BEFORE THE INDEPENDENT HEARINGS PANEL

PROPOSED WAIKATO DISTRICT PLAN (STAGE 1)

Under	the Resource Management Act 1991 (**RMA**)
In the matter of	hearing submissions and further submissions on the Proposed Waikato District Plan (Stage 1) – Hearing 18 **Topic: Subdivision**
By	The Surveying Company Limited (Submitter)

Statement of evidence by Vanessa Addy on behalf of The Surveying Company Ltd

Planning

Dated: September 2020

INTRODUCTION

1. My full name is Vanessa Margaret Addy. I am a Senior Planner at the Surveying Company in Pukekohe.

2. I have the following qualifications and experience relevant to my evidence:

    1) I hold a Bachelor of Arts and Masters of Resource and Environmental Planning from Massey University, Palmerston North.

    2) I am an intermediate member of the NZPI and have met my CPD requirements for this level of membership.

    3) My relevant professional experience spans 14 years working within both local government (as a consents planner) and within the private sector. I have been in my role at The Surveying Company for the last two and a half years. I have been involved in a number of subdivision and land use (Regional and District) consents for both urban and rural projects from both a processing and application perspective. My technical experience includes the preparation of statutory assessments and environment effects for predominantly and most recently resource consents. However, I have also been involved with Structure Plans, Plan Writing and a number of Notice of Requirements and Outline Plan approvals. In addition, I have prepared submissions and provided planning advice to submitters on the Proposed Waikato District Plan and other statutory and non-statutory planning documents.

    4) Working in the rural environment of Franklin and Waikato over the last 7 and a half years, I have had a continuous association with the rural activities and have a thorough understanding of rural issues.

3. This evidence is prepared on behalf of the The Surveying Company Limited (**TSC**). TSC is a multi-disciplinary land development consultancy that has been providing Planning, Surveying and Civil Engineering services throughout the Waikato, Auckland, including the former Franklin, Papakura, Manukau Districts, and Hauraki Districts for the past 30 years. This includes the application and management of Subdivision Consents and Land Use Consents associated with

the use and development of land. Over the past 30 years TSC have had continuous involvement with the preparation, administration and implementation of the operative and legacy versions of the Waikato and Franklin District Plans. In this regard TSC are familiar with both historic and current resource management issues facing the Waikato District.

4. In preparing this statement of evidence I have read the section 42A reports prepared by Katherine Overwater (Rural Subdivision) and Jonathan Clease (Rural Land Use), the reporting officers for Waikato District Council; the summary of submissions and any relevant submissions lodged in respect of the Plan Change; as well as any relevant information prepared for the Plan Change. These comments relate to the section 42A versions of the provisions.

CODE OF CONDUCT

5. I confirm that I have read the 'Expert Witnesses Code of Conduct' contained in the Environment Court of New Zealand Practice Note 2014. My evidence has been prepared in compliance with that Code in the same way as I would if giving evidence in the Environment Court. In particular, unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

SCOPE OF EVIDENCE

6. This evidence is provided in support of the submission and further submissions made by TSC on the Proposed Waikato District Plan – Stage 1 (**PWDP**). My evidence will focus on the key planning issues relevant to this hearing topic. My evidence addresses the following matters that follow a similar topic format as the s42A report:

    1) Objectives and Policies

    2) Prohibited Subdivision

    3) General Lot Subdivision;

    4) Boundary Relocation Subdivision;

5) Rural Hamlet Subdivision;

6) Conservation Subdivision;

7) Subdivision - Building Platform.

7. In summary, the relief sought for the evidence that is presented below is to:
   a) Remove numerical limits from the policy direction.
   b) Amend the status of all Prohibited Subdivision to be a Non-Complying Activity.
   c) Enable the use of the Discretionary Activity status for subdivision on High Class soils and for not meeting the 40 hectare provisions.
   d) Clarifications to terminology for 'Record of Titles' vs. 'allotments', 'lot' vs. 'site', and 'Significant Natural Areas' vs 'areas of significant indigenous biodiversity'.

TOPIC 1: OBJECTIVES AND POLICIES

8. TSC's Submission was in general support of the Rural objectives and policies as proposed under the notified version of the PWDP subject to some suggested amendments and deletions. In his Section 42A Report, Mr Clease has reworked through all of the Objectives and Policies in so far as to delete all objectives and policies as notified and replaced with his recommended amendments. I support in part the recommended amendments and for those that I do not support I have outlined my main concerns below.

<u>Reference to numerical limits</u>

9. I do not agree with the recommended amendments to Policies for Rural Subdivision where the minimum lot sizes are imbedded in the policy (Policies 5.3.8(c)(ii), 5.3.8(d)(iii) and (iv)). The reasons for these amendments are discussed in paragraph 278 (page 70) of Mr Clease's Report where he concluded "without putting a numerical limit on such outcomes simply creates ambiguity and uncertainty in the policy direction".

10. Objectives and policies set the direction for rules in a plan. In my opinion, incorporating rules in a policy is an unnecessary two pronged approach. Having both a policy with a rule and the rule itself could further unfairly jeopardise a subdivision particularly where it has a non-complying activity status. I agree that balance sites should continue to retain their productivity and larger balance sites tend to achieve this objective. However, it is not appropriate to incorporate a specific lot size in a policy as this is the function of rules in a plan. There are instances where balance sites smaller than 40 hectares are productive and given the context of the site in terms of topography of the land and its features, open space and rural character can continue to be achieved.

