BEFORE HEARING COMMISSIONERS
IN TAUPŌ

UNDER THE	Resource Management Act 1991 ("**Act**")
IN THE MATTER OF	Proposed Plan Change 42 Rural Chapter - General Rural Environment and Rural Lifestyle Environment
AND IN THE MATTER OF	a submission seeking the rezoning of the site located at 387 Whakaroa Road to Rural Lifestyle Zone and associated relief
BETWEEN	**STEVE HAWKINS**
	Submitter
AND	**TAUPŌ DISTRICT COUNCIL**
	Planning authority

SECOND MEMORANDUM ON BEHALF OF STEVE HAWKINS

Before a Hearing Panel: Chairperson David McMahon, Commissioner Liz Burge, and Councillors Yvonne Westerman and Kevin Taylor.

INTRODUCTION

1. As explained in my 25 July 2023 memorandum to the Panel, I am the Project Manager for the Applicant, and file this memorandum as its representative.

2. This memorandum responds to the legal advice provided to the Council by Mr Winchester in a letter dated 14 August 2023, which itself was in response to the preferred relief summarised in and attached to my earlier memorandum. That first memorandum recorded why, from the submitter's perspective, TDC had jurisdiction or scope to entertain the preferred relief.

3. I note that that relief was refined slightly through expert conferencing of the planners, as recorded in their joint witness statement (**JWS**) produced following their conferencing on 8 August 2023. This refined preferred relief, which is being pursued by the submitter through its evidence, is not

considered to be different enough to impact on the question of the scope or jurisdiction of this Panel to consider it.

4. The hope is, by filing this memorandum in advance of the hearing, that these jurisdictional matters may occupy less time at the hearing.

SCOPE/ JURISDICTION

Mr Winchester's opinion

5. Mr Winchester considers the preferred relief (including no doubt as refined through conferencing) as being "beyond the scope of [the submitter's] submission".

6. Helpfully, Mr Winchester takes no issue with the submission being "on" PC42, or the case law I had referred to in respect of scope. The difference in opinion appears to principally arise from whether:

   (a) the preferred relief is in fact more restrictive than what was sought in the original submission; and

   (b) even if the preferred relief is more restrictive, whether potentially interested parties in that relief would have been on notice of the issues raised through the original submission (and therefore whether they had a fair opportunity to participate).

7. While Mr Winchester focuses more on the latter question, the former question informs it – if not determines it.

8. It is also appropriate to recall the longstanding authority of Royal Forest and Bird Protection Society, where the High Court said that:[1]

> … it is important that the assessment of whether any amendment was reasonably and fairly raised in the course of submissions, should be approached in a realistic workable fashion rather than from the perspective of legal nicety.

9. This is because, as the High Court had earlier said, in *Countdown Properties*:[2]

> Persons making submissions in many instances are unlikely to fill in the forms exactly as required by the First Schedule and the Regulations, even

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1 *Royal Forest and Bird Protection Society Inc v Southland District Council* [1997] NZRMA 408 at 413.

2 *Countdown Properties (Northlands) v Dunedin City Council* [1994] NZRMA 145.

> when the forms are provided to them by the local authority. The Act encourages public participation in the resource management process; the ways whereby citizens participate in that process should not be bound by formality.

10. With this in mind, it is also necessary to recognise (as would have been evident from the original submission itself) that the original submission was filled out by the developer himself, without the assistance of his planning, legal, or wider team.[3] Mr Hawkins states in that regard:

> I was careful however to keep the submission as broad as possible. I wanted to make sure that we had room to move. Not being an expert, I also needed to keep it simple. I knew that the site needed to be rezoned Rural Lifestyle, but that the vision I had for the site would also require cluster development with rural residential lots needing to be below 10ha – so I sought for subdivision below 10ha to be a discretionary activity (with no minimum lot size, to allow flexibility within that discretionary status).

All the relief sought is within scope

11. In resolving this issue, it is (regrettably) necessary to go back to the original submission in detail. The original submission has three parts:

*First Part: Subdivision in the General Rural Environment (**GRE**):*

12. This part of the submission:

(a) seeks a specific amendment to Rule 4b.5.1 to make subdivision that results in lots smaller than 10ha a discretionary activity, with all consequential relief.

