ms

Chibnall's recommended reduction in the duration of the operation of machinery from 9pm to 7pm.

4.12 Educational facilities

80. Ms Duncan supported the restricted discretionary activity status for education facilities as recommended by Ms Chibnall, and we agree. We have also included childcare for more than 10 children as a restricted discretionary activity with appropriate matters of discretion, rather than assigning a discretionary status.

4.13 Land Use Effects

81. While we have set out our decision on broader matters below, we have addressed here some of the more discrete decisions we have made on the CLZ Land Use – Effects rules which sit in Chapter 23.2.

Noise

82. We have amended the rules to be consistent with the noise rules applying to other zones, and to reflect the most accurate units of measuring sound.

Signs

83. There are two rules which manage signs in the CLZ and the most substantive changes we have made are the limits on the size of real estate signs in response to the submission from Greig Metcalfe and clarification of the standards for signs directed at road users (Rule 23.2.6.2). While there were a number of submissions seeking larger signs or an increased number, we are aware that the character of the CLZ is residential development in a rural setting. We consider that the standards will achieve the objective for the zone in terms of character and amenity, while ensuring safety of traffic, pedestrians and cyclists.

84. Waka Kotahi sought to limit the number of words and graphics. We agree with Ms Chibnall's assessment that the addition of the words 'and no more than 6 words', or 'graphics' complicates the situation for a plan reader and we have not made any changes in response. Turning to Sharp Planning Solutions, we consider the important factor is the distance from other road signs and significant roading features such as intersections and pedestrian crossings, rather than the distance from other signs on private property. We therefore have amended clause (a)(ii) accordingly. We agree with KiwiRail that it is appropriate to expand clause (a)(ii) to include levels crossings and other signs associated with roads and traffic management. We consider these amendments to the standards will more effectively achieve Objective 6.1.1 Development, operation and maintenance of infrastructure and Objective 6.5.1 Land transport network.

Outdoor storage

85. We have deleted this rule in response to the submission from Council on the basis that it is not appropriate in the CLZ and will unduly limit residential uses.

4.14 Earthworks

86. Twenty-one submissions were received on the earthworks rules, with many seeking to increase the permitted baseline for volume of earthworks and to exclude the earthworks limits from applying to accessways. We agree with Ms Chibnall's assessment and recommendations to increase the permitted volume to 500m^3.

87. Mr Lester sought the earthworks limits not apply to the formation of accessways (Rule 23.2.3.1 P1). Ms Chibnall recommended rejecting this request on the basis that the size of the sites (being over 5,000m^2) mean that the development of an accessway has the potential to require substantial earthworks, and a consenting process is an appropriate way to manage the activity.[33] We agree.

88. Sharp Planning Solutions sought to increase the volume of fill material from 20m^3 to 50m^3. We agree with Ms Chibnall's assessment that 20m^3 is only two truckloads and this would not allow landscaping bunds to be constructed. We agree that 50m^3 would be a more appropriate amount. We also agree that a 1.5m maximum depth of cut or fill is more appropriate than 1m, particularly given that slopes are restricted to 1:2 (1 vertical to 2 horizontal) which will help with stability.

89. First Gas Limited sought an additional requirement to the earthworks rule, Rule 23.2.3.1 P2 (a)(vii), and an associated matter of discretion in Rule 23.2.3.1 RD1 limiting earthworks in close proximity to the gas line. Although we have addressed this matter comprehensively in our decision on Infrastructure and Energy, we record that we agree that including the matter of discretion is appropriate, but do not consider setbacks for earthworks to be necessary.

90. As requested by KiwiRail, we have amended the wording in Rule 23.2.3.1 P2 (a)(iv) to refer to earthworks being 'stabilised' as opposed to being revegetated and have amended the wording of the standard accordingly.

91. The other remaining issue in contention regarding earthworks is the setback requirement. We prefer Ms Chibnall's reasoning and recommendation for a 1.5m setback to the 0.5m proposed by Mr Lester.