11. It is noted that referencing a balance site of 40 hectares in the policy will further hinder General Lot Subdivision, Boundary Relocation Subdivision and Conservation Lot Subdivision as the provisions for these subdivisions do not have a balance site size Rule. Policies 5.3.8(d)(iii) and (iv) therefore are overriding and conflicting with Rules set out in the Plan. For example, in terms of General Lot Subdivision Rule 22.4.1.2 RD1(a)(ii) as recommended to be amended by Ms Overwater, Record of Titles would have to be at least 40.8 hectares to be consistent with the proposed policies.

Terminology of balance 'Lot' vs 'Site'

12. I disagree with Mr Clease's terminology reference to "lot" as contained in Policies 5.3.8(d)(iii) and (iv). Balance land could be made up of more than one allotment. An example of this is attached in Appendix 2. I request the terminology to be amended to "site". This will ensure the balance land can be held in more than one allotment provided they are amalgamated together. I note that I have considered "Record of Title" however this infers that the balance site has gone through to title, therefore "site" is a more appropriate term to refer to a future outcome.

13. In light of the above concerns, I request the following deletions/amendments to Policies 5.3.8(c)(ii) and 5.3.8(d)(iii) and (iv):

Policy 5.3.8(c)(ii):

~~Avoiding subdivision that creates lots smaller than 0.8ha to maintain a clear distinction between rural areas and the more urban Country Living Zones;~~

Policy 5.3.8(d)(iii) and (iv):

(iii) Provides a large balance **site** ~~lot greater than 40ha~~ so that an overall spacious rural character is maintained; or

(iv) Involves a boundary relocation to create a large**r** balance **site** ~~lot greater than 40ha~~ and a limited number of small rural lifestyle lots that are clustered to form a hamlet; and

TOPIC 2: PROHIBITED SUBDIVISION

14. TSC's Submission strongly opposed Prohibited Activity Status for the rural subdivision activities listed under Section 22.4.1.1 and requested the following relief:

"That the activity status for PR1, PR2, PR3, PR4 be changed from Prohibited to Non-Complying Activities".

TSC's submission point however has not been incorporated into the Submission table within paragraph 109 of Ms Overwater's report. However, TSC's further submissions have been listed and analysed. TSC's further submission (TSC FSI308) opposed all submissions that sought to retain and/or Prohibited Subdivisions (FSI308.179, FSI308.26, FSI308.155, FSI308.61, FSI308.43, FSI308.44, FSI308.46, FSI308.47, FSI308.48, FSI308.49, FSI308.50, FSI308.63, , FSI308.41, FSI308.19) and supported all submissions that sought to delete Prohibited Subdivision (FSI308.12; FSI308.132, FSI308.17, FSI308.15, FSI308.35, FSI308.92, FSI308.36, FSI308.93, FSI308.62, FSI308.57, FSI308.108, FSI308.16). TSC seeks that Rule PR2 and PR3 all Rural Subdivision that has been given a Prohibited Activity status to be amended to be a Non-complying Activity.

15. TSC FSI30 stated:

"We wholly oppose the inclusion of Prohibited subdivision irrespective of amendments. A prohibited status should only be applied where there is no case for exceptions and based on our experience this is simply not the case with subdivision. Subdivision can be undertaken for a number of reasons which may achieve the purpose of the Act and the strategic direction of the relevant plans. Non-Complying Activity status is appropriate to give Council opportunity to apply greater scrutiny to proposed subdivision identified as Prohibited in the Proposed Plan".

Prohibited Activity Status vs Non-complying Activity Status

16. The total prohibition of subdivision as a method of control should be used extremely sparingly. Giving an activity a Prohibited status suggests that effects are so significant these activities should not be considered. It is acknowledged that protection of high class soils is a key issue for the district/region and is a directive coming from both the Waikato Regional Policy Statement and the Proposed National Policy Statement for Highly Productive Land. However, special circumstances may exist where it is appropriate to undertake a subdivision. This is particularly the case when circumstances exist where the high class soils continue to be protected/utilised for appropriate rural productive activities. Incorporating the Prohibited Activity approach is unnecessary and unduly restrictive.

17. The loss of high-class soils needs to be considered in balance with many other factors such as rural landscape and character, and rural production. Subdivision around existing, established activities such as greenhouses, packing sheds etc may also be economically enabling for the primary production industry and should not be unnecessarily prohibited, but rather considered on a case by case basis.

18. While I support Ms Overwater's view on High Class soil protection, I consider the activity status is too stringent for Rules PR2 and PR3 and that it is impossible to foresee every situation where subdivision on High Class soils may be required. The Prohibited Activity status could have severe consequences for innovative and positive development. In paragraph 145 Ms Overwater discusses Policy 14.2

of the Waikato Regional Policy Statement where it seeks to *"avoid a decline in the availability of high class soils for primary production due to inappropriate subdivision, use or development"*. In response to this policy, Ms Overwater states that a "*prohibited activity status best supports Council to meet this requirement and any future National Policy Statement on Highly Productive Land".* Protecting and managing the District's high-class soil can still be achieved by robust objectives and policies, and restrictive activity status, such as non-complying. Prohibiting subdivision as proposed often results in unintended consequences which inhibit subdivision that would otherwise merit approval in the context of the objectives and policies of the Plan, high order planning provisions and Part 2 of the RMA.

Prohibiting Subdivision of Donor Lots under Legacy Plans

19. Prohibiting any subdivision of a lot previously amalgamated for the purpose of a transferable lot subdivision (Rule PR4) is restrictive well beyond the intent of the Legacy Plan. Subdividing a donor property by way of utilising the proposed General Lot provisions could be undertaken in a manner that results in less than minor environmental effects, be consistent with the objectives and policies of the plan as well as Part 2 of the RMA. Paragraph 146 of Ms Overwater report infers that these donor sites would 'double dip'. I disagree with this statement as there was no lot created on the site. In addition, these lots were not created by General Subdivision standards. Rather, they were created and transferred off the site under different legacy provisions being an amalgamation of titles or Conservation Lot/Environmental Lot subdivision. Therefore General Lot subdivision was not utilised.

