

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of hearings regarding submissions to the proposed Waikato District Plan relating to **Hearing 18: Chapter 5 Rural Environment & Chapter 22 Rural Zone.**

**STATEMENT OF PRIMARY EVIDENCE OF SHANE ALEXANDER HARTLEY ON BEHALF
OF MIDDLEMISS FARM HOLDINGS LTD AND THE BUCKLAND LANDOWNERS GROUP**
8 September 2020

1 INTRODUCTION

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

2 SCOPE

- 2.1 My evidence is in relation to submissions to the Proposed Waikato District Plan lodged by Middlemiss Farm Holdings Ltd (Middlemiss) seeking amendments

and additions to the objective and policies set out in Chapter 5 Rural Environment and the rules set out in Chapter 22 Rural Zone of the Proposed District Plan (PWDP).

- 2.2 Middlemiss' submission seeks deletions, amendments, and additions to several sections of the PWDP, including Chapter 5 and Chapter 22, primarily to introduce incentivised subdivision to achieve environmental and ecological enhancement for biodiversity, water quality and elite soils protection.

3 CODE OF CONDUCT

- 3.1 I confirm that I have read the Environment Court's Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014 and I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.
- 3.2 I declare that I am the Director of Terra Nova Planning Limited who was one of the several appellants to the Auckland Unitary Plan appeal I have referred to in the body of evidence below. My interest as an appellant in that process was solely a professional one, having been involved in the research and development of indigenous biodiversity, revegetation and TDR processes for approximately 30 years, initially as one of my planning responsibilities with the Rodney District Council through the 1990's.

4 SUMMARY

- 4.1 My statement concludes that incentivised rural subdivision to achieve a stronger focus on biodiversity, water quality protection and enhancement, and high quality soils protection, is an important and effective approach to achieving critically important environmental goals in Waikato District.
- 4.2 These goals are reinforced by the requirements of the Waikato Regional Policy Statement and the current National Policy Statement for Freshwater Management that came into effect on 3 September 2020, and the currently proposed draft national policy statements for biodiversity.
- 4.3 I support amendments to a number of objectives, policies, rules and methods, as specifically and generally sought by the Middlemiss Submission, but with amended wording where I consider it appropriate, relating specifically to;

- Objectives relating to rural character, biodiversity, water quality and high quality soils;
 - Policies relating to rural character, in-situ and transferable development rights (TDRs) to secure biodiversity and water quality benefits;
 - Policies relating to the location of TDRs;
 - Policies relating to the high quality soils protection.
 - Rules relating to the number of in-situ and TDRs possible for significant ecological protection and enhancement, indigenous revegetation and high quality soils protection; methodology to undertake a transfer; significant ecological area protection and enhancement requirements; and appropriate locations for TDR sites, and supplementary related rules for rural activities.
- 4.4 In my opinion, the significance of achieving improved biodiversity, soil protection and water quality outcomes in both qualitative and quantitative terms has become a defining and determinative policy function for district plans with extensive rural areas, as has been highlighted in very clear terms by the latest national policy statements for biodiversity and freshwater.
- 4.5 While still important, the emphasis placed on the maintenance of rural character, and the associated perceived rural landscape visual effects in the proposed plan and the Council's Section 42a reports should be tempered by the equivalent and arguably overriding importance of significantly improving responses to biodiversity and water quality deterioration, and incentivising.
- 4.6 I do not consider that the Plan or the recommendations in the Section 42a reports¹ relating to these matters fully achieve the balance that is required to do that, although I agree with and support many of the proposed amendments in the Reports.

5 OVERVIEW OF MIDDLEMISS SUBMISSIONS AND STATUTORY ASSESSMENT

- 5.1 The overall thrust of Middlemiss' submissions to the PWDP is that the Plan does not identify or include appropriate policies and methods for achieving the sustainable management of rural resources, specifically incentive subdivision opportunities in appropriate locations to achieve environmental and ecological enhancement and protection in terms of biodiversity, water quality, and high quality (particularly elite) soils.

¹ Section 42A Reports prepared by Jonathon Cleese and Katherine Overwater.

- 5.2 The Submission also identifies the Auckland Unitary Plan approach and Environment Court's response to relevant appeals; proposing that the Auckland Council approach is highly relevant (and able to be imported) to Waikato District².
- 5.3 My evidence addresses the submissions made by Middlemiss relating to the Rural chapters of the PWDP (the Submission includes a qualifying statement referring to the 'track changes' provided with the Submission which states that *"the changes are not comprehensive and there will be other changes required to implement the concerns outlined in the relief sought"*³). The relevant chapters are:
- Chapter 5: Rural Environment
 - Chapter 22: Rural Zone
- 5.4 My evidence is structured in a similar way to the two s42A reports.
- 5.5 I reference also my assessment of the higher level statutory documents and their objectives and policies relating to soil and water quality, the natural environment and biodiversity, as well as the significance of ecosystem services in my statement of evidence for Chapter 1 issues in September 2019 and do not replicate that here. This included the Waikato Regional Policy Statement and National Policy Statements for Indigenous Biodiversity and Freshwater Management (as the latter then stood, having been replaced by the new NPS Freshwater Management 2020 which came into force on 3 September 2020). The NPS Indigenous Biodiversity is not yet in force but has been expected to be before the middle of next year.
- 5.6 Most of the objectives and policies of the NPS Freshwater Management 2020 (NPS FM) are very relevant to those aspects of the Middlemiss submissions seeking to provide for larger scale indigenous planting, particularly within riparian areas. The importance of such existing and new indigenous revegetation to meeting the NPS objectives and policies, particularly in terms of buffering and insulating wetlands, lakes, streams and rivers from both rural and urban activities, including rural productive activities, will clearly be increasingly significant.
- 5.7 The NPS FM objective is:

² Para 6.5 Middlemiss Submission

³ Para 6.3 Middlemiss Submission

2.1 Objective

- (1) The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises:
- (a) first, the health and well-being of water bodies and freshwater ecosystems
 - (b) second, the health needs of people (such as drinking water)
 - (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

5.8 The key policies (in effect, all but one) in relation to the water quality implications of matters being addressed in the current Rural chapter by the Middlemiss submission are:

- Policy 1: Freshwater is managed in a way that gives effect to Te Mana o te Wai.
- Policy 2: Tangata whenua are actively involved in freshwater management (including decision making processes), and Māori freshwater values are identified and provided for.
- Policy 3: Freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments.
- Policy 4: Freshwater is managed as part of New Zealand's integrated response to climate change.
- Policy 5: Freshwater is managed through a National Objectives Framework to ensure that the health and well-being of degraded water bodies and freshwater ecosystems is improved, and the health and well-being of all other water bodies and freshwater ecosystems is maintained and (if communities choose) improved.
- Policy 6: There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.
- Policy 7: The loss of river extent and values is avoided to the extent practicable.
- Policy 8: The significant values of outstanding water bodies are protected.
- Policy 9: The habitats of indigenous freshwater species are protected.
- Policy 10: The habitat of trout and salmon is protected, insofar as this is consistent with Policy 9.

Policy 12: The national target (as set out in Appendix 3) for water quality improvement is achieved.

Policy 13: The condition of water bodies and freshwater ecosystems is systematically monitored over time, and action is taken where freshwater is degraded, and to reverse deteriorating trends.

5.9 Regional councils are required to develop long-term visions for fresh water in their regions and to include those objectives in regional policy statements (3.3).

5.10 Local authorities are required to adopt an integrated approach which recognizes the interconnectedness of the whole environment, including provisions in district plans to promote positive effects and avoid, remedy or mitigate adverse effects including cumulative effects of urban development on the health and well-being of water bodies, freshwater ecosystems, and receiving environments (3.5).

5.11 Specific focus is on minimising nitrogen and phosphorus and (3.13), sediments (3.25), and E. coli (3.27) effects on fresh water, and a significant matter for the current PWDP process - at least in principle rather than legal effect at this stage - is the requirement for regional councils' to specifically identify all natural inland wetlands of 0.05ha (500m²) or greater in extent or less than 0.05 ha (such as an ephemeral wetland) and known to contain threatened species (3.23).

6 CHAPTER 5: RURAL ENVIRONMENT

6.1 The changes sought to Chapter 5 by the Middlemiss submission are to better provide for the wide range of activities which occur in rural environments and modify the currently overriding focus on productive rural activities. They also seek to strengthen provisions relating to the protection, enhancement and restoration of rural land for biodiversity, water quality, and high quality soils, including by way of incentivised subdivision.

Objectives

Rural Environment

6.2 The Middlemiss submission seeks the amendment of Objective 5.1.1 in the following way:

5.1 The Rural Environment

5.1.1 Objective – The rural environment

Objective 5.1.1 is the strategic objective for the rural environment and has primacy over all other objectives in Chapter 5.

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

- (i) high class soils are protected for ~~productive~~ rural activities;
- (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, and other subdivision is managed.

- 6.3 The intent of the Middlemiss submission is to reduce (not eliminate) the emphasis on “traditional” productive farming activities and to better recognise the range of activities occurring now and potentially in the future within rural areas. These alternative activities include existing and proposed rural residential subdivision related in particular, to the matters I set out in paragraph 6.1 above. The change sought is also to recognise that care needs to be taken with regard to what is meant by the term “productive”. Traditionally it is taken to mean only the commercial primary products themselves, but this has been at the exclusion of the vital “ecosystem services”, that enable that “production”, such as the quantity and quality of freshwater.
- 6.4 The 42A Report does not agree with these requested changes; its recommended objective (para 75) does not provide or signal any provision for hamlet or any other rural residential subdivision even though provision for that very method already occurs in the existing PWDP policies and rules, including Policy 5.3.8 (d):
- (d) Rural hamlet subdivision and boundary relocations ensure the following:
 - (i) Protection of rural land for productive purposes;
 - (ii) Maintenance of the rural character and amenity of the surrounding rural environment;
 - (iii) Minimisation of cumulative effects.
- 6.5 The s42A recommended replacement Policy 5.3.8 introduces a sub-policy providing for rural lifestyle lots in hamlet format (para 258):