(b) states reasons that specifically:

(i) state opposition to subdivision of lots smaller than 10 hectares being non-complying;

(ii) refer to "any associated objectives, policies, and standards relating to the rule"; and

(iii) record that "only Class 1-3 land should be protected with a non-complying activity subdivision rule" (in other words, seeking for non Class 1-3 land to be something other than non-complying, eg discretionary or less).

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[3] Refer Hawkins evidence at [3].

13. Clearly, this relief was focused on Rule 4b.5.1, which would only apply if the site remained GRE. It is clearly focused on securing discretionary activity status for subdivision below 10ha. It would defeat the entire purpose of the relief for the site if it were granted, but rendered ineffective because the Outstanding Landscape Area (**OLA**) rule were still to apply and maintain non-complying status for the site. A change to the OLA rule must, I respectfully opine, fall within necessary consequential relief to that primary relief.

Second Part: Subdivision generally

14. This part of the submission:

    (a) seeks amendment of the "rural environment chapter**s**" (ie GRE and RLE) to "reflect the objectives and policies of the NPS-HPL";

    (b) clarifies what that relief in is in the reasons, which includes the statement that: "the proposed non-complying subdivision rules should only relate to land comprising class 1-3 soils"; and that: "[f]or all other rural land a Discretionary status should apply".

15. The submission makes no distinction or exception to retain non-complying status for either GRE or RLE that is OLA. In other words, in my opinion, the submission seeks for discretionary subdivision status across both the GRE and the RLE, whether or not it is also OLA. This relief applies to the site whether or not it is rezoned to RLE or not.

Third Part: rezoning to RLE

16. This part of the submission:

    (a) seeks amendment of "the site located at 387 Whakaroa Road to Rural Lifestyle Zone"; and

    (b) states reasons as being the opposition of GRE on the site.

17. This is the most straightforward part of the submission.

18. I also note that it is not expressed as being in the alternative, and can sit comfortably alongside the Second Part.

Conclusion: most relevant relief in the submission

19. In other words, on a careful reading of the parts of the submission, as most relevant to the current question of jurisdiction, it is clear that the submitter sought both:

    (a) the rezoning of the site to RLE; and

    (b) for all subdivision in the RLE to be discretionary (whether or not also in an OLA). Significantly, this aspect of the relief is unconstrained by any minimum lot size.

20. If the scope of the submission is viewed this way, the question then becomes whether the preferred relief now sought is more restrictive than (or falls within) the scope of the original submission.

Is the preferred relief more restrictive (or consequential)

21. Having clearly identified the "scope" of the application, there can be no issue as to rezoning to RLE.

22. The critical issue is whether a precinct plan, with supporting provisions that direct subdivision and development in a very specific way as a discretionary activity, is more restrictive than having unconstrained subdivision as a discretionary activity. Having cleared away the "OLA" issue, answer is obvious: the only true and reasonable conclusion is that the preferred relief is more restrictive.

23. I would say that this is then the end of the matter. However, given Mr Winchester's emphasis on the fairness (or notice) issue, I address this next.

Stepping back – the ultimate fairness issue

24. If an individual or organisation were concerned about the potential extent of subdivision in the rural environment, and in particular about smaller lot sizes being enabled, then the original relief sought would have been of immediate concern to them (including the potential for that relief to cut across the non-complying status of subdivision within the OLA) and they could have lodged a further submission. In the same way, if anyone was particularly concerned about the site, then the original relief would also

have been of immediate concern to them and they could have lodged a further submission.

25. This is, in fact what happened, as the Regional Council opposed the submission due to "the potential for land fragmentation, loss of productive capacity, increase in greenhouse gas emissions and issues associated with transport and infrastructure". Any other interested person also could have opposed the submission (noting that there are constraints on who can make further submissions).

26. The thrust of the submission is also very clear: it sought greater ability to subdivide the site than that put forward under PC42 as proposed. If anyone had a concern with that, they could have further submitted in opposition.

Additional comment on the Glen Massey precinct plan example

27. Finally, I note that I referred in my 25 July 2023 memorandum to the Glen Massey precinct plan approved by the Environment Court as an example of the Court endorsing jurisdiction in similar circumstances. Mr Cumming has provided the Environment Court's decision in Attachment 5 to his evidence. I now, for completeness, attach the submission, which stated:

    (a) In terms of relief: "For 233 Wilton Collieries Road to be returned back to country living"

    (b) In terms of relief:

        (i) This land was rural residential and the reason it was purchased at his cost was to subdivide it to 18 large livestyle [sic] blocks as it was not sustainable for commercial farming.

