

**BEFORE WAIKATO DISTRICT COUNCIL
HEARINGS PANEL**

UNDER the Resource Management Act 1991 (**RMA**)

IN THE MATTER OF Proposed Waikato District Plan

Mischa Jacobine Davis

**PRIMARY EVIDENCE ON BEHALF OF THE AUCKLAND/WAIKATO FISH AND GAME
COUNCIL ("FISH & GAME")**

SUBMITTER ID: 433

Hearing 18 Rural

Dated: 8 September 2020

STATEMENT OF EVIDENCE OF MISCHA DAVIS

Introduction

- 1 My full name is **Mischa Jacobine David**
- 2 I am employed as Environmental Officer for Auckland/Waikato Fish and Game Council.
- 3 I have been in this role since October 2016 during which time I have been responsible for preparing and lodging submissions on resource consent applications, local government planning documents, draft legislation or other central government policy matters, then presenting those submissions and other evidence at hearings. I have further been involved in responding to queries on resource management issues, investigating non-compliance with resource consents, policies and plans, and assisting with regional planning and policy development.
- 4 I hold the qualifications of Bachelor of Laws, and Bachelor of Arts (Geography), both from the University of Auckland.
- 5 I have read the Environment Court's Code of Conduct for Expert Witnesses, and I agree to comply with it. My qualifications are set out above. I confirm that the issues addressed in this brief of evidence are within my area of expertise.

Background

- 6 Fish and Game has sought changes in five areas regarding the Rural Zone. They are:
 - a. Wetlands
 - b. Recreational hunting
 - c. Signs
 - d. Maimai
 - e. Public access
- 7 The Table attached to my evidence sets out the revised relief sought by Fish & Game following the recommendations in the s42A Reports.

Wetlands

- 8 It is essential that the Waikato District Plan strikes the right balance between protection of wetlands and allowing restoration/enhancement activities to occur.
- 9 If the loss and degradation of wetlands in the Waikato District is to be addressed, encouraging wetland restoration and enhancement is vital.
- 10 Mr Wilson explains the important role that the Fish and Game has had in maintaining and restoring wetlands in the Waikato District.¹

¹ Wilson EIC at [3.2-3.5].

- 11 Fish and Game's predecessor was the Auckland Acclimatisation Society. Through the foresight of the Society, the Waikato District retains many wetlands that might have otherwise been lost to activities such as land drainage.
- 12 Although historically the focus for Fish and Game has been on the creation and preservation of game bird habitat, wetlands in Waikato District also provide critical habitat for threatened and at-risk indigenous flora and fauna. They also provide other important functions: water supply, water purification, climate regulation, flood regulation, coastal protection, cultural values and contribution to human health and wellbeing.
- 13 Auckland/Waikato Fish & Game and its predecessor have supported and financed the creation of wetland development/enhancement programmes throughout the greater Waikato Region, including on private land. This includes providing funding through the New Zealand Game Bird Habitat Trust - funded by a fee placed on game bird hunting licences. Mr Wilson's evidence lists the wetlands that Fish & Game owns and actively manages in the Waikato District, including substantial holdings in the Whangamarino Wetland.²
- 14 Wetlands have been impacted by surrounding land drainage and nutrient enrichment from runoff. With continued loss and degradation, remaining wetlands in the Waikato District have increasing significance.
- 15 Mr Wilson and Mr Klee have provided evidence on the ecological value of wetlands across the Waikato District, the threats they face, the resource management issues associated with them and the management options available to them.
- 16 What is clear from their evidence is that leaving wetlands to 'look after themselves' will not achieve restoration or even maintenance of the extent of wetlands in the Waikato District. As explained by Mr Wilson and Mr Klee, wetlands require active management, protection, and restoration.
- 17 Section 6(a) RMA requires the preservation of the natural character of wetlands, lakes and rivers, and their margins. The current Waikato Regional Policy Statement ("RPS") largely reflects section 6(c) in the following provisions (underlining my emphasis):

Policy 12.2 Preserve Natural Character

Ensure that activities within the coastal environment, wetlands, and lakes and rivers and their margins are appropriate in relation to the level of natural character and:

- a) where natural character is pristine or outstanding, activities should avoid adverse effects on natural character;*
- b) where natural elements/influences are dominant, activities should avoid significant adverse effects and avoid, remedy or mitigate other adverse effects on natural character;*
- c) where man-made elements/influences are dominant, it may be appropriate that activities result in further adverse effects on natural character, though opportunities to remedy or mitigate adverse effects should still be considered;*
- d) promote the enhancement, restoration, and rehabilitation of the natural character of the coastal environment, wetlands and lakes and rivers and their margins; and*

² Wilson EIC at [3.6]

e) regard is given to the functional necessity of activities being located in or near the coastal environment, wetlands, lakes, or rivers and their margins where no reasonably practicable alternative locations exist.