20. Many 'donor' Records of Title range in size upwards from 20ha prior to the amalgamation. Therefore would comply with the General Lot provision as notified regardless of whether there was a lot created and transferred off the site under the Legacy Plan provisions. I also note that under the Franklin Section of the District Plan there was no corresponding rule that limited any further subdivision of the donor lot. I agree that subdividing lots amalgamated under Section 22B of the Franklin Section (Legacy Plan) require closer scrutiny however this should merit a Non-Complying Activity status only.

21. The donor site provided an opportunity to create a lot elsewhere in the district that, at the time, was suitable and resulted in less than minor effects at the receiving site and surrounding environment. Undertaking a General Lot subdivision at, what was, the donor site at the time of subdivision and under a Legacy Plan's provisions, should not preclude potential for subdivision in the future if circumstances exist where it could be appropriate to do so while upholding the objectives and policies of the plan.

Terminology of 'Record of Title'

22. TSC's submission (746.87) requested the terminology of 'lot' to be amended to 'Record of Title'. I note that Paragraph 94 of Ms Overwater's report provides an analysis of this stating that "…use of the term 'Record of Title' where it makes sense to do so".

23. I support Ms Overwater's amendments in terms of terminology (use of the term 'Record of Title') for the following rules:

Rule 22.4.1.1 PR2, PR3 and PR4

24. For the reasons outlined above, I request that the status of Rules PR2, PR3, and PR4 be amended to be Non-complying Activities.

TOPIC 3: GENERAL LOT SUBDIVISION

25. TSC's submission (746.86, 746.88, 746.141, 746.90, 746.89) sought to retain the parent title size of 20 hectares, enable a Discretionary Activity Rule for non-compliance with 22.4.1.2 (a)(iv) being the size of the resulting lot, and amend Rule 22.4.1.2.a.v being the 80/20 for soil class to fragmentation of versatile soils being a matter of discretion.

Balance site size of 40 hectares vs 20 hectares

26. Paragraph 182 of Ms Overwater's report discusses the reasons for opting with an increase in the parent title to 40 hectares. I agree that population growth should be directed to towns and villages. However, this is being achieved by appropriate zoning (Residential, Village, and Countryside Living) in these locations. In

addition, the district needs to cater for housing choice demands, some of which are directed towards the rural areas. Therefore providing limited opportunities for subdivision in the Rural Zone is appropriate. Particularly in instances where there adverse effects are able to be avoided or mitigated and the subdivision does not jeopardize the integrity of the zone. Land can continue to be productive, even at 20 hectares (or 18.4ha post subdivision). Examples include greenhouses, packhouses, packing sheds, intensive farming, poultry hatcheries or commercial orchard activities. It is also noted that Rule 22.4.1.2(a)(v) deals with protecting High Class Soils from inappropriate development. This is primarily directed by Strategic Objective 5.1.1(i) and imbedded in Policy 5.3.8(c)(iii). Therefore if the land to be subdivided does not contain High Class Soils then there are less than minor adverse effects in terms of soil versatility and fragmentation.

27. In my opinion, the Record of Title to be subdivided should remain at 20 hectares in area, being the parent lot. If it not accepted by the Panel to retain a parent lot of 20 hectares then, as an alternative, provision for a Discretionary Activity status should be introduced for Records of Title between 20 and 40 hectares. My reasons are discussed below. Relief sought as an alternative is as follows:
Add to Rule 22.4.1.2:

D1

(a) General Lot Subdivision that does not comply with Rule 22.4.1.2(ii and v) RD1.

<u>Subdivision of High Class Soils – Discretionary Approach</u>

28. In Ms Overwater's analysis of retaining the non-complying activity status referenced in paragraph 225 is to take a rigorous and stringent approach aligning with the "*higher order documents of the WRPS and the proposed objective and policy framework, which is to keep rural land for primary productive activities and to ensure that high class soils are protected from rural residential development".* I disagree with this approach. Providing for a Discretionary Activity status will continue to achieve protection of high class soils when and where necessary at the Council's discretion.

29. In my opinion, a Discretionary Subdivision application would still be required to be appropriately considered under the WRPS and objectives and policies of the plan. Council have the ability to look at any matter they believe are relevant over and above the listed matters of discretion for Restricted Discretionary Activity and, moreover can refuse a Discretionary Activity. As noted above, there are many examples of productive rural activities that could occur on land less than 40 hectares in size. Scrutinising these as non-complying activities will undermine the non-complying activity status itself, being an activity that is very rare or has extremely special circumstances.

Terminology of 'lot' vs 'Record of Title

30. TSC's submission (746.87) requested terminology of 'lot' to be amended to 'Record of Title' however this was for the Prohibited Activity Rules. As a result of other submissions on the terminology of 'lot'/'record of title'/'allotment', Ms Overwater has made recommended amendments that are not workable as explained below.

31. I do not support Ms Overwater's analysis provided in paragraph 240 with regard to incorporating 'allotments' into Rule 22.4.1.2 rather than 'record of title'. There are instances where a Record of Title could be made up of many allotments and these are held together in one Record of Title (Refer to Appendix 2). If the use of allotment is used rather than Record of Title the ability to subdivide may either be inhibiting or enabling. Examples of this are as follows:

Scenario A: A Record of Title could be made up of two allotments both being 25 hectares in size. The size of the Record of Title is 50 hectares however a General Lot subdivision could not occur in accordance Rule 22.4.1.2 RD1(a)(ii) using the proposed amendments to the terminology as the allotments are only 25 hectares.

