BEFORE INDEPENDENT HEARING COMMISSIONERS
AT WAIKATO

IN THE MATTER OF	The Resource Management Act 1991 ("the Act")
AND	
IN THE MATTER OF	The Proposed Waikato District Plan – Hearing 6 Village Zone.
AND	**Glenn Soroka on behalf of the Pakau Trust**
	Submitter

Legal Submissions of Behalf of Pakau Trust

DATED 16TH December 2019

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MAY IT PLEASE THE COMMISSIONERS:

Introduction

1. These submissions are given on behalf of Glenn Soroka as a Trustee of the Pakau Trust.

2. Although my client's submission seeks the introduction of a Transferable Title Right ("**TTR**") mechanism, the Council Officer's report says consideration of this should be deferred until the Rural Zone is heard. Presumably, that is because, the Trust's property on which there is a significant stand of native bush is located in Klondyke Road, and is zoned rural.

3. I disagree. That will be too late.

4. TTRs are a unique method of environmental protection and compensation. In return for the protection or enhancement of significant environmental features on a "donor property", a subdivision incentive is given to the owner, which can be utilised on a "receiver property". Sufficient incentive needs to be created to offset the costs, and foregone opportunities an owner has in protecting that environmental feature.

5. In other District Plan with which I am familiar, this incentive is created by giving a subdivision opportunity, that would not otherwise be available. For example, one transferable title right, may be the only means of subdividing the receiving property, or that one transferable title right may give rise to more than one title on the receiving property. Somehow or another, a market needs to be created, within the provisions of the District Plan.

6. This means that any TTR mechanism needs to be considered with care, and will involve several zones.

7. The reporting planner says this:

> *The Pakau Trust [624.3] sought a new rule to provide appropriate recognition for their entitlement to 64 lots (29 of which have been developed and 35 of which remain) as part of the Trust's wider conservation efforts. The submissions by the Pakau Trust are to be addressed primarily through the hearing on the Rural Zones, along with the complex planning history on the Trust's property. As such the Panel will need to cross-reference their findings in this separate hearing with the Trust's relief sought on the Village Zone provisions. For now it is simply noted that the Village Zone provisions do not set any limits on the number of lots, rather the rule sets a minimum site size.* ***For large blocks such as those owned by the Trust, the 2,500m^2 requirement (as recommended) should not be an impediment to them achieving their desired number of lots.***

(my emphasis)

8. With respect, I am not sure that the TTR mechanism has been properly understood. TTRs are not created "in situ" on the donor property and the minimum lot size is not relevant. What is relevant is the quality of the environmental feature, and how these can successfully be "landed" elsewhere.

The Trust's Situation

9. The planning history of the Trust's donor property in Klondyke Road, is perhaps not so complex.

10. Briefly, the Trust owns a property in Klondyke Road which contains 204 hectares of significant indigenous vegetation, of Critical and High Biodiversity Significance.

11. The Klondyke Road property formally fell within the jurisdiction of the Franklin District Council. However, the Auckland Council reorganisation of November 2010, saw that property come within the jurisdiction of the Waikato District Council.

12. On 17 April 2012, the Trust made a resource consent application to Waikato District Council and Auckland Council for Environmental Lots to be used as TTRs under rule 22 of Plan Change 14 (**"the Original Application"**).

13. At that time, TTRs were a legal instrument, or RMA "method" that was provided for only in Plan Change 14. They were known as Environmental Lots.

14. The Franklin District Plan was also still operative. It contained an entirely different method known as "Conservation Lots". Conservation Lots could only be created in situ.

15. Thus, Environmental Lots and Conservation Lots were two entirely different things and RMA methods. Each existed in completely separate planning documents and had different outcomes and assessments.

16. The Original Application, confirmed that the biodiversity of the indigenous vegetation on the Klondyke Road property was of such significance as to establish that the Trust's entitlement to Environmental Lots (as TTR's) under Plan Change 14 *shall be*; **64** Environmental Lots[1].

17. Because of the sensitivity of the Klondyke Road property, these Environmental Lots had to be recognised as TTR's, rather than any in-situ subdivision right.

18. The Trust complied with the Specific Performance Standards of PC14. Thus, it secured its entitlement to 64 Environmental Lots, as TTRs, when the Original Application was granted on 31 July 2012.

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[1] Rule 22.11.2.1(b) and (c), Table 2, Plan Change 14.

19. The bush was legally and physically protected, in full, and in perpetuity early in 2013. At that point, the Trust's full entitlement of 64 TTRs, crystallised.

20. Since then, the Trust used 29 TTRs, leaving, it says 35 transferable title rights available to it. These exist legally because the Original Application has been given effect to.

Waikato District Council's Position

21. WDC does not agree with my analysis for two basic reasons.

22. First, when it evaluated the Original Application, it mixed and matched the Operative District Plan method of Conservation Lots, with the PC14 method of Environmental Lots, and came to a number of 29. In so doing, it wrongly, in my view, confused Conservation Lots and Environmental Lots. But they are two entirely different concepts, and methods, that existed under independent planning instruments. If you like, that is like trying to mix oil with water.

23. The Council takes the view, fundamentally, that each time consent was sought to land a TTR's on a "receiver property", the entitlement to TTR's needed to be assessed afresh irrespective of the donor feature having been protected previously. Irrespective of the fact, that the owner had then committed to a conservation outcome in perpetuity.

24. That logic, in my view is also wrong. Rule 22.11.2.1(b) and (c), Table 2 of Plan Change 14, clearly states what the entitlement "*shall be*". If the performance criteria were met (which they were), that's what you got. In the Trust's situation the bush was of such merit, that was entitled to 64 TTRs. Simple.

25. The Trust and the Council do not presently agree on the Trust's entitlement. Thus, the Trust has filed High Court proceedings, which, in part, seek to confirm its residual entitlement of 35 TTRs.

What does the Trust Want?

26. The Trust wants its residual entitlement to TTR's recognised and confirmed. Then, it wants to be able to use them effectively in the marketplace.

27. In my view, is open to you, and the Council, through this Plan review process to decide and confirm the Trust's residual entitlement. This could be done, as it has before[2], by a specific rule.

[2] For example, Soroka and Baigent Rules under Variation 13 to Plan Change 14

28. Then, with that residual entitlement established, provision needs to be made for it to be effectively utilised. That too could be done by a specific rule for the Trust's benefit, or as part of broader TTR mechanism.

29. However, the Trust's residual entitlement to TTR's is confirmed, it will need to be able to be used. Enter the District Plan process.

J C Dawson - Barrister for Pakau Trust