Policy 12.2.2 Enhance natural character where compromised:

Local authorities should identify opportunities to enhance, restore or rehabilitate the natural character of the coastal environment, wetlands, and lakes and rivers and their margins where it has been compromised, including when undertaking works and services or preparing or reviewing growth strategies, structure plans, or regional and district plans. In particular, opportunities to achieve the following should be considered:

- a) the removal of derelict or unnecessary structures;*
- b) restoration or enhancement of natural elements;*
- c) enhancement of water quality;*
- d) modification of existing development to be less intrusive; and*
- e) de-reclamation of redundant reclaimed land.*

Earthworks policies and rules

- 18 Fish and Game sought changes to policy 5.3.5 of the Proposed Plan to include provision for earthworks where they are for ecosystems protection rehabilitation or restoration works, including for wetland enhancement work (submission point 433.3).
- 19 This relief has been accepted in part in the Hearing 18 s42A Report. The author agrees with our position that conservation activities should be encouraged and enabled.³ I support the recommended amendments to the policy to note earthworks to facilitate ‘conservation activity’ as an activity to be enabled.
- 20 I support the defined term of ‘conservation activity’ in the Proposed Plan. As noted in my evidence above, while historically the focus for Fish and Game has been on the creation and preservation of game bird habitat, wetlands also provide critical habitat for threatened and at-risk indigenous flora and fauna.
- 21 I further agree that such amendments provide a favourable policy pathway by which to recognise the positive contribution of such earthworks that would otherwise exceed the limits set out in the applicable Proposed Plan rules.
- 22 The changes to enable earthworks for conservation activities are also supported by the Strategic Directions of the Proposed Plan:

1.12.2 Strategic directions

- (a) The directions set out in paragraphs 1.12.3 – 1.12.8 provide the overarching directions for the development of the objectives, policies and other provisions within the district plan.*
- (b) In summary, the overarching directions include the following:*
 - (vi) Protect and enhance green open space, outstanding landscapes and areas of cultural, ecological, historic, and environmental significance.*
- (c) The strategic objectives that implement the strategic directions are included within Section 1.13 and cross referenced to the relevant chapters in Part B of the district plan. They assist in*

³ Hearing 18 S42A Report at [244].

providing an objective that encompasses more than one zone (such as Chapter 4 Urban Environment) or a range of matters (such as Chapter 6 Infrastructure).

1.12.3 Direction - Natural environment

(a) A district that protects its natural habitat and ecological values and retains its significant landscape features.

(b) A district that retains the natural character of its rural areas and has public open space available and well used by the community.

1.13.3 Strategic Objective – Rural Environment

(a) Subdivision, use and development within the rural environment where:

(ii) productive rural activities are supported, while maintaining or enhancing the rural environment;

(iii) Urban subdivision, use and development in the rural environment is avoided.

- 23 As highlighted in Fish and Game’s submission the earthworks rules seek to impose restrictions on earthworks in terms of volume, height and location which would severely restrict/curtail the construction, restoration, maintenance and enhancement of wetlands. Fish and Game therefore sought further changes to the general earthworks rules 22.2.3.1 (submission point 433.31) to add ecosystem protection, restoration or enhancement (e.g. conservation covenants, works involved with wetland enhancement) to the list of permitted earthworks activities provided for under the rule. The Hearing 18 s42A Report accepted this in part, stating at paragraph 267:

It is considered appropriate that earthworks ancillary to conservation activity are provided for as permitted given the social and environmental benefits that arise from such activity, although given that such activities often occur close to waterbodies it is recommended that they be subject to having an erosion and sediment control plan in place.

