

**BEFORE THE WAIKATO DISTRICT COUNCIL INDEPENDENT HEARING PANEL**

**IN THE MATTER** of Proposed Variation 3, under clause 16A of Schedule 1 of the Resource Management Act 1991, to the Proposed District Plan Change

**AND**

**IN THE MATTER** of submissions by Pokeno West, West Pokeno, CSL Trust and Top End Properties Limited, at Munro and Helenslee Roads, Pokeno (the **Submitters**)

**To: The Hearings Co-ordinator  
Waikato District Council**

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**PLANNING HIGHLIGHTS OF JAMES GILBERT OAKLEY ON BEHALF OF THE  
SUBMITTERS**

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*31 July 2023*

**Counsel Instructed**

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## **1. SUMMARY**

- 1.1 My full name is James Gilbert Oakley, I am a planner at Birch Land Development Consultants.
- 1.2 I have provided primary and rebuttal evidence on behalf of the submitters on a variety of matters related to Variation 3 (**V3**) including (but not limited to):
- a) Subdivision/development in floodplains;
  - b) Minimum vacant lot size;
  - c) The statutory framework V3 is subject to;
  - d) The overall approach of V3 in implementing the Medium Density Residential Standards (**MDRS**); and
  - e) The National Policy Statement for Indigenous Biodiversity 2023.
- 1.3 I have also attended various expert conferencing sessions on stormwater and vacant lot subdivision.
- 1.4 This highlights package summarises the evidence supplied to date and the s42A rebuttal/addendum. Overall, it captures the latest position of the submitters on the key matters.

## **2. MINIMUM VACANT LOT SIZE RESTRICTION AREA**

- 2.1 The current state of play for subdivision in the Minimum Vacant Lot Size Restriction Area is the revised Council position (as per the s42A rebuttal addendum dated 20 July). This new proposal is to employ a minimum average requirement of 450m<sup>2</sup> in addition to a minimum requirement of 300m<sup>2</sup>.
- 2.2 Confusingly, this followed Council confirming support for 300m<sup>2</sup> in the initial s42A rebuttal (dated 19 July) and mentioned in the rebuttal evidence of Mr David Mead (dated 19 July) who was present at the conferencing.

- 2.3 In my primary evidence I raised broad opposition to the MLSRA and the imposition of a minimum area requirement of 450m<sup>2</sup>. I did not offer a specific alternative approach.
- 2.4 As part of the conferencing on 18 July, a preference for a minimum lot size of 300m<sup>2</sup> was reached among various attendees (including myself). In my rebuttal statement (dated 19 July) I noted continued support for this approach. I remain comfortable with a minimum requirement of 300m<sup>2</sup>.
- 2.5 Notwithstanding this, I acknowledged in my rebuttal statement (para. 5.2) that I had considered the evidence of Mr Campbell. His interpretation of the statutory provisions on the inclusion of a minimum lot size has informed the Kainga Ora shape factor driven approach.
- 2.6 In addition, urban design rebuttal evidence for the submitters has been prepared by Mr Ian Munro. He provides a more nuanced approach also incorporating a shape factor.

### **Councils Revised Approach**

- 2.7 I consider that the revised position from Council imposing a minimum average requirement of 450m<sup>2</sup> continues this trend of restricting development opportunities in the face of a clear mandate to do the opposite through the IPI. This began with the Urban Fringe Qualifying Matter in the Notified Variation and has continued with the Minimum Vacant Lot Size Restriction Area and its iterations.
- 2.8 The proposal to implement the minimum average requirement is problematic. I understand the justification for the revised position is as per paragraph 8 below in the s42A addendum:

*“In writing this evidence I did not fully consider the implications of whether 300m<sup>2</sup> would deliver an appropriate range of intensification options in the longer term. On this I note the evidence of Ms. Fairgray about the importance over the longer term of providing the flexibility to enable redevelopment within a single site [emphasis added]. Ms. Fairgray at paragraphs 99 to 101 considers that whilst 300m<sup>2</sup> is better than 200m<sup>2</sup>, it could still restrict future redevelopment [emphasis added].”*