(d) Make limited provision for small rural lifestyle lots, where in addition to the matters set out in (a), (b), and (c) the subdivision:

- (i) Includes the physical and legal protection of a Significant Natural Area; or
- (ii) Includes the provision of public parks and reserves where these are located in accordance with a Council Parks Strategy; or
- (iii) Provides a large balance lot greater than 40ha so that an overall spacious rural character is maintained; or
- (iv) Involves a boundary relocation to create a large balance lot greater than 40ha and a limited number of small rural lifestyle lots that are clustered to form a hamlet; and

6.6 Having regard to the above, I recommend that additional wording is applied to Objective 5.1.1 (a) to apply to either the notified objective or the proposed amendment from the S42A report, as follows or with similar wording (my additional text underlined):

- (a) Subdivision, use and development within the rural environment is provided for where:
 - (i) High class soils are protected for productive rural activities;
 - (ii) Productive rural activities, rural industry, network infrastructure, community activities, and extractive activities are supported, while maintaining or enhancing the rural environment;
 - (iii) Significant indigenous vegetation, biodiversity and ecosystem services are protected, restored and enhanced.
 - (iv) Urban subdivision, use and development in the rural environment is avoided. *[renumbered from (iii)]*

6.7 I consider that this amendment provides better support for the policies of both the notified plan and proposes 42A amendments, as well as complementing the provisions of other chapters, including those addressing significant natural areas and biodiversity.

6.8 While the s42A report's proposed amendment (para 75) of sub-clause (a) (ii) to widen the scope of rural activities is a positive step, I consider that the references are overly limited - excluding appropriate rural-based tourist and visitor activities, rural dwellings and similar activities, for example. This problem can be avoided by either extending the list of activities, or accepting the Middlemiss submission that simply seeks the deletion of the word "Productive" so that it reads:

- (ii) ~~Productive~~ Rural activities are supported, while maintaining or enhancing the rural environment.

Productive Versatility of rural resources

High class soils

- 6.9 Middlemiss sought additional wording of Policy 5.2.3 (b); however, the S 42 I report proposes to delete (b) in its entirety (para 99). I agree with the Report's rationale for this and support the deletion.

Rural character and amenity

- 6.10 Middlemiss supports the retention of **Objective 5.3.1**⁴, which the s42A Report recommends. I support that recommendation.
- 6.11 The Report also proposes an additional **Policy 5.3.1** (para 113) that is intended to provide “*direction on character and amenity, and responds to submitter concerns regarding the need to recognise that such character is not uniform*”.
- 6.12 While I agree with the intent of the policy, and generally support its inclusion (subject to scope), I observe that while the proposed wording of (b) (ii) “*Significant visual separation of dwellings and rural-related farm buildings between neighbouring properties*” is a typical rural format in many parts of rural New Zealand and Waikato, there are also examples of dwellings and associated buildings in clustered form that have a similar outcome for rural character and amenity. These are sometimes within one property (often large holdings with farm worker / extended family dwellings) but also in a group of separate properties too small to be termed a village.
- 6.13 In this respect the addition of the words “*or in some instances, small clusters of dwellings and farm buildings within one or on separate properties*” would provide a more accurate description. The point being that in both cases there is visual separation and openness in the rural landscape. This recognition also provides support for clustered development forms like the rural hamlet format retained in both the notified plan and supported by the S42A reports. Proposed sub-policy (b) (ii) would read (proposed additional wording in italics and underlined):

(b) (ii) Significant visual separation of dwellings and rural-related farm buildings between neighbouring properties *or in some instances, small clusters of dwellings and farm buildings within one or on separate properties.*

- 6.14 Amendments to Policy 5.3.4 are sought by the Middlemiss submission⁵ to require site specific design responses for subdivision proposals, with the amended policy being:

5.3.4 Policy - Density of dwellings and buildings within the rural environment as follows:

⁴ Appendix One; Middlemiss submission

⁵ Appendix One; Middlemiss Submission

- (a) Retain open spaces to ensure rural character is maintained.
- (b) Additional dwellings support workers' accommodation for large productive rural activities.
- (c) Require site specific design responses for subdivision provisions that avoid, remedy and mitigate, any potential significant adverse effects of buildings on rural character and amenity.

AND

Amend the Proposed District Plan consequential or additional amendments as necessary to give effect to the submission.