Scenario B: A Record of Title could be made up of two allotments both being 50 hectares in size. Use of the terminology 'allotment' will allow for two General Lot Subdivisions on this Record of Title.

32. In light of the above concerns regarding terminology, I request the following changes to Rule 22.4.1.2 RD1(a)(i) and (ii):

(i) The Record of Title to ~~the allotment to~~ be subdivided must have issued prior to 6 December 1997;

(ii) The **Record of Title** ~~allotment~~ to be subdivided must be at least 40 hectares in area;

33. I agree with the terminology of 'allotment' when it is used to describe a proposed allotment. I therefore request Rule 22.4.1.2 RD1(a)(ii) be retained as originally notified.

TOPIC 4: BOUNDARY RELOCATION

34. TSC submission (746.109) regarding Boundary Relocation is summarised as follows:

'We support the inclusion of boundary relocation provisions and support flexibility to allow rural properties to rationalise large landholdings to provide a logical lot arrangement that better supports the farming activity. However we would like to see this extended to boundaries of adjacent consented lots'. This is because consented lots form part of the receiving environment.

Our submission supported the date of title as this would allow for closer scrutiny and a higher activity status for those Records of Title and consented lots created under the Transferable and Environmental Lot rules of the previous sections of the District Plan which had restrictions on size. Our submission also requested to amend Rule 22.4.1.4(a)(i) to enable boundary relocations between more than two titles.

Consented Lots

35. Ms Overwater's analysis has not considered consented lots and therefore I request this to be included in Rule 22.4.1.4(a)(i). My reasons are as follows:

There are instances where consented lots exist that have not yet gone through to title. When undertaking a planning assessment, consented lots should be considered as if they are likely to be given effect to as they form part of the

receiving environment. In some cases the owner may wish to relocate the consented lot boundary however Rule 22.4.1.4 (a)(i) does not provide the ability to do this. The rule as notified would require the deposit of the LT Plan and the title to be issued first before applying for the boundary relocation which would add more costs and time delays. Therefore I would like to see provision made for the relocation of the boundaries of adjacent consented lots and Records of Title. Suggested amendment is provided in Paragraph 38 below.

Valid Record of Title

36. I do not fully agree with Ms Overwater's recommendation to add to what is a valid record of title. This is stated in RD1 (a)(i) as follows:

Relocation of a common boundary or boundaries between two existing Records of Title. All Records of title used in the boundary relocation subdivision must contain an area of 5000m2 is not a road severance or stopped road, and is able to accommodate a suitable building platform under as Permitted under Rule 22.4.4.9 (subdivision rule for building platform).

37. I highlight "*suitable building platform as Permitted under Rule 22.4.4.9*". It is noted that it is not "Permitted" as the activity status is a Restricted Discretionary Activity therefore this particular reference introduces ambiguity and uncertainties and requires deletion. There is little benefit to comply with Rule 22.4.4.9, particularly when the boundary relocation will make changes to the existing Record of Title, therefore making any pre-assessment irrelevant.

Relief sought for Consented Lots and Valid Record of Title

38. I agree with the Ms Overwater's recommended changes to Rule 22.4.1.4(a)(i) with the following amendments:

Relocate a common boundary or boundaries between two **or more** existing Records of Title **or Consented Lots**. All Records of Title **or Consented Lots** used in the boundary relocation subdivision must contain an area of at least 5,000m2; **and** is not a road severance or stopped road; ~~and is able to accommodate a~~

~~suitable building platform as a permitted activity under Rule 22.4.9 (subdivision rule for building platform);~~

Number of Records of Title involved in a Boundary Relocation Subdivision

39. The PWDP has provided for boundary relocations for the exchange of land between two records of title in a continuous land holding (Rule 22.4.1.4(a)(i) and (ii). Our submission requested an amendment to Rule 22.4.1.4(a) to allow for more than two Records of Title to be relocated. Ms Overwater's analysis in paragraph 306 is as follows:

"I do not agree that more than two titles should be able to be relocated, as this is where the Rural Hamlet provision would apply and aims to ensure that lots are consolidated in way that ensures that fragmentation productive rural land is minimal".

40. I do not agree with this analysis. There may be instances where a farmer holds multiple large titles however wants to rearrange these to align with their current farming regime and/or align with existing fence lines in order to allow the ability to sell the land as a logical farming unit. Not all boundary relocations are for the purpose of creating a small lot for a dwelling for rural lifestyle living. Allowing for more than two Record of Titles to undertake a boundary relocation in this manner should not be a Discretionary Activity.

Continuous Landholding

41. While our submission did not specifically request to amend Rule 22.4.1.4(a)(ii) – that "*The Record of Titles must form a continuous landholding*", I wish to note the following: A 'continuous landholding' infers that the land must be held within the same ownership. There are many occurrences where a boundary adjustment is appropriate between land held in different ownerships, for example formalising a leasing agreement with a neighbouring farmer. As this is not provided for it automatically defers to having a discretionary activity status. The ownership details do not make a difference when adjusting common boundaries. Such an application should be dealt with as a Restricted

Discretionary Activity as the environmental outcomes are the same as if the land was in common ownership. I therefore request Rule 22.4.1.4(a)(ii) to be amended as follows:

The Record of Titles must be ~~form a~~ adjoining.