- 2.9 The paragraph above highlights a focus on providing for future infill development opportunities through the average lot size requirement. I am not aware of any statutory basis/requirement to achieve this.
- 2.10 The submitters land is collectively one of the largest greenfield areas not just in the Pokeno settlement but in the Waikato District. The site has been subject to a comprehensive masterplanning exercise identifying indicative open space areas, neighbourhood centres and critically higher density areas around these features.
- 2.11 The masterplanning of the site’s development will naturally be subject to further iteration at future consenting stages. However, the exercise highlights the typical greenfield approach of considering density across the site and where it is most appropriate with a view to getting it right the first time. The consideration of redevelopment/infill opportunities is not something that has been contemplated to date. This type of development has its place and is more appropriate in the existing urban area close to the town centre where some development has already occurred.
- 2.12 This is considered to be the best approach to providing for these outcomes rather than the Council proposition that seeks to provide for more intensification that in reality may never be realised. The existing Pokeno settlement provides plenty of examples of lots 450m<sup>2</sup> and greater that only accommodate a single standalone dwelling. The imposition of the minimum average requirement could yield the same outcomes.
- 2.13 It is not effective to be required to provide for these opportunities which may never come to fruition. Furthermore, given the role that greenfield

development will play in the growth of the district it is critical that the provisions are fit for purpose in providing for development in these areas.

- 2.14 Regarding the implementation of Councils revised position. By way of example, a three-lot subdivision proposal for a single 300m<sup>2</sup> lot could require the next two lots to be 525m<sup>2</sup> each to achieve a 450m<sup>2</sup> average. For two 300m<sup>2</sup> lots, the third would need to be 750m<sup>2</sup>. The difference between the minimum and average requirement is 150m<sup>2</sup> which is a sizeable gap that significantly limits the ability to provide lower size vacant lots across a wide area.
- 2.15 The above is also not considered to achieve medium density outcomes. This evidenced by the fact that the notified Proposed Waikato District Plan provides for 450m<sup>2</sup> as a minimum requirement in the General Residential Zone and the Operative Waikato District Plan (Waikato Section) provides for 450m<sup>2</sup> in the Living Zone. The minimum average requirement continues this trend.

### **3. Other Approaches**

- 3.1 As discussed above, I do not consider that the s42A addendum approach is effective or efficient. There is also no statutory/policy basis that I am aware of to move forward with it.
- 3.2 I have reflected on the approach referred to by Mr Tollemache in his highlights package for Havelock Village Limited. Mr Tollemache identifies an “Option 1” and “Option 2”.
- a) Option 1 implements the requirement of 300m<sup>2</sup> for new vacant lots as discussed at the conferencing.

- b) Option 2 implements the approach referenced by Mr Munro in his rebuttal evidence. There are specific requirements for new front and rear lots that address frontage and require a shape factor for rear lots.
- 3.3 I have listened to the presentation of Mr Tollemache on Day 4 (28 July) of the Hearings and the discussion with the Panel.
- 3.4 I support a nuanced approach that provides more certainty about achieving good outcomes regarding streetscape and access which Mr Munro rightly notes as relevant considerations. I also support providing flexibility in development responding to where future growth is anticipated to occur (greenfield vs brownfield) noting that greenfield growth is anticipated to accommodate a large portion of where development occurs.
- 3.5 I am comfortable with Option 2 put forward by Mr Tollemache which captures the key points of Mr Munro namely: vehicle access/parking and impact on the streetscape.
- 3.6 It is noted that the introduction of a requirement for a minimum frontage width is not new to the district. The current plan has requirements for this in the General Residential Zone (SBU-R17) and the Medium Density Residential Zone (SUB-R37).
- 3.7 Regarding the differentiation between front and rear lots, this recognises the potential impacts of infill development on existing urban areas and thus requires a higher area threshold to be met where a vacant lot is being created at the rear.
- 3.8 I have **attached** the relevant subdivision provisions for the MRZ2 to reflect the latest discussions on SUB-R153. I have transplanted Option 2 from the highlights package of Mr Tollemache to get a sense of how it could appear in the entire context of the activity with the matters of discretion.