- 6.15 Amendments are also sought by Middlemiss to Policy 5.3.8 and a new policy is proposed to enable and encourage environmental enhancement and restoration through in-situ subdivision opportunities in appropriate areas, and to ensure that areas identified and restored are protected in perpetuity.
- 6.16 In response to the several submissions to Policies 5.3.4 and 5.3.8 including Middlemiss', the s42A report concludes that both should be deleted and redrafted to be "*... more clearly separated into clauses that relate to subdivision in general, and clauses that provide improved direction for the various pathways by which small lifestyle lots can be created. Given the closely linked nature of dwelling density and subdivision, and the impact that they have on rural character, it is recommended that the two policies be located sequentially*" (paras 282 and 283).
- 6.17 These recommended changes are relatively significant rewrites, the implications of which require fuller consideration. However, my provisional view is that they appear to be more usefully structured and couched in terms of providing clearer guidance for both residential development and subdivision. Having said that, I consider that in terms of the Middlemiss submissions, there is the need to amend these recommended policies to better address the issues identified in the submission.
- 6.18 In the first instance, **should Policies 5.3.4 and 5.3.8 remain largely as notified**, I support the Middlemiss submissions seeking to provide a focus on site specific design for subdivision to avoid, remedy and mitigate the effects of subdivision and resulting development on rural character and amenity (5.3.4) and to provide for in-situ environmental enhancement incentive subdivision (5.3.8).
- 6.19 I also support the **additional new policy (proposed as 5.3.8B) in the Middlemiss submission** focussed on environmental enhancement and ecosystem services restoration, including in-situ incentive subdivision opportunities.

- 6.20 These outcomes are consistent with the PWDP's Chapter 3 Natural Environment objectives and policies as notified; in particular:

Chapter 3: Natural Environment

3.1 Indigenous Vegetation and Habitats

3.1.1 Objective – Biodiversity and ecosystems

- (a) Indigenous biodiversity values and the life-supporting capacity of indigenous ecosystems are maintained or enhanced.

3.1.2 Policies

- (a) Enable activities that maintain or enhance indigenous biodiversity including:
- (i) planting using indigenous species suitable to the habitat;
 - (ii) the removal or management of pest plant and animal species;
 - (iii) biosecurity works.

- 6.21 The considerations in Chapter 3 Policy 3.1.2 (b) also include a range of matters supportive of protection of both existing and new indigenous vegetation:

- (b) Consider the following when avoiding, remedying or mitigating adverse effects on indigenous biodiversity:
- (i) the required range of natural food sources;
 - (ii) habitats of threatened and at risk species;
 - (iii) ecological processes and corridors;
 - (iv) ecological sequences;
 - (v) migratory pathways;
 - (vi) pest plants and pest animals;
 - (vii) the Waikato river and its catchment;
 - (viii) natural character and landscape values of the area;
 - (ix) natural waterway habitats and hydrology;
 - (x) ecological corridors, natural processes and buffer areas;
 - (xi) legal and physical protection of existing habitat;
- (c) Provide for the removal of manuka or kanuka on a sustainable basis.

- 6.22 I further note Chapter 3 Policy 3.2.8 which is to *"Incentivise subdivision in the Rural Zone when there is the legal and physical protection of Significant Natural Areas, provided the areas are of a suitable size and quality to achieve a functioning ecosystem"*.
- 6.23 Middlemiss has submitted to several of the Chapter 3 objectives and policies I have referred to above⁶. These will be addressed more fully in Hearing 21 but I foreshadow that by noting the changes sought are to specifically support new areas of indigenous biodiversity being established, give stronger recognition of the importance of connections and linkages between habitats and resources, and providing for incentivised subdivision for ecological enhancement for other than SNAs.
- 6.24 I support both the Middlemiss Submission's proposed amendments to Policies 5.3.4 and 5.3.8 and the proposed new policy 5.3.8B but I propose amendments to the latter two to include reference to opportunities for TDR subdivision to allow development in identified areas.

⁶ Appendix One; Middlemiss Submission

- 6.25 As I concluded in my evidence for Middlemiss Farm Holdings on Chapter 1 Issues⁷, the TDR option is an appropriate alternative, or additional, method (to in-situ subdivision) for achieving significant environmental benefits, as was recognised by the Environment Court in the Auckland Unitary Plan appeal⁸.
- 6.26 This was in relation to the Court's assessment of the Auckland Unitary Plan objectives relating to avoidance of fragmentation of productive land, prime and elite soils in particular, and subdivision is to achieve other objectives of the plan such as securing Schedule 3 SEA areas, ONL and outstanding natural character areas⁹.
- 6.27 In my opinion, the Environment Court's conclusions in relation to Auckland's provisions are largely transferable to Waikato, although I observe that the market values of both in-situ and TDR sites may be lower in Waikato than they are in Auckland. On the other hand, many of the establishment costs are not lower, including the estimated per hectare costs of indigenous revegetation which I understand to be almost identical. This means that the incentive for landowners to undertake the planting and fencing establishment, and pest and weed control will almost certainly be lower. I refer to the Court's comment on this aspect in its AUP decision¹⁰:

[263] We also heard evidence from a number of experts who practice in this area and who indicated that the general preference of persons living in rural areas (rather than developers) is to create transferable rights and retain the land under their sole control. For a farmer, there are good reasons why they would seek to do this.