- 24 Mr Klee’s evidence notes that while sediment should be retained on site as best as practicable in some instances this may be unavoidable. He further questions why this condition has not been recommended for other rural earthwork activities when those activities carry the same, if not a greater risk of sediment entering waterbodies.⁴ Considering the above I recommend that the condition be amended to *minimize*, rather than retain, sediment resulting from the earthworks.
- 25 Fish and Game sought further changes to the general earthworks rules at 22.2.3.1 of the Proposed Plan where they duplicate a regional planning function to do with waterways, natural water flows and established drainage paths (submission points 433.50, 433.51 and 433.66).
- 26 Of concern to Fish and Game is rule 22.2.3.1 P2 (vi) P3 (vii) due to the broad nature of the wording. Mr Klee’s evidence highlights how this specific condition inhibits the restoration and creation of wetlands.⁵ If Fish and Game or an individual were to undertake earthworks that would alter water flow in any way shape or form, this would trigger the requirement for discretionary consent even where this falls under the permitted activity rules of the Waikato Regional Plan.

⁴ Klee EIC at [4.7].

⁵ Klee EIC at [4.8].

27 As highlighted in our submission Waikato District Council do not have authority to control water flow via rules relating to the taking, use, damming and diverting of water in the district plan – that this is in fact a matter reserved for regional council control.⁶

28 The Hearing 18 s42A Report accepts our relief regarding rule 22.2.3.1, stating at paragraph 289:

Primarily, the nature of the condition is such that it raises matters more appropriately regulated by the regional council. On that basis it is recommended that condition (vi) of Rule 22.2.3.1 P2 is deleted. As a consequential amendment, it is considered that condition (vii) of Rule P3 is similarly removed from the Proposed Plan. Therefore it is recommended that the above submissions are accepted in part.

29 Section 30 RMA details the functions of Regional Councils. Section 30(c) providing that Regional Councils have control of the use of land for the purpose of soil conservation, the maintenance and enhancement of the quality of water in water bodies, the maintenance of the quantity of water in water bodies, and the maintenance and enhancement of ecosystems in water bodies.⁷ Section 30(e) further provides that Regional Councils have control of the taking, use, damming, and diversion of water, and the control of the quantity, level and flow of water in any water body.⁸

30 The RPS method 8.3.2 Activities in riparian areas - reflects s 30(c) where it provides:

Regional plans shall manage the adverse effects of activities in riparian areas, including tracking and earthworks, removal of riparian vegetation and access to the beds and banks of fresh water bodies by vehicles and stock to ensure:

- a) reduced sedimentation of fresh water bodies (including bank instability) and estuaries that is derived from human based activities;*
- b) reduced microbial contamination of fresh water bodies; and*
- c) that water body objectives are achieved, including by meeting the limits and targets in regional plans.*

31 This is supported by the Proposed Plan itself where it states at 1.10.2.2 that if there is overlap between district and regional plans, including for earthworks, the district plan concentrates mostly on effects on human health or amenity, whereas the regional plan is more directed at effects on the natural environment. It emphasises that It is essential that the district plan is not inconsistent with the relevant regional plans.

32 I therefore support the proposed recommended changes in the Hearing 18 s42A Report that condition (vi) of Rule 22.2.3.1 P2 is deleted, and as a consequential amendment, condition (vii) of Rule P3 is similarly removed from the Proposed Plan.

⁶ Fish & Game submission at [23-26].

⁷ Section 30(1)(c).

⁸ Section 30(1)(e)(f).