#### **4. STORMWATER MANAGEMENT & FLOODING**

- 4.1 The reporting planner notes in para. 59 that drafting amendments have occurred to address stormwater matters raised. The proposed amendments for land use/subdivision in the Stormwater Constraints Overlay (**SCO**) are now contained in the amended Natural Hazards and Climate Change chapter.
- 4.2 I generally support these changes as they provide flexibility to development e.g. NH-R26D (Subdivision that creates one or more vacant lot other than a utility allotment, access allotment or subdivision to create a reserve allotment) which implements the building platform approach rather than a minimum lot size.
- 4.3 In my primary evidence I put forward the building platform approach as a tailored way to ensuring that a suitable platform can be identified outside of the SCO rather than requiring a blanket 450m<sup>2</sup> vacant lot area requirement.
- 4.4 In para. 60, the reporting planner refers to discussion on the status of flood mapping as a statutory or non-statutory layer and continues to support the data being a statutory layer. I acknowledge the current situation of hydrological information that is in a statutory layer currently. As mentioned by the reporting planner and in the 11 July conferencing session, a future plan change/variation is required to address the matter of natural hazards comprehensively.

#### **Other Submitters**

- 4.5 Mr Davis for Anna Noakes et al. provided a rebuttal statement which addressed portions of my primary evidence statement. In light of the expert conferencing that has occurred I am of the opinion that the concerns raised by Mr Davis are now sufficiently provided for.

- 4.6 I did not attend the conference session on the 12 July but I understand having attended the session on the 11 July that this was arranged to specifically address the various concerns of Mr Davis. I was also present at the session on the 13 July that covered stormwater provisions.
- 4.7 I have reviewed the proposed changes to the following chapters: Subdivision (SUB), Natural Hazards and Climate Change (NH), Water, Wastewater and Stormwater (WWS). The suite of changes is comprehensive and without limiting their overall anticipated impact I draw the panels attention specifically to the proposed new matters of discretion below for SUB-R153 (Subdivision – General) included in the s42A rebuttal.
- 4.7.1 [\(m\) The effectiveness of the stormwater system to manage flooding \(including safe access and egress\), nuisance or damage to other infrastructure, buildings and sites, including the rural environment;](#)
- 4.7.2 [\(o\) The potential for adverse effects to the environment in terms of stormwater quantity and stormwater quality effects;](#)
- 4.8 Notwithstanding the other proposed amendments included in V3 and the existing provisions (some of which I acknowledge are subject to Environment Court appeal), I consider that the matters above provide Council with sufficient discretion to address the primary concerns of Mr Davis (effects on downstream rural land as I understand it).
- 4.9 I acknowledge that Mr Davis presented proposed amendments in his primary evidence. However, I consider that the current s42A rebuttal suite of provisions (and the existing provisions in the Proposed District Plan) are superior and fit for purpose.

## **5. OTHER MATTERS**

### **Single Medium Density Zone**

- 5.1 The reporting planner in para. 39-40 recommends that a single Medium Density Residential Zone be used for the four towns (subject to V3 and Te Kauwhata and Raglan. I support this recommendation.

### **Miscellaneous Provisions**

- 5.2 The reporting planner recommends amendments under Section 13.3 (Standards for Fences and Walls) and Section 13.4 (Minimum Residential Unit Sizes) of the report. I support these recommendations.