[264] Further, we accept the evidence of the expert witnesses that landowners are generally reluctant to commit the considerable funds to protection and rehabilitation without some form of compensation. We acknowledge that many have done so either through QEII covenants or by simply fencing areas off. One of the issues that was clear to us from our overall helicopter visit of the region is the enormous difference the fencing off of indigenous vegetation areas makes. Where riparian areas or SEAs have been fenced, it is usual to see dense or emergent native vegetation after around 5-6 years. In areas where stock are still allowed access into the area, edge effects still dominate, and as could clearly be seen, the overall density of the vegetation is lower.

[265] We agree with the experts that if a way can be found to create transferable rights for the general farming community in the rural area these are likely to be preferred to either selling the land as a whole or undertaking the significant costs of a comprehensive subdivision.

⁷ para 4.40 Shane Hartley Evidence Chapter 1 Issues Hearing September 2019

⁸ Cabra Rural Developments Ltd & ORS and Auckland Council; Decision 2018 NZEnvC 90

⁹ para 4.15 Shane Hartley Statement of Evidence Chapter 1 Issues Hearing September 2019

¹⁰ Cabra Rural Developments Ltd & ORS and Auckland Council; Decision 2018 NZEnvC 90

6.28 Although this statement highlights the financial limitations of the indigenous biodiversity incentive provisions, it is relevant to take account of the Court's broader findings about the importance of the incentive regime, including for revegetation proposals, and the relatively low significance for rural subdivision yields overall, based on its analysis of the evidence provided to the Hearing by both the Auckland Council, and Appellants.

6.29 In regard to positive biodiversity effects for the Auckland region, the Court stated that:

[289] On a positive note, there is clear evidence that the incentive regime has positive benefits for biodiversity and resource management more widely, such as land stabilisation and water quality. We are satisfied from the evidence of the expert witnesses for the appellants, in particular Dr Bellingham and Ms Pegrume, that the incentivisation of protection has led to better outcomes for the environment in the medium to long term. Although we acknowledge there have been failures, we see these predominantly based around vegetation of depauperate areas that have not sustained indigenous vegetation for some time. Even with the several examples we saw of this, there was evidence over the longer term (7-10 years) that the indigenous vegetation did reestablish and did naturalise.

6.30 And in relation to the overall significance of the in-situ and TDR mechanisms, the Court described both the reality of the biodiversity situation in Auckland, which seems unlikely to be much different in Waikato:

[339] More importantly for the Court, we are concerned that the generally depauperate nature of indigenous vegetation and biodiversity generally, including wetlands, throughout Auckland is likely to continue without intervention. We have concluded that the incentivisation within Rodney, and to a lesser extent in the Manukau area, has at least reduced the level of reduction in significant indigenous vegetation, and has improved the existing stands of indigenous vegetation and resulted in wetland gain. We consider that the data showing the number of developments that have been achieved over the last 30 years as a result of this are such as to show that the incentivisation has not been sufficient to lead to a significant increase in the protection of or creation of indigenous vegetation areas (take-up rates of around 220 lots per year).

6.31 In regard to site yields, and based on a 30 year history of the provisions operating in Rodney District, the Court concluded that:

[341] More practically, we would anticipate that there would be defragmentation of prime and elite soils (around 800 lots); further subdivision within the Countryside Living zones (say 3,000 lots, including amalgamation lots) and up to 1,500 for wetlands revegetation of indigenous vegetation not meeting Schedule 3 and revegetation.

[342] If 2,500-3,000ha of revegetation is achieved, that would be a significant gain in this region. More importantly, it would add to the resilience and long-term future of the indigenous vegetation that is currently marginalised. In our view, the risk of not providing positive incentivisation is the risk of loss of important indigenous vegetation and wetland representative of the former natural condition.

[343] It is clear that these provisions will not in themselves achieve any increase approaching the 30 percent suggested to us as now being considered appropriate by ecologists. Nevertheless, it may see us gradually climb up to and above 10 percent of the original natural vegetation. More importantly, it will give resilience by providing other protected areas throughout the Auckland region beyond the Waitakeres (compromised by kauri dieback) and the Hunua ranges. Such diversity may be critical to ecological protection in the medium to long term, with climate change and sea level rise.

6.32 I take considerable support from the Court's findings on the value of both in-situ and TDR rules and consider that they are transportable "in fact" to Waikato, subject to modification where there are good reasons for that. On that basis I propose additional wording to that sought by Middlemiss (purple font) to provide for Policy 5.3.8 (NEW) is in green underlined font:

5.3.8 Policy - Effects on rural character and amenity from rural subdivision

- (a) Protect ~~productive~~ the amenity values of rural areas by directing urban forms of subdivision, use, and development to within the boundaries of towns and villages.
- (b) Ensure development does not compromise the predominant open space, character and amenity of rural areas.
- (c) Ensure subdivision, use and development minimise the effects of ribbon development.
- (d) Rural hamlet subdivision, in situ and transferable development right environmental enhancement incentive subdivision, and boundary relocations ensure the following:
 - (i) ~~Protection of~~ Rural land can continue to be used for productive purposes;
 - (ii) Maintenance of the rural character and amenity of the surrounding rural environment;
 - (iii) Minimisation of cumulative effects.
- (e) Subdivision, use and development opportunities ensure that rural character and amenity values are maintained.
- (f) Subdivision, use and development ensures the effects on public infrastructure are minimised.