Changes to SNA and Landscape and Natural Character earthworks rules

- 33 Whilst I acknowledge that the rule packages controlling earthworks in SNAs and Landscape and Natural Character Areas are to be considered through separate hearings, and as such our relief regarding these rules have not been addressed in the Hearing 18 s42A Report, I consider it important to address them in this hearing as the proposed changes to those earthworks rules are a flow on from the ones addressed above.
- 34 In its submission Fish and Game proposed similar changes to the earthworks rules that apply in the Rural Zone to apply in SNA's and Landscape and Natural Character Areas. As drafted these earthworks rules are restrictive for most of the maintenance and enhancement activities Fish and Game undertake in wetlands. This is a concern for us as most of Fish and Game wetlands in the Waikato District have been zoned as Significant Natural Area under the Proposed Plan. For example, according to the proposed rules Fish and Game could only dig out 50m³ of accrued sediment from wetland areas in SNAs for maintenance of fences, tracks and drains. All other wetland maintenance and enhancement activities would require a resource consent.
- 35 I agree with the author of the Hearing 18 s42A Report at paragraph 244 that SNAs and Landscape and Character Areas are sensitive to change and earthworks undertaken on the pretence of ecosystem protection and/or enhancement could have the opposite effect if allowed with no consenting oversight. As noted above, it is essential that the Proposed Plan strikes the right balance between protection of wetlands and allowing restoration/enhancement activities to occur.
- 36 I therefore propose a new permitted activity rule for earthworks that are specific to enhancement/restoration work in wetlands within SNA's and Landscape and Natural Character Areas with the conditions that that may only be undertaken over a maximum area limit of 500 m² and a "Wetland Restoration Plan" is also required to be submitted to the Waikato Regional Council.
- 37 Providing for this rule would bring the Proposed Plan in line with the recent '*Resource Management (National Environmental Standards for Freshwater) Regulations 2020*' ("NES Regulations") which came into force on 3 September 2020.
- 38 The NES Regulations includes standards for restoration of natural wetlands and provides (underlining my emphasis):

38 Permitted activities

(1) Vegetation clearance within, or within a 10 m setback from, a natural wetland is a permitted activity if it—

- (a) is for the purpose of natural wetland restoration; and*
- (b) complies with the conditions.*

(2) Earthworks or land disturbance within, or within a 10 m setback from, a natural wetland is a permitted activity if it—

- (a) is for the purpose of natural wetland restoration; and*
- (b) complies with the conditions.*

(3) The taking, use, damming, diversion, or discharge of water within, or within a 100 m setback from, a natural wetland is a permitted activity if it—

- (a) is for the purpose of natural wetland restoration; and*
- (b) complies with the conditions.*

Conditions

(4) The conditions are that—

- (a) the activity must comply with the general conditions on natural wetland activities in regulation 55; and*
- (b) if the activity is vegetation clearance, earthworks, or land disturbance, the activity must not occur over more than 500 m² or 10% of the area of the natural wetland, whichever is smaller.*

(5) However, the condition in subclause (4)(b) does not apply if the earthworks or land disturbance is for planting.

55 General conditions on natural wetland activities

(1) This regulation applies if a regulation in this subpart refers to the compliance of an activity with the general conditions in this regulation.

General condition for permitted activities: prior notice of activity

(2) If this regulation applies in relation to a permitted activity, the 1 or more persons responsible for undertaking the activity must, at least 10 working days before starting the activity, provide the relevant regional council with the following information in writing:

- (a) a description of the activity to be undertaken; and*
- (b) a description of, and map showing, where the activity will be undertaken; and*
- (c) a statement of when the activity will start and when it is expected to end; and*
- (d) a description of the extent of the activity; and*
- (e) their contact details.*

39 The general conditions on natural wetland activities in regulation 55 would be met via a Wetland Restoration Plan. The Waikato Regional Council already provide a template for Wetland Restoration Plan's which is available to download from their website.⁹

40 Mr. Wilson's evidence highlights the importance of the various earthwork's activities undertaken by Fish and Game in wetlands zoned as SNA's, and how an area restriction any less than 500 m² would be impractical to achieve the beneficial restoration and enhancement outcomes of those activities.¹⁰

41 These proposed new earthworks rules are supported by the Waikato Regional Plan's Implementation Method 3.7.4.2 to promote an inter-agency approach to managing wetlands which provides:

⁹ <https://www.waikatoregion.govt.nz/environment/natural-resources/water/freshwater-wetlands/create-your-own-wetland-plan/>

¹⁰ Wilson EIC at [3.24].