TOPIC 5: RURAL HAMLET SUBDIVISION

42. TSC submission (746.110) regarding Rural Hamlet Subdivision is summarised as follows:
"We support subdivision provisions for Hamlet subdivision in the Rural Zone. We seek the inclusion of consented lots, including General and Conservation Lots, in the Hamlet provisions. This would have positive outcomes through the provision of shared infrastructure, enhancement of the production systems. It would also limit the wide dispersal of lots and enable subdivision layout to account for effects from intensive farming or mineral extraction activities…
The Hamlet provisions should ensure that a response to the landscape context is more important than meeting performance standards relating to lot size and should allow for a reduction in the lot size".

43. Our submission supported Rule 22.4.1.5(a)(i) as notified:
"(a) Subdivision to create a Rural Hamlet must comply with all of the following conditions:
(i) it results in 3 to 5 proposed lots being clustered together";

<u>Viable Record of Title and Consented Lots</u>

44. Ms Overwater has recommended to amend Rule 22.4.1.5(a)(i) to align with the boundary relocation description of a viable Record of Title. For the reasons discussed in paragraphs 35-37 above, I agree in part with the Ms Overwater's recommended changes to Rule 22.4.1.5(a)(i) with the exception of the amendments outlined in paragraph 45 below.

45. Ms Overwater's analysis has not acknowledged consented lots, forming part of the receiving environment, as requested in our submission (746.110) and

therefore I request this to be included in Rule 22.4.1.5(a)(i). For the reasons discussed in paragraph 35 above, I partly agree with the Ms Overwater's recommended changes to Rule 22.4.1.5(a)(i) with the following changes:

Land contained within a maximum number of 5 Records of Title **or Consented Lots** may be relocated into a Rural Hamlet resulting in a single cluster of 3 to 4 proposed allotments and one balance **site** ~~allotment~~. All Records of Title **or Consented Lots** used in the Rural Hamlet subdivision must contain an area of at least 5,000m2; **and** not be a road severance or stopped road; ~~and be able to accommodate a suitable building platform as a permitted activity under Rule 22.4.9 (subdivision rule for building platform),~~

Balance site size and terminology of 'allotment'

46. Our submission supported 22.4.1.5(a)(v) as follows:
"(a) Subdivision to create a Rural Hamlet must comply with all of the following conditions:
(v) The proposed balance lot has a minimum area of 20ha";

47. My points in paragraphs 26-29 above regarding the balance site size in General Subdivision are relevant. Based on my reasoning under paragraphs 26-29 above, I do not agree with Ms Overwater's recommended amendment to change the balance allotment to 40 hectares and further the terminology reference to "allotment". Balance land could be made up of more than one allotment held together via amalgamation (refer to example in Appendix 2. Therefore I request the proposed rule (Rule 22.4.1.5 RD1(a)(v)) to be retained as notified with the following amendment:

(a) Subdivision to create a Rural Hamlet must comply with all of the following conditions:
(v) The proposed balance ~~lot~~ **site** has a minimum area of 20ha;

48. In my opinion, if it not accepted by the Panel to retain a balance site of 20 hectares then, as an alternative, provision for a Discretionary Activity status should be introduced for Records of Title between 20 and 40 hectares. My points in paragraphs 28 and 29 above regarding the inclusion of a Discretionary Activity

status are relevant and therefore will not be repeated. Relief sought as an alternative to the requested amendment outlined in paragraph 48 above is as follows:

Add to Rule 22.4.1.5:

D1

(b) Subdivision to create a Rural Hamlet that does not comply with Rule 22.4.1.5(iv) RD1.

TOPIC 6: CONSERVATION LOT SUBDIVISION

49. TSC's submission (746.111) supported the Conservation Lot Subdivision provisions in part, requesting amendments to be made to allow for ecological enhancement and/or restoration planting in the rules and to add a Discretionary Activity rule to allow flexibility to the RDA provisions.

Terminology of SNA vs 'areas of significant indigenous biodiversity' and 'allotment' vs 'Record of Title'

50. I partly support the amendments made to Rule 22.4.1.6 RD1 (a)(i). I agree with Ms Overwater that 'Significant Natural Areas' in relation to this rule are determined by an experienced suitably qualified ecologist and that references to the areas being shown on the planning maps are deleted. I also agree with the Table 1 and Table 2 as amended. However I disagree with the continued use of the terminology of 'Significant Natural Areas' and 'SNA'. Now that the rule is not referring to the areas shown on the Planning Maps and that they are to be determined by an experienced suitably qualified ecologist, I believe the terminology should change to 'areas of significant indigenous biodiversity' in order to align with Appendix 2: Criteria for Determining Significance of Indigenous Biodiversity (Appendix to the Proposed Waikato District Plan as notified). I also disagree with the use of 'allotment rather than 'Record of Title' given the reasons outlined in paragraphs 30 and 31 above. In addition, 'areas of significant indigenous biodiversity' could be located over two allotments held in the same Record of Title. Rule 22.4.1.6. RD1(a)(i) should be amended as follows:

(i) The ~~allotment/lot~~ **Record of Title** to be subdivided must contain a**n** ~~contiguous area of existing Significant Natural Area~~ **area of significant**

indigenous biodiversity ~~either as shown on the planning maps or~~ as determined by an experienced and suitably qualified ecologist in accordance with ~~the~~ either Table 1 or Table 2 below:

Discretionary Activity status for subdivision on HCS and minimum Lot size

51. TSC original submission (746.143) requested to add a new discretionary rule to Rule 22.4.1.6 – Conservation Lot Subdivision as follows:

D2

(a) Conservation lot subdivision around an existing dwelling and associated curtilage that does not comply with Rule 22.4.1.6(vi-vii) RD1.

(b) Conservation lot subdivision around established rural activities that does not comply with Rule 22.4.1.6(vi-vii) RD1.

