
BEFORE THE HEARINGS PANEL

In the Matter of: The Resource Management Act 1991

And Proposed Plan Change 42: General Rural and Rural Lifestyle Environments

Application By: Taupō District Council

**Section 42A Supplementary Statement BY
CRAIG SHARMAN**

Dated: 16 August 2023



Taupō District Plan
CHANGES - BUNDLE ONE

Preamble

- 1) My full name is Craig Melville Sharman. I am a Technical Director of Planning at Beca Limited based in Hamilton. I have held this position since early 2023, having worked at Beca Limited in similar roles since 2017. I hold a Bachelor of Resource and Environmental Planning (Massey University 1996) and a Master of Philosophy (Geography) (Massey University 1998). I have been employed in the practice of planning and resource management both in Aotearoa and overseas for some 25 years. This experience includes working as a Senior Planner at Taupō District Council (TDC) from 2001 to 2004.
- 2) I am the Plan Change 42 (PC42) section 42A reporting planner and am introduced in full at Section 1 of the Section 42A Report dated 28 July 2023.
- 3) I have read and am familiar with the Environment Court's Code of Conduct for Expert Witnesses, contained in the Environment Court Practice Note 2023, and agree to comply with it. My qualifications as an expert are set out at Section 1 of the Section 42A Report dated 28 July 2023. Other than where I state that I am relying on the advice of another person, I confirm that the issues addressed in this statement of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Purpose

- 4) The purpose of this statement is to provide a planning response to Minute 6 of the Independent Hearing Panel dated 27 July 2023. This minute is in respect of submitter 74 Hawkins. In response to the directions set out within the minute, a legal opinion from Mr Winchester has been submitted to the panel on 14 August 2023, as has a Joint Witness Statement (JWS) following conferencing between myself, Ms Hilary Samuel (representing TDC), Ms Megan Kettle (representing Waikato Regional Council (WRC)) and the planning experts representing submitter 74 Hawkins (Mr Drew Cumming and Ms Stephanie Blick). The JWS sets out the agreement around a set of planning provisions initially proposed by the submitter's representative Mr James Gardner-Hopkins. The conferencing was successful insofar as an agreement was reached on a set of district plan provisions applying to the 'Te Tuhi Precinct', although this was subject to some disagreements around several matters, as recorded within the JWS, regarding the suitability of incorporating the precinct into the district plan framework.
- 5) The JWS process focused on the workability of the proposed district plan provisions. This by no means implies support or any lessening in concern regarding the legal scope matter; the fit with the existing and proposed growth management policy framework; acceptance of the need for additional rural lifestyle development in this location (or elsewhere); or with the process issues involved with the modified relief sought by submitter 74.

Background

- 6) At paragraph 12 of Minute 6, leave was granted for the Council's reporting officer to submit a supplementary statement of evidence addressing the 'planning policy impediment' referred to in paragraph 11 of the minute. Minute 10 of the Independent Hearing Panel then further clarifies the timing of the supplementary statement as being required by 1pm 16 August 2023. The planning policy impediment(s) is discussed below.
- 7) A response to legal scope matters from Mr Winchester was submitted to the panel on 14 August 2023. This legal statement addresses the submitter's statement on scope from Mr Gardner-Hopkins. As stated by Mr Gardner-Hopkins in his memorandum to the panel dated 25 July 2023, the submitters original relief was:
 - (a) Amend the 'zone' of the site located at 387 Whakaroa Road to Rural Lifestyle Environment (RLE).
 - (b) Amend Rule 4b.5.1 to make subdivision that results in lots smaller than 10 hectares a discretionary activity.
 - (c) The proposed changes to the Rural Environments chapter should be amended to reflect the obligations and requirements of the National Policy Statement for Highly Productive Land (NPS-HPL) whereby only Class 1-3 land should be protected with a non-complying activity subdivision rule.
- 8) These submission points were not summarised within the submission of relief sought summary, as they were succinct enough to be included in full. It is important to note here that the amendment to Rule 4b.5.1 is somewhat contradictory with the first relief, as the rule is a General Rural Environment (GRE) provision that does not apply within RLE. The last point of relief appears to incorrectly interpret the NPS-HPL as providing direction for more lenient subdivision on soils which are not Class 1-3. In relation to how this relief fits with the modified relief and the specific provisions of PC42, I will address this point in more detail later in this statement.
- 9) Mr Winchester challenges Mr Gardner-Hopkin's assertion that the modified relief is more restrictive than within the original submission. Mr Winchester outlines points around fairness and whether the modified relief introduces new or unforeseen outcomes that potentially interested persons might not have been able to identify or effectively contribute to discussion on. In this regard it is worth noting that the only further submission on submission 74 is WRC in opposition. Mr Winchester concludes at paragraph 21 that "for those reasons, I consider that the position sought to be advanced by the submitter would be beyond the scope of the original relief." I concur for reasons set out below.
- 10) Economic evaluation evidence will be presented by Mr Phil Osborne (Property Economics Limited) in response to the submission 74 modified relief. This is partly in response to Mr Fraser Colgrave's economic evidence presented on behalf of submission 74.