Waikato Regional Council will promote an inter-agency approach in conjunction with territorial authorities, Department of Conservation, tangata whenua, affected landowners, Fish and Game New Zealand, public health authorities, neighbouring regional councils and other interested parties, to:

- 1. prepare joint strategies to protect wetland areas,*
- 2. consider preparation of a Waikato Wetlands Accord to set regional objectives for wetland management,*
- 3. prepare guidelines on good practice for wetland management*

- 42 These changes are also supported by the Waikato Regional Policy Statement's Implementation Method 11.1.4 *Recognition of activities having minor adverse effects on indigenous biodiversity* (underlining my emphasis):

Regional and district plans should include permitted activities where they will have minor adverse effects in relation to the maintenance or protection of indigenous biodiversity. They may include:

a) the maintenance, operation and upgrading of lawfully established infrastructure, regionally significant infrastructure and lawfully established activities using natural and physical resources of regional or national importance;

b) existing lawfully established uses of land where the effects of such land use remain the same or similar in character, intensity and scale;

c) activities undertaken for the purpose of maintenance or enhancement of indigenous biodiversity;

d) the collection of material for maintaining traditional Māori cultural practices; and

e) actions necessary to avoid loss of life, injury or serious damage to property

- 43 I consider that such changes are necessary to provide consistency for earthworks rules for restoration and enhancement works throughout the plan.

Recreational hunting

- 44 The Waikato District includes environments which enable people to engage in recreational hunting in a wilderness setting, with minimal restrictions. This is a significant cultural aspect of the Waikato District which is highly valued and deserves recognition in the Proposed Plan, particularly given the projected increasing footprint of settlement and industry.

- 45 Recreational hunting however can become constrained by surrounding land use, and typically occurs when land use changes such as when urban and lifestyle development is introduced near areas of recreational significance to hunters, implicating the future of hunting in these areas. The most obvious example is when complaints are made regarding noise as recreational hunting involves the discharge of shotgun noise. Game bird hunting during the game bird season begins at 6:30am in the morning and concludes at 6:30pm at night for the length of the season.

- 46 To avoid any issues regarding noise Fish and Game sought to have recreational hunting recognised as a permitted activity in the Rural Zone noise rules at 22.2.1.1 of the Proposed Plan (submission point 433.30). Both the Waipa District Plan and South Waikato District Plan

provide for hunting as a permitted activity in the Rural Zone.¹¹ Fish and Game submitted that the same provision should be included in the Proposed Plan to appropriately address the issue of noise and reverse sensitivity issues for hunting and to ensure a consistent approach across all of the districts in the Waikato Region and eliminate any cross boundary issues.

- 47 I therefore support the Hearing 18 s42A Report and proposed amendments regarding this rule which accepts our relief, stating at paragraph 549: *I agree that occasional noise from hunting is a common and anticipated feature of rural environments, therefore should be provided for in the rule.*
- 48 Recreational hunting can be affected in ways other than noise alone, such as predation of avifauna by the introduction of domestic cats and dogs, and amenity concerns regarding the construction and use of maimai.
- 49 The Proposed Plan currently omits recreational hunting from its policy on reverse sensitivity effects in the Rural Zone, failing to recognise it as a typical feature of the rural environment with its effects accepted and able to be managed. Fish and Game therefore sought in its submission that recreational hunting be considered in this policy.
- 50 The Hearing 18 s42A Report has retitled and rewritten the policy on reverse sensitivity and defined the term to help make it more understandable to the layperson. I agree with the reasoning behind these amendments, particularly that the policy as written does not work because of the “awkward mix” of what it is trying to achieve.
- 51 I therefore support these amendments that instead of including an exclusive list of specific activities and effects, more general and broad terms are given which better encompass the wide range of existing activities that are typically found in rural areas. However, I seek that the word ‘productive’ be deleted from the policy – as it could be argued that this only relates to commercial rural activities, whereas the policy should apply to all existing rural activities.

Signs

- 52 In its submission Fish and Game sought to amend Rule 22.2.6.1 P1 Signs – General, to have Auckland/Waikato Fish and Game Council included as an agency who may erect a public information sign as a permitted activity (submission point 433.54).
- 53 The H18 s42 Report accepted this relief and I agree with the reasoning provided particularly at paragraph 584:
- The purpose of P1 is to recognise that signage has broader purposes than just advertising. Signage is commonly used for direction, safety, and public information. It is a core responsibility of both government and public agencies, and businesses that need to comply with statutory requirements. Such statutory obligations are common in working rural environments, especially with regard to HSNO, Worksafe, and biosecurity requirements.*
- 54 I therefore support the changes proposed in the Hearing 18 s42A Report to extend the rule to include ‘official signs’ and to provide a definition of ‘official sign’ within the district plan.