92. Having undertaken an evaluation in accordance with s32AA of the RMA, we consider the amendments are more appropriate in achieving the Objective for the CLZ than the

[33] Hearing 12: Country Living Zone section 42A report, Susan Chibnall, 3 March 2020, paragraph 319.

notified version, as it provides for the sustainable use of the land and better manages the effects of earthworks.

4.15 Land use – Buildings Rules

Daylight admission

93. Sharp Planning Solutions sought amendments to the daylight angle to be 45º (rather than 27º) commencing at 3m (rather than 2.5m). We agree that the 45º better aligns with the daylight controls of adjoining councils, but for the same reason consider the starting height should remain at 2.5m.

Building coverage

94. As notified, the permitted site coverage rule allows coverage of either 10% or 300m^2, whichever is the larger. We are not persuaded that any change is necessary.

Setbacks

95. We have retained the notified setbacks from the road boundary as they are necessary to maintain the sense of spaciousness already present, to allow for landscaping and to retain the character of the zone. Although Waka Kotahi sought to increase the setback for expressways to be 35m and state highways to be 15m for all boundaries, this is already the setback for sensitive land uses in Rule 23.3.7.2, and we see no reason to extend the setback to apply to all buildings.

96. We have added a rule which addresses the scenario where indicative roads have been constructed, but the planning maps have not yet undergone a Schedule 1 process to remove the notation.

4.16 Minor dwelling

97. We agree with Ms Chibnall that the requirement for a minor dwelling to be within 20m from the main dwelling serves to protect the character and amenity of the zone. We are not persuaded that any change is warranted, but we have amended the description of “principal residential unit” to make the standard clearer.

4.17 Setbacks from waterbodies

98. Given the small areas of the district where CLZ is located adjacent to a waterway, we do not see any problem in a maimai of a maximum specified size (10m^2) to be located within the setback requirement for a waterbody, as proposed by Mr Wilson for Auckland/Waikato Fish and Game Council. We have therefore added such a provision to permitted activity Rule 23.3.7.5 Building setback – waterbodies, noting that maimais that do not comply with this standard will be a discretionary activity.

99. In the context of Rule 23.3.7.5 Building setback – waterbodies, Mr Lester and Ms Chibnall agree that there should be a more lenient setback of 10m to a ‘managed wetland’ and that the term should be defined. We agree, however, we also consider it

appropriate to include an advice note advising plan users that they will also need to consider the National Environmental Standards for Freshwater.

100. We have increased the setbacks from waterbodies in response to the submission from Council.

4.18 General subdivision

101. Various submissions sought a reduced minimum lot size from 5,000m^2, as notified, that were in the range of between 1,000m^2 and 4,000m^2.

102. We agree with Ms Chibnall that the minimum lot size of 5,000m^2 is intended to provide rural-residential living opportunities that are large enough to be self-serviced in terms of water supply, wastewater and stormwater. We are aware that the minimum lot size in the Operative District Plan for the CLZ is 5,000m^2, and given the amenity and character is already well developed in this zone, we are not persuaded to change it.

103. In that regard, we agree with Ms Chibnall that:[34]
    a. Reducing the minimum lot size would have an impact on the character of the CLZ as well as the surrounding Rural Zone. It would result in a somewhat large-lot urban character, which is more akin to the Village Zone;
    b. A decrease in lot size will increase the density of the zone and may generate potential impacts on amenity in terms of increased noise and traffic;
    c. There would be a loss of open vista and space with an increase in the number of dwellings. The dwellings in the CLZ are often large so there would be a noticeable increase in the level of buildings;
    d. There is the potential for an increase in reverse sensitivity effects in respect of the adjoining rural productive areas;
    e. Decreasing the lot size decreases the opportunity for small scale primary productive activities to occur;
    f. Decreasing the lot size reduces the range of residential lifestyle options, noting that the CLZ provides for low-density residential opportunities in a rural setting;
    g. Decreasing the lot size will increase the cumulative impacts of on-site servicing for wastewater and stormwater.