- 6.33 My proposed additional wording for the new Policy 5.3.8B sought by Middlemiss is in green underlined font:

New Policy 5.3.8B - Environmental enhancement and restoration of ecosystem services

- (a) Enable environmental enhancement and the restoration of degraded ecosystem services by the provision of in situ incentive and transferable development right subdivision opportunities.
- (b) Avoid, remedy and mitigate, any potential adverse effects of subdivision and development on other rural activities, soil and mineral resources, and rural amenity values.
- (c) Ensure that areas identified and restored are properly protected for the long term through appropriate legal mechanisms.

- 6.34 If the S42A report's proposed policy changes are accepted, I consider they should also be amended to address the matters I have discussed above. I have applied amendments in green underlined font to the policy wording the Report recommends:

Policy 5.3.4 – Density of Residential Units

- (a) Maintain an open and spacious rural character through:
 - (i) Providing for residential units as an ancillary element to farming and productive other rural activities;
 - (ii) Limiting provision of residential units to no more than one per Record of Title, except for particularly large titles where a minimum of 40ha is provided for each residential unit;
 - (iii) Limiting the size, location, and number of minor residential units and requiring such units to be ancillary to an existing residential unit;
- (b) Provide for papakaainga housing within Maaori freehold land; and
- (c) Provide for alterations and additions to retirement villages existing at date of decision 2021;

Policy 5.3.8 – Rural Subdivision

- (a) Protect the productive potential, and maintain or enhance indigenous biodiversity values and the life-supporting capacity of indigenous ecosystems of rural areas; and
- (b) Maintain an open and spacious rural character; and
- (c) Minimise adverse effects on the safe and efficient operation of infrastructure;

Through:

- (i) Enabling subdivision that supports farming and rural primary production activities;
- (ii) Avoiding subdivision that creates lots smaller than 0.8ha other than in rural hamlets to maintain a clear distinction between rural areas and the more urban Country Living Zones;

- (iii) Avoiding the creation of new lots that are wholly located on high class soils. For sites that are partially covered in high class soils, new lots are to be located primarily on that part of the site that does not include high class soils;
 - (iv) Mitigating potential reverse sensitivity effects on lawfully established productive rural activities, intensive farming, rural industry, infrastructure, or extractive activities, through ensuring new lots are designed to provide adequate setbacks for future sensitive activities.
 - (v) Ensuring that the subdivision design and layout does not adversely affect public access to rivers and water bodies or the quality of these environments.
- (d) Make limited provision for small rural lifestyle lots, where in addition to the matters set out in (a), (b), and (c) the subdivision:
- (i) Includes the physical and legal protection of
 - a. a Significant Natural Area; or
 - b. significant indigenous revegetation, enhancement or restoration of degraded ecosystem services by the provision of in situ incentive and transferable development right sites, or
 - (ii) Includes the provision of public parks and reserves where these are located in accordance with a Council Parks Strategy; or
 - (iii) Provides a large balance lot greater than 40ha so that an overall spacious rural character is maintained; or
 - (iv) Involves a boundary relocation to create a large balance lot greater than 40ha and a limited number of small rural lifestyle lots that are clustered to form a hamlet; and
 - (v) For (d) (i), (iii) and (iv) avoids ribbon development and the cumulative effects of multiple small rural residential lots locating on the same road frontage.

7 CHAPTER 22: RURAL ZONE

7.1 Middlemiss seeks the deletion and relaxation of several proposed rural rules, and the addition of new rules to give effect to the changes to the objectives and policies discussed above:

- Deletion of the Rules below and replacement with more enabling provisions:
 - Rule 22.3.1 – Number of dwellings within a lot
 - Rule 22.3.7.5 – Building setbacks
 - Rule 22.4.1.1 – Prohibited subdivision
 - Rule 22.4.1.2 – General subdivision
 - Rule 22.4.1.4 – Boundary relocation
 - Rule 22.4.1.5 – Rural Hamlet Subdivision
 - Rule 22.4.1.6 – Conservation lot subdivision
 - Rule 22.4.9 – Subdivision – Building platform

7.2 Additionally, two new rules are sought:

- The inclusion of a rule to provide for in-situ incentive subdivision for environmental enhancement, and
- The inclusion of a transferrable development right subdivision regime, particularly to relocate small lots from elite soils that are inappropriately located.