¹¹ Rule 28.3.1 d) South Waikato District Plan, Rule 4.1.12 k) Waipa District Plan

- 55 Fish and Game further sought to delete conditions (a)(i) and (vii) from rule 22.2.6.1 P2 so that more than one sign may be erected on site and that a sign may also be erected within 50m of the Waikato Expressway or a state highway, without a resource consent (submission point 433.55).
- 56 This relief was also accepted in the Hearing 18 s42A Report. I agree with the reasoning provided that such signs should not be subject to the size and number limitations proposed in P2 as the nature of such signage is controlled via our organisation's responsibilities and statutory obligations – we should not have to apply for a resource consent in order to meet these.
- 57 I further support the author's point at paragraph 586 that for consistency such an approach should be applied across all the zones in the Waikato District.

Maimai

- 58 In its submission Fish and Game sought to exempt maimai (gamebird shooting shelters) from the building setback rules that apply to waterbodies both in the Country Living (submission point 433.28) and Rural Zone (submission point 433.59). Likewise, we sought an exemption to permit the construction of maimai within identified features/landscapes in the Rural Zone (submission point 433.58).
- 59 In the Hearing 2 s42A Report which applies to the Rural Zone, our relief regarding setbacks was accepted. I support the Hearing 2 s42A Officers' statement that a maimai would only fall within the jurisdiction of the Waikato District Plan if it were attached to land outside a waterbody, and that providing a maimai meets the definition of a building, which is very widely defined by the Building Act, then it would be captured by the building setbacks.
- 60 Our submission regarding the exemption for maimai however was later rejected in the Hearing 12 s42A Report which applies to the Country Living Zone, citing concerns around safety, re-purposing of maimai, and maintaining the character of the area.
- 61 Mr Wilson's evidence highlights how the reason hunters build their maimais very close to waterbodies is that the effective range of shotguns (i.e. the range at which they can humanely shoot gamebirds), is at best only within 30-40 metres. Any rules which force the maimai to be located 23m back from the waterbody they are hunting on (or any similarly stretched distance), is both impractical and unsafe, regardless of zoning.¹²
- 62 Mr Wilson's evidence further highlights how the Maimai Construction Guidelines require hunters to maintain maimai to a specific amenity standard (camouflaged and tidy) and may not contain permanent fixtures (stoves, sinks, toilets etc.) thus preventing any repurposing of a maimai and also ensuring they are built to an acceptable standard both visually and structurally.¹³
- 63 This reasoning was also supported in the Hearing 18 s42A Report, which accepted our relief, stating at paragraph 688: *In my view the concept of a maimai is well understood and any building that provides residential accommodation falls beyond what could be described as a maimai.*

¹² Wilson EIC at [3.26-3.27].

¹³ Wilson EIC at [3.39].

- 64 Regarding our relief for rule 22.3.3 D1 to permit the construction of maimai within identified features/landscapes, the Hearing 21b s42A Report rejected this request, stating the potential for visual adverse effects of maimai, which would diminish the attributes of identified landscapes.
- 65 Mr Wilson's evidence states how several large hunting areas have been identified as Outstanding Natural Features and provides a list of these areas.¹⁴ These areas are some of the most intensively hunted in New Zealand for waterfowl, attracting high densities of gamebird hunters and as such many maimai have been established. These areas include the Whangamarino Wetland, which contains 738 ha of Fish and Game owned and managed wetlands and is classified as nationally significant for game bird hunting under the Auckland Waikato Sportsfish and Game Management Plan. Another large hunting area identified as an Outstanding Natural Feature is Lake Whangape, which is classified as regionally significant for gamebird hunting under the Auckland Waikato Sportsfish and Game Management Plan.
- 66 With regards to the Auckland Waikato Sportsfish and Game Management Plan, the general purpose of this plan is to establish objectives for the management of sports fish and game birds, and as a statutory management plan, the Waikato District Plan is required to have regard to it in the course of the district plans preparation (ss 66(2)(c)(i) RMA).
- 67 An important point to note regarding jurisdiction is that the Waikato Regional Plan permits the use, erection, reconstruction, placement, alteration or extension of a maimai or structure for the purpose of gamebird hunting, when it is in, on, under or over any river or lake bed, providing it meets the specified conditions in the rule 4.2.7.1. Any rule under the Waikato District Plan that restricts the construction of maimai on any adjacent land to a lake or river then is at odds with the Waikato Regional Plan. It is essential that the district plan is not inconsistent with the regional plan.
- 68 Further to the above the Waikato Coastal Plan allows maimai as a permitted activity in the Coastal Zone under rule 16.4.2 providing it also meets specified conditions. It states the principle reasoning for adopting the rule as: *There are a number of maimai located in the CMA which provide traditional recreational opportunities for hunters. These structures are only used for a short time each year.*
- 69 The Auckland Unitary Plan also allows for maimai in the General Coastal Marine Zone as a permitted activity¹⁵. It also allows for maimai as permitted activities in lakes, rivers streams and wetlands including those areas zoned as Outstanding Natural Features.¹⁶
- 70 Considering the importance of gamebird hunting to the Waikato District, that building and using maimai is a fundamental part of gamebird hunting, and that a wide range of structures are used as maimai, many of which meet the definition of a building under the Building Act and are therefore regulated by it, and further considering the temporary nature of their use, I consider that it is only logical and necessary that maimai should be exempt from any building rules that require a resource consent under the Waikato District Plan. This would also provide consistency with other planning documents across corresponding districts and regions.