    Whilst Mr Hartley's proposal for a minimum lot size of 3,000m^2 and an average of 5,000m^2 would allow more flexibility in lot size, we consider that allowing smaller sites (even though these may be balanced by a larger site) creates a risk that the character of the CLZ will, over time, be eroded.

104. Given all the above, we have retained the 5,000m^2 minimum lot size.

[34] Section 42A Closing Statement Hearing 12: Country Living Zone Report, Susan Chibnall, 20 April 2020, paragraph 48.

105. Policy 5.6.3 is the key policy for guiding subdivision, which Ms Palmer and Mr Lester considered was too inflexible. Nevertheless, we consider that a strong policy position will more effectively support Objective 5.6.1 and we are not persuaded to change it, for the reasons presented by Ms Chibnall.

106. As a direct consequence, we also consider that a subdivision proposal that does not comply with the 5,000m^2 minimum lot size should be a non-complying activity.

107. Contrary to the submission of Grace Wilcock, we do not consider there would be significant indigenous biodiversity gains to be made from incentivising subdivision in the CLZ if Significant Natural Areas were to be protected. We therefore reject this submission point.

108. We have also amended the matters of discretion in Rule 23.4.1 to ensure a wider range of potential effects of subdivision are able to be considered.

4.19 Subdivision under the Airport Overlays

109. The purpose of the ASCB and SEL 95 Boundary overlays, as marked on the planning maps, is to limit the amount of development close to the Airport and the potential for reverse sensitivity effects. Rule 23.4.2 RD1(a)(ii) controls subdivision of CLZ land within the ASCB and SEL 95 Boundary and increases the minimum lot size to 1.1ha (as opposed to 5,000m^2 for CLZ sites outside of these overlays). Rule 23.4.2 RD1 (a)(iii) sets out a calculation for sites that straddle the ASCB so that subdivision of the portion of the site outside the overlay is not constrained. Non-compliance with these minimum lot sizes cascades to a non-complying activity status.

110. Central to our consideration of the various submissions is the direction provided by the RPS. The Airport is defined as regionally significant infrastructure in the RPS, which means the following objectives and policies are directly relevant:
    a. Policy 6.6 Significant infrastructure and energy resources;
    b. Implementation Method 6.6.1 Plan provisions;
    c. Implementation Method 6.1.8(c) Information to support new urban development and subdivision; and
    d. Implementation Method 6.6.5 Measures to avoid adverse effects.

    These all seek to protect the efficient and effective operation of the Airport now and in the future.

111. The submitters helpfully set out the genesis of the lower density subdivision rules within the ASCB which was the result of an appeal that was settled in 2003. We understand from Ms Drew that the 1.1ha lot size was based on the average size of land parcels within the Outer Control Boundary at the time and were intended to ‘hold

the line' at that density, while allowing for subdivision elsewhere in Tamahere to increase in density to 5,000m^2 lots.[35]

112. We are aware that the Outer Control Noise Boundary is an area where aircraft noise levels are predicted to be between 55 and 65 dBA Ldn. Having carefully considered all the evidence, we consider that the ASCB should remain in its current location, and that minimum lot size within the ASCB and SEL 95 should continue to be set at 1.1ha.

113. For increased clarity we have split the rule for subdivision in the ASCB away from the general subdivision rule and it now has its own standalone rule.

114. We considered Mr Barrett's proposal for dealing with reverse sensitivity effects by requiring new activities to enter into a "no complaints" covenant via a land encumbrance,[36] but do not consider it would be effective or appropriate.

115. The Operative District Plan: Waikato Section currently classifies subdivision within the Hamilton Airport SEL 95 Boundary or inside the Airport Noise Subdivision Control Boundary that creates allotments with an average net site area of less than 1.1ha as a prohibited activity. The PDP classified such subdivision as a non-complying activity. We agree that a non-complying activity status is the most appropriate activity status, and that there is a gap in the policy framework to address reverse sensitivity, particularly given the direction from the RPS. This is a matter we discuss more generally below. In terms of the Airport, we are mindful that while there is an objective and policy in Chapter 6 Infrastructure and Energy addressing reverse sensitivity, this refers to "infrastructure" generally and there is no specific reference to the Airport. We therefore agree with Ms Drew that reverse sensitivity relating to the Airport should be explicitly addressed by a policy and have therefore included the following new policy:[37]

> 5.6.19 Policy- Reverse Sensitivity
>
> (a) Avoid or minimise the potential for reverse sensitivity through:
>
> (i) the use of setbacks, the design of subdivisions and development
> (ii) limiting subdivision within the Airport Subdivision Control Boundary.