S42a Report

- 7.3 The s42a for Chapter 22 proposes the same changes to policy 5.3.8 (para 84) which I have addressed above under Chapter 5. I consider several rule amendments are required to give effect to the proposed objective and policy changes I have recommended in regard to significant indigenous vegetation protection, enhancement and restoration, and high quality soils protection. The most appropriate way of achieving this outside of other Council non-regulatory initiatives, is by way of incentivised subdivision opportunities.
- 7.4 I note that consequential amendment of Rule 22.4.1.1 Prohibited Subdivision (para 134 et al) is needed if the draft subdivision rules I propose amendments to are accepted, including the limited subdivision on high quality soils enabled by the proposed rules.
- 7.5 The s42 report discussion of rule 22.4.1.5 Rural Hamlet Subdivision (para 323) relates to the relocation of lot boundaries to enable hamlet clusters. As I recommend hamlet rules providing for significant indigenous vegetation protection and enhancement incentive subdivision, I make the comment that the proposed minimum lot sizes are in my opinion too small at 8000m².
- 7.6 In my opinion, this area is wasteful of productive rural land for what is frequently a rural living opportunity. Certainly, some landowners would prefer larger areas to enable limited farming or rural recreational activities such as horse riding and this is provided by the 1.6 ha larger site size which I support. At the other end of the scale, 8,000m² is often too large for those people who simply want a rural living experience. To that end, I propose a minimum site size of 4,000m² and a minimum average of 6,000m².
- 7.7 In the s42a discussion of site sizes in regard to the general subdivision provisions, the concern is stated that there is no differentiation between the rural zone and the country living zone which provides for 5,000m² lot, and therefore the larger 8,000m² site size is preferred (paras 196 to 204).
- 7.8 While I understand this position better for single lot general rural subdivision, I consider that where sites are clustered it is a better outcome to provide for a smaller minimum area so that a range of sites can be achieved with an overall smaller cluster or hamlet footprint. This also provides different living

opportunities for people with different objectives, and a healthy mix of residents as opposed to a “one stop shop” format. Hamlets will by their nature, and the rules and assessment criteria applied, be relatively dispersed and not adjoining each other. There is little in that case to support or warrant the need to achieve differentiation as suggested.

Rural Hamlet Subdivision

- 7.9 In regard to hamlet subdivision rules (both those recommended in the s42a Report and the additional opportunities I recommend in this statement), I consider that there is a rationale for ensuring that hamlets are located close to local sealed arterial and collector roads, existing urban settlements and local schools (if they are not located within an urban settlement). This avoids and mitigates potential adverse effects on rural infrastructure, such as demands for sealing metal roads, and the greater reverse sensitivity issues that arise in the more remote rural areas (as opposed to those closer to more “urban” activities).
- 7.10 Such locations also provide the residents of hamlets with local educational and urban services in a more sustainable way than a scenario where such sites are scattered throughout the rural areas, often many kilometres away from such facilities. I propose that a defined area for hamlet locations of a linear two kilometres from such defined roads and facilities is established as the receiving area for TDRs. This approach requires that a rural hamlet rule allows the creation of hamlet sites through TDRs.
- 7.11 I have prepared a plan showing such a receiving area in relation to the roads and facilities I have outlined which is attached in Appendix A. Some hamlets might be able to be established in-situ because they are located both within the 2 kilometre ‘corridor’ and on a site which has the indigenous biodiversity features to be protected.
- 7.12 The Buckland Landowners Group area is mostly included within the 2km corridor but the balance through to Harrisville Road falling outside of 2km is in my opinion also an appropriate area for receiving lots as it is adjacent to urban Auckland (Pukekohe) and is already compromised by historical subdivision patterns and development. Alternative relief for the Buckland Group will also be outlined more fully for the zone extents hearings.
- 7.13 However, I consider that most will require a TDR approach, and this is supported by the plan in Appendix B which shows the overlay of the 2km receiving area on SNAs and other significant landscape or natural areas. It is clear from this plan that although some significant indigenous biodiversity areas are within the receiving area I suggest, most are not. This plan also highlights

the remote location implications of in-situ hamlet subdivision would need to occur if a TDR method is not applied.

- 7.14 For the draft rule amendments I propose to provide for hamlet and TDRs to incentivise indigenous biodiversity protection, restoration and revegetation, I have not included reference to the plan attached in Appendix A as it does not have the necessary legal accuracy for a rule. However, the Council could no doubt provide a plan with the necessary accuracy based on its GIS system.
- 7.15 I instead propose a draft schedule of zone, title or geo-references from which a straightforward 2 kilometre measurement can be made for any particular subdivision proposal. The Buckland TDR area is slightly wider and I have described this in the rule by referencing roads and District boundary. The schedule is in an attachment to the draft rule amendments in Appendix C. I note also that approach is also partly in accord with the Auckland Council submission¹¹ seeking to limit and focus rural hamlets around existing towns and villages, and addresses the s42a report discussion of this (para 331).