¹⁴ Wilson EIC at [3.31].

¹⁵ Activity 130 and Rule F2.21.10.6. Maimai, F2 Coast – General Coastal Marine Zone, Auckland Unitary Plan.

¹⁶ A36 in Table E3.4.1 Activity table, E3. Lakes, Rivers, Streams and Wetlands, Auckland Unitary Plan.

71 I therefore support the recommended changes to the setback rule given at paragraph 700 in the Hearing 18 s42A Report, however I further seek that this logic of permitting maimai to be built without a resource consent be translated across all zones, including the Country Living Zone, as well as in identified Landscapes and Natural Character Areas.

Public Access

72 Fish and Game sought an amendment to the Proposed Plan to provide for the creation and protection of esplanade reserves and strips as a permitted activity [433.72].

73 In response to this relief the Hearing 2 s42A Report states:

240. I understand that the restricted discretionary activity status is required in order for Council to reserve some control over the creation of an esplanade reserve or strip where it is to be vested. Council cannot control permitted activities to the same degree. Therefore, I consider that it is inappropriate to add a provision permitting the creation of all esplanade reserves and strips.

74 I support the Hearing 2 s42A Officers' reasoning and propose that Fish and Game withdraw this relief. I consider that the Waikato District Council have met its obligation under Method 12.4.1 of the RPS which requires district plans to provide for the enhancement of public access to and along wetlands, and lakes and rivers and their margins by:

- i. identifying areas where it is appropriate; or
- ii. establishing criteria to enable assessment through resource consent processes of when it would be appropriate; and
- iii. including provisions to ensure it occurs in appropriate circumstances and locations.

75 However, there is still the outstanding concern raised by Fish and Game that existing public access in the Rural Zone can be fragmented by the subdivision process if not carefully managed.

76 The Rural Zone provides relatively little legal public access to and along waterbodies compared with urban areas. While unformed legal roads do provide some access to rivers, they often wander over farmland and it is not obvious where they lie. Once at the river, there are few esplanade reserves and strips, marginal strips, recreation, and road reserves and so most riverbanks are in private ownership, potentially with ad medium filum rights. It is therefore important to protect what public access does exist in the Rural Zone.

77 As such, Fish and Game's submission sought an additional clause be added to Policy 5.3.8 – *Effects on rural character and amenity from rural subdivision* to include: *'ensure that the form and location of subdivision does not compromise public access to rivers, streams, lakes, and wetlands and the quality of these environments'* (submission point 433.5).

78 This relief is further supported by the Waikato Regional Policy Statement's Policy 12.4 which requires that public access to and along lakes, and rivers to be maintained and enhanced by ensuring subdivision, use and development does not result in inappropriate loss of existing public access.

79 This relief has been accepted by the Hearing 18 s42A Report, stating at paragraph 281: *I agree that this is a valid matter to consider when designing new title boundaries.* I therefore support the recommended amendments proposed for this policy in the Hearing 18 s42A Report.