52. This request was rejected by Ms Overwater. For the reasons previously discussed in paragraphs 28 and 29 of this report, a Discretionary Activity status is an appropriate activity status for applications that do not comply with Controlled and Restricted Discretionary Activities. Scrutinising these as Non-complying Activities will undermine the Non-complying Activity status itself, being an activity that is very rare or having extremely special circumstances. Consistency with the WRPS and objectives and policies of the plan would still be required. Council have the ability to look at any matter they believe is relevant over and above the listed matters of discretion for a Restricted Discretionary Activity.

High Class Soils vs. Biodiversity Protection

53. I am supportive of Ms Overwater recommendation for an additional provision Rule RD1(a)(ix) as follows:

"Where the land to be subdivided contain high class soil (as determined by a property scale site specific Land Use Capability Assessment prepared by a suitably qualified person), the additional allotment created by the subdivision, exclusive of the balance area, must not contain more than 15% of the total land area as high class soils within the allotment".

54. I do however raise concerns that there are two competing issues, both with national importance. These are protection of biodiversity versus protection of

high class soils. These are also primary objectives of the proposed Plan as amended by Mr Clease as follows:

5.2.1 Objective – rural resources

(a) Maintain or enhance the:

i) Inherent life-supporting capacity, accessibility, and versatility of soils, in particular high class soils;
ii) The health and wellbeing of rural land and natural ecosystems.

Defaulting to a Non-complying Activity status if Rule RD1(a)(ix) is not met is overly stringent, particularly when protection of significant indigenous biodiversity is at stake and maintenance and enhancing natural ecosystems is a key objective under the proposed plan (5.2.1(a)(ii). The draft National Policy Statement for Indigenous Biodiversity also provides guidance on the protection of indigenous biodiversity.

Non-complying Activity status vs. Discretionary

55. A Non-complying Activity status infers that unless there are extreme circumstances, the application is likely to be declined. In my opinion, as plans get older, there is more potential for Non-complying Activities to be applied for and granted when they are not provided for by the plan. This is because at the time the plan was made operative, these activities may not have existed or were not appropriate. As plans get older, in my opinion, there may be a rise in Non-complying Activities being applied for and granted. However when a new plan is made operative, the number of Non-complying Activities is not likely to be high as the Plan should be a true reflection of current issues. Protection of significant indigenous biodiversity is a key issue of today. For a new plan to default a Restricted Discretionary Activity status to a Non-complying Activity status for this particularly matter is not considered to be appropriate.

56. With the inclusion of Rule RD1(a)(ix) outlined in paragraph 53 above as recommended by Ms Overwater and with respect to TSC original submission and my reasons outlined in paragraphs 54 and 55 above, I request a Discretionary Rule to be added that includes the following:

D2

(a) Conservation lot subdivision around an existing dwelling and associated curtilage that does not comply with Rule 22.4.1.6(vi-vii) RD1.

(b) Conservation lot subdivision around established rural activities that does not comply with Rule 22.4.1.6(vi-vii) RD1.

(c) Conservation lot subdivision that does not comply with Rule 22.4.1.6 (ix) RD1.

Restoration/Enhancement Planting on High Class Soils

57. I support in part Ms Overwater's recommendations to include a restoration and enhancement planting provision Rule 22.4.1.6 D1. Specifically I do not support the ability to undertake revegetation or enhancement planting on high class soils. It is important to protect high class soils for rural productivity. Planting these areas would jeopardise productivity of the land. Rule 22.4.1.6. D1(a)(i)G should be amended as follows:

*"~~Where~~ ~~t~~**The** land to be ~~subdivided~~* ***restored/planted must not*** *contain high class soil (as determined by a property scale site specific Land Use Capability Assessment prepared by a suitably qualified person)~~, the additional allotment created by the subdivision, exclusive of the balance area, must not contain more than 15% of the total land area as high class soils within the allotment".~~*

Implementation of restorative/enhancement planting - Timing

58. I also do not support the requirements to implement the planting 12 months prior to an application to Council being made (Rule 22.4.1.6. D1(a)(ii)). Requirement to implement the planting prior to any decision being made is extremely risky for a landowner in terms of cost of the planting and time delays. The activity status for restoration and enhancement planting is Discretionary. Therefore giving Council full discretion as well as the ability to decline an application. The requirement to implement the planting should only occur if the activity was a Controlled Activity. However this is not an appropriate activity status for this method of subdivision. Paragraph 421 of Ms Overwater's report states:

"The provision aims to focus on areas of existing SNA that do not meet the minimum size requirements set out in RD1(a)(i). The provision proposed also requires planting to be planned and implemented a minimum of 12 months prior to an application being lodged with Council and requires a planting management and weed / pest management plan; and fencing plan. These provisions would ensure that the restoration/enhancement planting is appropriately managed and contributes to the ecological values associated with the existing SNA".

I believe the restoration/enhancement planting will continue to be appropriately managed and will contribute to the ecological values associated with the existing 'SNA' regardless of the timing at which it is to be planted.

59. With the risks being too high for a landowner to implement the planting prior to an approved consent, it is likely that restoration/enhancement planting throughout with District will be far less than if it was implemented upon approval. The Rule provides a sense of prevention to undertake restoration/enhancement planting rather than this being encouraged throughout the district.

60. Given my reasons outlined in paragraphs 58 and 59 above, I request Rule 22.4.1.6. D1(a)(ii) to be amended as follows:
A planting plan, prepared by a suitably qualified expert ~~has been implemented for a minimum period of 12 months~~ for the ~~SNA~~ **area of significant indigenous biodiversity** being restored or enhanced **shall be submitted** ~~prior to an application~~ to Council ~~being made~~;

61. This amendment will also require a minor amendment to Rule 22.4.1.6. D1(a)(v) as follows:

A fencing plan is provided demonstrating that the restoration or enhancement planting ~~is~~ **will be** protected from stock intrusion.