TDRs

- 7.16 In most part, I disagree with the s42a report's reasons for not accepting the submissions seeking TDR provision. Firstly, very little consideration is given in the discussion to the importance of incentivising the protection, enhancement and restoration of indigenous vegetation and biodiversity, high quality soils, and water quality. The desirable outcomes (increasingly demanded by higher level statutory documents such as the NPS Freshwater Management 2020) are given little attention (para 644) while "undesirable" outcomes are extensively discussed (paras 645 to 658).
- 7.17 Unfortunately, I consider that many of the so called 'undesirable' outcomes are misplaced. In some instances they appear to be more "anecdotal" than scientific, and are based on experience with different TDR mechanisms than are proposed, or that have been amended to address such issues. The discussion with Auckland Council staff is a case in point. I do not understand the significance of the statement that *"They advised that these provisions were not delivering the outcomes that were expected, mainly because transfers were entirely dependent upon certainty provided by a buoyant market and worthwhile financial gains for willing buyers and sellers"*.
- 7.18 In the first instance, that is how TDRs operate – they are a market mechanism. Because they are a market mechanism, it is important to have appropriate methods to enable the exchange of subdivision consent and TDR's. In my

¹¹ Auckland Council Submission 372.21

experience, one of the main problems with the operation in Auckland has been unnecessarily complicated processes, and a failure to recognise in application processing the importance of the method to achieving the highly important objectives I have discussed above, particularly in relation to amended objectives and policies (and discussed by Mr Keesing).

- 7.19 It is necessary in my opinion for the significant environmental objectives I have set out above to be given at least as much, if not more, attention than those of rural character, rural production, and the stated “unplanned” development. I refer the Council again to the Environment Court’s comments on some of the above concerns raised by the Auckland Council in its decision¹² on incentivised in-situ and TDR provisions under the Auckland Unitary Plan, and the Court’s view on both in-situ and TDR methodology and results.
- 7.20 The reality is that any adverse effects of the TDR process can be addressed. Hamilton City Council’s concerns can be addressed by removing the areas of concern from the TDR location area. Any growth management issues can be addressed by directing TDRs to areas that can sustain any adverse effects (as the receiving sites proposed by Middlemiss are rural and not urban, the growth management issues are relatively limited - typically traffic). Similarly, direct effects on the Country Living and Village Zones can be avoided by not having these zones as TDR receiving areas.
- 7.21 I note that the TDR method proposed by the Middlemiss submission requires the covenanting of SNA or otherwise significant indigenous biodiversity areas that comply with the proposed rule standards in exchange for the creation of a site or sites within the TDR receiving area. The mechanics of this process were discussed at some length in the Cabra & Ors and Auckland Council Environment Court decision. The proposed methodology from the AUP is in the Court’s decision and the same process could be applied in the PWDP.
- 7.22 Alternatively, I am familiar with the process undertaken by the Western Bay of Plenty District Council and consider that this might be a better option for Waikato District Council provided that it is willing to actively engage with and manage the process. My discussion with a Council officer long involved with the process is that the TDR system has been used for some years and has been highly effective with no significant issues arising after some early amendments. The transfer process is:
1. An ecologist’s report is provided by a landowner with an SNA or otherwise significant indigenous biodiversity area to the Council.

¹² Cabra Rural Developments Ltd & ORS and Auckland Council; Decision 2018 NZEnvC 90

2. The Council's ecologist assesses the report and undertakes a site visit to confirm its findings, and if the Council agrees it issues a letter to the donor TDR landowner confirming both the quality of the SNA or indigenous biodiversity area and how many TDR sites qualify. This advice goes onto the property file for the site.
3. When the landowner sells one or more TDRs to one or more subdividers (by separate civil sale and purchase agreement) the scheme plan of subdivision is lodged with Council on that basis.
4. Upon issue of subdivision consent, the Council sends the donor TDR landowner a new letter with the reduced qualifying TDR area stated.

7.23 As a last recommendation, I consider that it is necessary for SNA quality indigenous vegetation and wetlands to be protected and enhanced, whether or not areas have been identified on the planning maps. The notified definition of SNA refers only to the planning mapped areas. I propose that the words; "*or assessed by a suitably qualified person as satisfying at least one criteria in Appendix 2 (Criteria for Determining Significance of Indigenous Biodiversity)*" be added to cover such areas.

8 CONCLUSION

- 8.1 I consider that the proposed Objective, policy, and rule changes sought by Middlemiss, including in particular the incentivised SNA and indigenous biodiversity in-situ and transferable development right provisions, are important and appropriate, subject to the additions and modifications I have recommended.
- 8.2 In my opinion, these provisions will give effect to the purpose of the Resource Management Act, the relevant national policy statements, in particular the National Policy Statement Freshwater Management 2020, the Waikato Regional Policy Statement, and the relevant objectives and policies of the proposed Waikato District Plan, in particular those relating to the Natural Environment Chapter

Shane Hartley

APPENDIX A
Proposed 2km TDR receiving areas

APPENDIX B

Proposed 2km receiving areas and SNA/environmental overlays

APPENDIX C

Proposed rule amendments to Chapter 22.4