**James Gilbert Oakley**

**31 July 2023**

**KEY**

Green: Notified in Variation 3

Red: s42A Changes

Blue: s42A Rebuttal Changes

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MRZ2 – Medium density residential zone 2

<b>SUB-R152</b> MRZ2 – Medium density residential zone 2	Subdivision – general <b>(1) Activity status: CON</b> (a) Any subdivision in accordance with an approved land use resource consent must comply with that resource consent.  <b>Council's control is reserved over the following matters:</b> (b) Subdivision layout; (c) Compliance with the approved land use consent; and (d) Provision of infrastructure.  <i>Advice Note: A water, wastewater and/or stormwater connection approval from the network provider will be required. The presence of infrastructure that can service the lot or unit does not guarantee a connection will be possible and capacity is available to service new development.</i>	<b>(2) Activity status where compliance not achieved: n/a</b>
<b>SUB-R153</b> MRZ2 – Medium density residential zone 2	Subdivision – general <b>(1) Activity status: RDIS</b> <b>Activity specific standards:</b> (a) <u>Except where SUB-R154 (Subdivision – residential) applies,</u> subdivision must comply with all of the following standards:  (i) <u>Except in the Minimum Vacant Lot Size Restriction Area,</u> proposed vacant lots must have a minimum net site area (excluding access legs) of 200m <sup>2</sup> , except where the proposed lot is an access allotment, utility allotment or reserve to vest; <b>and</b>  (ii) <u>In the Minimum Vacant Lot Size Restriction Area proposed vacant lots must have a minimum net site area (excluding access legs) of:</u>  <u>(a) 250m<sup>2</sup> for a front lot, provided that:</u> <ul style="list-style-type: none"><li><u>there is a minimum road frontage width of 9.5m;</u> <u>and,</u></li><li><u>where a lot has a road frontage width less than 12.5m, there must be a single width vehicle crossing and future garaging is restricted to a single garage width;</u></li></ul> <u>(b) 300m<sup>2</sup> for a rear lot, provided that:</u> <ul style="list-style-type: none"><li><u>it contains a rectangle with minimum dimensions of 19.5m x 13m.</u></li></ul> <u>(c) except where the proposed lot is an access lot, utility allotment, or reserve to vest,</u>	<b>(2) Activity status where compliance not achieved: DIS</b>

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	<p><a href="#">(iii) (i) and (ii) Above do not apply to land within the Slope Residential Area in the Havelock Precinct where proposed minimum vacant lots must have a minimum net site area of 2,500m<sup>2</sup>, except where the proposed lot is an access allotment, utility allotment or reserve to vest</a></p> <p>(b) Proposed vacant lots must be able to connect to public-reticulated water supply and wastewater.</p> <p><b>Council's discretion is restricted to the following matters:</b></p> <p>(a) Subdivision layout;</p> <p>(b) Shape of lots and variation in lot sizes;</p> <p>(c) Ability of lots to accommodate a practical building platform including geotechnical stability for building;</p> <p><del>(d) Likely location of future buildings and their potential effects on the environment;</del></p> <p>(e) Avoidance or mitigation of natural hazards;</p> <p>(f) Opportunities for streetscape landscaping;</p> <p>(g) Vehicle and pedestrian networks;</p> <p>(h) Consistency with any relevant structure plan or master plan including the provision of neighbourhood parks, reserves and neighbourhood centres;</p> <p>(i) Consistency with any relevant structure plan or master plan including the provision of neighbourhood parks, reserves and neighbourhood centres; <del>and</del></p> <p>(j) Provision of infrastructure;</p> <p><a href="#">(k) In the Waikato River Catchment the extent to which the application enhances or benefits the Waikato River and its tributaries;</a></p> <p><a href="#">(l) The effectiveness of the stormwater system to manage flooding (including safe access and egress), nuisance or damage to other infrastructure, buildings and sites, including the rural environment;</a></p> <p><a href="#">(m) The capacity of the stormwater system and ability to manage stormwater;</a></p> <p><a href="#">(n) The potential for adverse effects to the environment in terms of stormwater quantity and stormwater quality effects;</a></p> <p><a href="#">(o) Extent to which low impact design principles and approaches are used for stormwater management; and</a></p> <p><a href="#">(p) Consistency with the relevant stormwater catchment management plan.</a></p>	
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	<p><u><i>Advice Note: A water, wastewater and/or stormwater connection approval from the network provider will be required. The presence of infrastructure that can service the lot or unit does not guarantee a connection will be possible and capacity is available to service new development.</i></u></p>	
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