4.20 Subdivision within Identified Areas

116. Rule 23.4.4 was intended to apply to subdivision of sites within one of the PDP's overlays, however we consider it is more appropriate to have separate rules, with one dealing with subdivision of Significant Natural Areas, and the other archaeological

[35] Rebuttal evidence of Kathryn Drew on behalf of Waikato Regional Airport Ltd, 24 March 2020, paragraph 20.

[36] Submission Statement of Philip Barrett for William Hodgson and Leo Koppens, 20 March 2020, paragraph 3.1.

[37] Horticulture New Zealand (419.66).

sites, Maaori sites and areas of significance, and notable trees. This approach enables the matters of discretion to be more bespoke. We have also changed the activity status to cascade to discretionary rather than non-complying, because the non-complying activity status is unnecessary given that in some circumstances it is unavoidable to put a boundary through an archaeological site, or a Maaori site or area of significance.

4.21 Subdivision – Road frontage

117. We have considered Waka Kotahi's proposal to increase the minimum width of the road boundary in Rule 23.4.7 from 15m to 50m for front sites alongside Ms Chibnall's analysis of the existing width of road frontages.[38] After doing so, we are satisfied that increasing the road frontage to 50m will assist in supporting the objectives and policies of the zone, which have a strong focus on retaining character and amenity.

4.22 Building platform for subdivision

118. Mr Lester considered that a 1,000m^2 building platform is excessive in the CLZ and is significantly above and beyond what is reasonable. Ms Chibnall considered that the standard will ensure a site versatile enough to accommodate many different orientations, shapes and sizes.[39] Given that the minimum lot size is 5,000m^2, we consider a 1,000m^2 platform will ensure that the landowner (or developer) has choice about where buildings are situated within that platform. It is also an effective mechanism for ensuring that a future resource consent for encroaching the building standards (such as setbacks, daylight angles etc) is not required. We consider the minimum 1,000m^2 building platform to be appropriate.

4.23 Subdivision creating reserves and walkways

119. We have deleted Rule 23.4.9 relating to reserves, as the purpose of the rule is to create public parks and we consider it unlikely that a reserve of this nature would be required in the CLZ.

120. As detailed in our decisions on the Infrastructure and Energy chapter (Decision Report 13), we have deleted the indicative walkways, cycleways, bridleways from the planning maps.

121. We accept the submission from McCracken Surveys Limited that an additional matter of discretion should be included in Rule 23.4.12 to enable the assessment of the costs and benefits of acquiring land for esplanade reserves. However, we do not agree that

[38] Hearing 12: Country Living Zone Rebuttal section 42A report, Susan Chibnall, 1 April 2020, paragraph 162-163.

[39] Hearing 12: Country Living Zone section 42A report, Susan Chibnall, 3 March 2020, paragraph 712.

references to section 230(3) of the RMA is an appropriate matter of discretion, as this duplicates other legislative requirements.

5 Conclusion

122. We accept and/or reject the section 42A report and the evidence filed by the submitters, collectively forming the section 32AA assessment informing this Decision.

123. Overall, the Panel is satisfied that the Country Living Zone provisions, now referred to as the Rural Lifestyle Zone in accordance with implementing the National Planning Standards, as amended for the reasons set out in this Decision, will provide a suitable framework for managing land use, subdivision and development within this zone. The Rural Lifestyle Zone provisions are attached as **Attachment 1**.

For the Hearings Panel

Dr Phil Mitchell, Chair

Dated: 17 January 2022