- 11) The substantive package of technical material was lodged with TDC by the 'submission 74 team' on the afternoon of Friday 11 August 2023. At the time of preparing this statement I have only briefly reviewed this material but will do so in more detail prior to the hearing.
- 12) Attached to this statement is a statement of evidence presented by Ms Hilary Samuel, a TDC officer, dated 14 August 2023. This statement focuses on the growth management approach applied by TDC, the importance and evolution of the Taupō District Growth Strategy 2050 (TD2050); the background to private plan changes to rezone land, growth areas and structure planning in the district; and some background history for the property at 387 Whakaroa Road.

Discussion

Key Planning Impediments

- 13) The key planning policy impediment to the modified relief is in respect of the unsuitability of the relief in the context of the purpose and proposed provisions of PC42. A further impediment is the contrary nature of the proposal with the broader growth management framework (within the Waikato Regional Policy Statement, TD2050 and the Operative District Plan). The approach to the identification of RLE locations is described within the Section 32 Evaluation Report and the Section 42A Report. RLE locations were identified ('zoned') due to the presence of existing clusters of smaller/lifestyle lots and land use; avoidance of locations with physical constraints such as topography, geography or infrastructure; were applied to lots smaller than 30 hectares (unless completely surrounded by smaller rural lifestyle blocks); avoided Outstanding Landscape Areas (OLA) (with one exception at Bonshaw Park); the proximity to Taupō township; avoidance of properties accessed from state highways; and avoidance of properties subject to the Operative District Plan to the D1 Geothermal Rule.
- 14) I hold concerns regarding the suitability of the modified relief within this submission in relation to:
 - The significantly expanded and more enabling scope of the modified relief in contrast with the original submission (as outlined in the legal opinion by Mr Winchester).
 - The contrary nature of the proposal (as represented by the Te Tuhi Precinct Plan) within the context of the Operative District Plan and proposed PC42 objectives and policies around subdivision and development within the Rural Environment and Strategic Directions chapters, and in respect of Outstanding Landscape Areas.
 - The absence of any site-specific or locational factors that would make the proposal (and the modified relief) more suitable on the 387 Whakaroa Road property relative to any other similar property elsewhere within the Rural Environment of the district.
 - The lack of demonstrated need for, and therefore the displacement impacts of, the additional rural lifestyle housing supply (which is to be addressed by Mr Osborne).

Procedural Issues

- 15) From a process perspective it is difficult to see how this matter can be resolved through the current PC42 process. An expert team would need to be assembled to evaluate the supporting material provided on Friday 11 August 2023 to determine the merits of it. Given the scope matter identified by Mr Winchester, and that I concur with, this expert team has not been assembled and instructed, nor should be until such time as the panel determine the matter of legal scope. In any event I consider that it is not appropriate to progress this matter further within the PC42 process for reasons outlined below.
- 16) In my mind there are questions of fairness and appropriateness of how the modified relief has been introduced into the PC42 process, and whether other parties could have reasonably foreseen such relief as a natural outcome of the limited relief sought within the original submission (of submission 74).
- 17) The modified provisions were introduced into the PC42 process via a memorandum on 25 July 2023, and the Te Tuhi Precinct Plan was only entered as evidence on Friday 11 August 2023 (5 working days prior to the start of the PC42 hearing). Whilst I have briefly reviewed the planning components of the submitted evidence and have identified the nature of the various assessments and supporting reports provided, at the time of writing this statement no wider review process has been undertaken, nor will it be able to be undertaken prior to the hearing.
- 18) The modified relief sought and, in particular, the provisions proposed (and as agreed within the JWS) rely heavily on a future assessment of compliance of any future development with the Te Tuhi Precinct Plan. However, the precinct plan proposed by the submitter has been lodged as evidence five working days before the hearing. There has been no mechanism for the Council, or the community, to have had input into the merits of the precinct plan.
- 19) In addition, even if the panel accepted the original relief within the submission, then the modified relief sought would result in a non-complying activity still applying given the two proposed provisions within the RLE subdivision provisions:
 - 4b.5.3 Subdivision – Rural Lifestyle Environment that does not adjoin the General Rural Environment: ii. Subdivision resulting in lots that are smaller than 2 hectares that do not adjoin the General Rural Environment is a non-complying activity.
 - 4b.5.7 Subdivision – Outstanding Landscape Areas: i. Any subdivision of land in the General Rural Environment or Rural Lifestyle Environment that is located within an Outstanding Landscape Area where the resulting lots are less than 10 hectares, is a non-complying activity.
- 20) The submitter did not submit on either of these two provisions (or the associated objectives and policies) within their original submission.