        (ii) This land has a good housing aspect for large livestyle [sic] properties, for people to enjoy country living.

        (iii) There is only a small amount of land that can be used for housing in this area and this is one of them.

28. So the Glen Massey submission is not, in fact, particularly more detailed than that of the submitter #74 in this process.

29. By the time of the Council-level hearing, however, the Glen Massey submitter was represented by legal counsel, planning, transport and soils/productivity experts. The Commissioners' decision records the case presented as follows:

> Dr Joan Forret filed legal submissions on behalf of S and K Quigley and Quigley Family Trust who sought rezoning of the property at 233 Wilton Collieries Road, Glen Massey to either Country Living or Village Zone. Her submission stated that the proposal would support the existing Glen Massey village by concentrating residential development; and would be a better option for those seeking a rural lifestyle than allowing for ad hoc and scattered subdivision throughout the rural zone, especially in areas close to Hamilton City. Dr Forret further disagreed with the assessment and recommendation in the section 42A report to reject the submission and considered that Country Living Zone would ensure an efficient use of land resource. In her submissions, Ms Forret also noted that a subdivision consent had previously been approved for the site and was only partly implemented.
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> Ms Morse filed planning evidence on behalf of Quigley Family Trust and described the key features of the previously approved subdivision. She summarised the assessment of various technical experts and concluded that the surrounding road network could accommodate the additional traffic volumes and that access to lots could be provided for in comparable locations to those shown on the previously approved subdivision plan. Ms Morse observed that the site comprises solely of low class (Class 6) soils, and this, combined with the contour and fertility of the soils, provides significant limitations to the agricultural productivity of the site.
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> In her evidence, Ms Morse considered that the rezoning proposal was generally consistent with achieving the relevant objectives of the PDP, as well as being generally consistent with achieving the outcomes sought in the higher-level planning instruments. Ms Morse also drew our attention to consistency with the general and rural-residential development principles contained in Section 6A of the RPS. Overall, Ms Morse concluded that the site was well suited to be zoned Country Living due to its location adjacent to the Glen Massey village with existing facilities. She expressed concern with the assessment in the section 42A report and considered that the reliance on Future Proof to determine areas appropriate for growth was flawed.
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> Mr Stuart Quigley filed rebuttal evidence for Quigley Family Trust providing the details of the 18-lot subdivision consent and addressing the delays that occurred with implementation of the consent prior to section 223 approval finally being obtained for 2 lots in February 2011. He explained that the consent had since lapsed due to delays in implementation, some of which have been attributed to roading repairs. Mr Quigley also outlined reasons why the site was appropriate to rezone including:
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> a) The soil is not productive;
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> b) Enabling other people to enjoy the lifestyle of living in the country and being self-sufficient;
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> c) Supporting the Glen Massey school; and
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> d) Providing a diversity of housing options within the Waikato District.
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> Ms Judith Makinson filed evidence on behalf of Quigley Family Trust regarding transport effects. She outlined the likely number of vehicle

> movements and considered that the current width of Wilton Colleries Road was sufficient enough for the proposed zone change. Ms Makinson concluded that the transportation effects of the proposed rezoning to the Country Living Zone would be less than minor and that the mitigation measures required as part of the previous 18-lot residential subdivision consent remain applicable.
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> Mr Dave Miller filed evidence on behalf of Quigley Family Trust regarding soil types and productivity, concluding that there was no prospect for horticulture on the site due to the soil and topographical limitations (although forestry was an option). He further acknowledged that a shift to Country Living Zoning would result in a modest drop in the carrying capacity of stock but observed that if the property was rezoned, then it was reasonable to assume that a number of the lot owners would continue to run stock of some kind as a means of controlling pasture and weeds.

30. The Commissioners did not accept the merits of the submission – but matters were clearly resolved through mediation, and endorsed by the Environment Court by way of a decision by consent (refer Attachment 5 to Mr Cumming's evidence).

31. This should give this Panel significant comfort that there is no jurisdictional or scope barrier to granting the preferred relief sought; and it can proceed to consider that relief on its merits.

Conclusion

32. I respectfully urge the Panel, in light of all of the above, to find jurisdiction to consider the merits of the submitter's case; or, at the very least, to reserve its decision on jurisdiction to the release of its substantive decision, and at that time address both jurisdiction, and, in any event, merit.

33. That would be the most efficient and helpful way forward for all parties.

21 August 2023
James Gardner-Hopkins
Project Manager