TOPIC 7: BUILDING PLATFORM

TSC Submission (746.114) requested changes to Rule 22.4.9RD1(a)(i) - the building platform area as follows:

i) can accommodate a 30m diameter circle ~~has an area of 1,000m² exclusive of boundary setbacks~~.

Ms Overwater has accepted our submission. I support the recommended amendments Ms Overwater has made to Rule 22.4.9 - Subdivision – Building Platform.

CONCLUSION:

62. Overall I do not support Mr Clease's recommendations to reference numerical limits as contained in the policy direction and request these policies are amended. I do not support Ms Overwater's inclusion of Prohibited Subdivision and request these to be amended to have Non-complying Activity statuses. In my opinion, the use of a Discretionary Activity status for subdivision on High Class soils and for General Lot subdivision not meeting the minimum balance size should be enabled. Lastly, I request amendments to terminology in both Mr Clease's and Ms Overwater's Secton 42A reports regarding 'Record of Titles' vs. 'allotments'/'lot', and 'Significant Natural Areas' vs 'areas of significant indigenous biodiversity' to provide a level of consistency and to ensure they reflect the anticipated outcomes of the plan.

_____

Vanessa Addy

September 2020

Enclosed:

Appendix 1 – Consolidation of Requested Amendments

Appendix 2 – Example of a Record of Title that includes more than one allotment

Appendix 1 – Consolidation of Requested Amendments

1. Rural Subdivision Policies

Amend Policies 5.3.8(c)(ii) and 5.3.8(d)(iii) and (iv) as follows:

Policy 5.3.8(c)(ii):

~~Avoiding subdivision that creates lots smaller than 0.8ha to maintain a clear distinction between rural areas and the more urban Country Living Zones;~~

Policy 5.3.8(d)(iii) and (iv):

(iii) Provides a large balance **site** ~~lot greater than 40ha~~ so that an overall spacious rural character is maintained; or

(iv) Involves a boundary relocation to create a large**r** balance **site** ~~lot~~ ~~greater than 40ha~~ and a limited number of small rural lifestyle lots that are clustered to form a hamlet; and

2. Prohibited Activities

Rules PR2, PR3, and PR4 be amended to be Non-complying Activities.

3. General Subdivision

Amend Rule 22.4.1.2 RD1(a)(i) and (ii) as follows:

(i) The Record of Title to ~~the allotment to~~ be subdivided must have issued prior to 6 December 1997;

(ii) The **Record of Title** ~~allotment~~ to be subdivided must be at least ~~40~~ 20 hectares in area;

Or

If 20 hectares not accepted under Rule 22.4.1.2 RD1(a)(ii)- Add a Discretionary Activity to Rule 22.4.1.2 as follows:

D1

(a) General Lot Subdivision that does not comply with Rule 22.4.1.2(ii and v) RD1.

4. Boundary Relocation Subdivision

Amend Rule 22.4.1.4 RD1(a)(i) as follows:

Relocate a common boundary or boundaries between two **or more** existing Records of Title **or Consented Lots**. All Records of Title **or Consented Lots** used in the boundary relocation subdivision must contain an area of at least 5,000m2; **and** is not a road severance or stopped road; ~~and is able to accommodate a suitable building platform as a permitted activity under Rule 22.4.9 (subdivision rule for building platform);~~

Amend Rule 22.4.1.4 RD1(a)(ii) as follows:

The Record of Titles must be ~~form a~~ adjoining.

5. Rural Hamlet Subdivision

Amend Rule 22.4.1.5 RD1(a)(i) as follows:

Land contained within a maximum number of 5 Records of Title **or Consented Lots** may be relocated into a Rural Hamlet resulting in a single cluster of 3 to 4 proposed allotments and one balance **site** ~~allotment~~. All Records of Title **or Consented Lots** used in the Rural Hamlet subdivision must contain an area of at least 5,000m2; **and** not be a road severance or stopped road; ~~and be able to accommodate a suitable building platform as a permitted activity under Rule 22.4.9 (subdivision rule for building platform),~~

Amend Rule 22.4.1.5 RD1(a)(v) as follows:

The proposed balance ~~lot~~ **site** has a minimum area of 20~~40~~ha;

Or

If 20 hectares not accepted - Add a Discretionary Activity to Rule 22.4.1.5 as follows:

D1

(a) Subdivision to create a Rural Hamlet that does not comply with Rule 22.4.1.5(iv) RD1.

6. Conservation Lot Subdivision

Rule 22.4.1.6. RD1(a)(i) should be amended as follows:

(i) The ~~allotment/lot~~ **Record of Title** to be subdivided must contain a**n** ~~contiguous area of existing Significant Natural Area~~ **area of significant indigenous biodiversity** ~~either as shown on the planning maps or~~ as determined by an experienced and suitably qualified ecologist in accordance with ~~the~~ either Table 1 or Table 2 below:

Rule 22.4.1.6. D1(a)(i)G be amended as follows:

"~~Where~~ ~~t~~**The** land to be ~~subdivided~~ **restored/planted must not** contain high class soil (as determined by a property scale site specific Land Use Capability Assessment prepared by a suitably qualified person)~~, the additional allotment created by the subdivision, exclusive of the balance area, must not contain more than 15% of the total land area as high class soils within the allotment".~~

Rule 22.4.1.6. D1(a)(ii) be amended as follows:
A planting plan, prepared by a suitably qualified expert ~~has been implemented for a minimum period of 12 months~~ for the ~~SNA~~ **area of significant indigenous biodiversity** being restored or enhanced **shall be submitted** ~~prior to an application~~ to Council ~~being made~~;

Rule 22.4.1.6. D1(a)(v) be amended as follows:

A fencing plan is provided demonstrating that the restoration or enhancement planting ~~is~~ **will be** protected from stock intrusion.

Add a Discretionary Activity to Rule 22.4.1.6 as follows:

D2

(a) Conservation lot subdivision around an existing dwelling and associated curtilage that does not comply with Rule 22.4.1.6(vi-vii) RD1.
(b) Conservation lot subdivision around established rural activities that does not comply with Rule 22.4.1.6(vi-vii) RD1.

(c) Conservation lot subdivision that does not comply with Rule 22.4.1.6 (ix) RD1.

7. Building Platform

Amend Rule 22.4.9RD1(a)(i) as follows (as recommended in the section 42A Report by Ms Overwater):

i) can accommodate a 30m diameter circle ~~has an area of 1,000m²exclusive of boundary setbacks~~.

Appendix 2: Example Record of Title

RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
FREEHOLD
Limited as to Parcels
Search Copy

R.W. Muir
Registrar-General
of Land

Identifier **NA880/76**
Land Registration District **North Auckland**
Date Issued 08 July 1947

Prior References
NA767/70

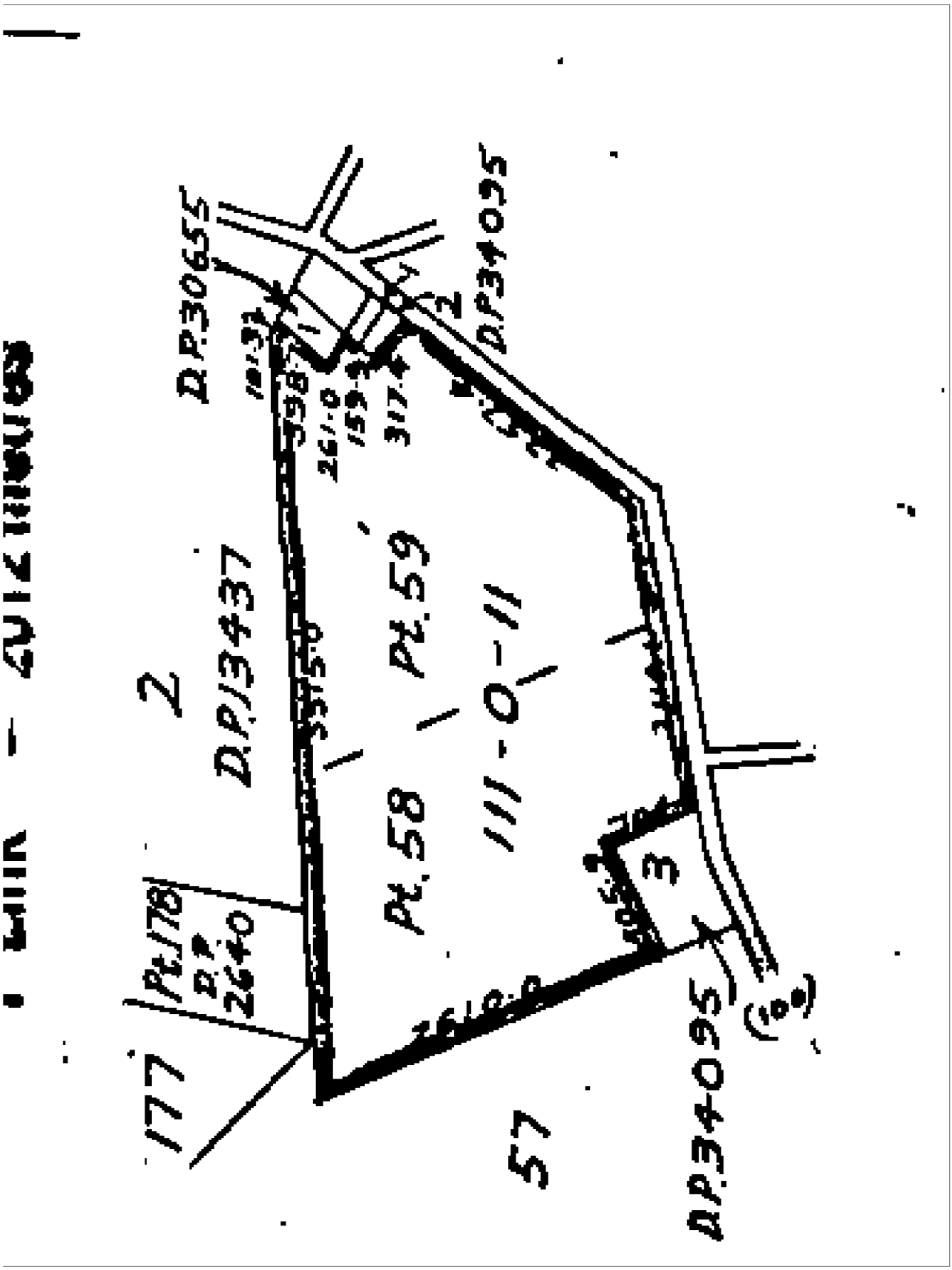
Estate	Fee Simple
Area	44.9479 hectares more or less
Legal Description	Part Allotment 58-59 Parish of Waiuku West

Registered Owners

[redacted]

Interests

11454024.2 Mortgage to ANZ Bank New Zealand Limited - 19.7.2019 at 12:13 pm


DP30655
DP34095
DP13437
2
Pt 59
Pt 58
111-0-11
3
Pt 178
D.P. 2640
177
57
DP34095
(100)