'Macro' Assessment of Suitability

- 21) I have considered whether at a 'macro' level (applying RLE identification criteria to this property) whether the submitter's modified relief is a suitable outcome that I can support.
- 22) In preparing the Section 42A Report, the grouping of submitters seeking a change in environment from GRE to RLE were considered as a collective. These were also considered in the context of the key conclusion of the Property Economics Limited reports (2019, 2023) that there is no demand driver to increase the extent of RLE land within the Rural Environment. The overarching purpose of the RLE is about housing choice and relieving pressure for additional housing within GRE by providing for it within specific RLE locations. This is why, aside from several small additions to existing proposed RLE locations, those submitters seeking 're-zoning' to RLE have been recommended for rejection. The submitter 74 submission points have likewise been recommended for rejection for the same reasons.
- 23) In the context of 387 Whakaroa Road, I have considered the unique factors that might make this property more or less suitable than others for inclusion within RLE. This is notwithstanding the above point that there is no demand-based need to identify additional RLE land given housing supply is more than adequate within the district's urban areas and the RLE locations proposed by PC42. In respect of the above RLE inclusion criteria – the existing land use is pastoral rural land use with no existing cluster of small landholdings; the extent of physical constraints (topography, geography or infrastructure) are typical of rural properties and are moderate/manageable; the existing property size is well in excess of 30 hectares; the entirety of the property is within an OLA; the proximity to Taupō township is positive (meaning it is capable of functioning as part of the Taupō township); the property is not accessed from a state highway; and the property is not within the D1 area of the Operative District Plan.
- 24) On the basis that several of the RLE-identification factors are contravened here, the property at 387 Whakaroa Road was not considered suitable for inclusion within the RLE, as sought within the relief sought of the original submission. For this reason, the section 42A recommendation is to reject, and I consider that remains an appropriate recommendation.

'Micro' Assessment of Suitability

- 25) I have also considered whether there are 'micro' factors (property-specific or locational factors) that make this property unique or distinctively different to other similarly sized rural properties in the district.
- 26) The property is not adjacent to a proposed RLE location, is not characterised by existing rural lifestyle development or small allotments, is well placed in terms of proximity to Acacia Bay and Taupō but is not particularly more so than many other similar sized rural properties in the wider locality, is subject to several fault lines based on technical hazards assessment work undertaken by TDC, appears to have high landscape and natural values as recognised by the OLA notation and the adjacent significant natural areas notation and, whilst near to Kinloch township, is not connected to it in a practical sense. I therefore do

not consider that there are property-specific or locational factors that make this property more suitable for RLE land use than for other similarly sized properties within the wider Rural Environment.

- 27) It is also important to note that whilst the original submission relief sought is a 're-zoning' from GRE to RLE, the modified relief is for a proposal-specific layout of far greater density and is much more enabling of rural housing (than the RLE provisions). The PC42 RLE provisions provide for 4 hectare minimum lot sizes for RLE land adjacent to GRE (as is the case with this property), whereas the Te Tuhi Precinct proposal-specific density involves circa 100 dwellings. Whilst the specific proposal promoted within the Te Tuhi Precinct involves clustering, and involves several non-residential elements (equestrian facility, lodge) and substantial re-vegetation of large portions of the property, the density proposed is totally unlike that provided for within the RLE provisions as proposed within PC42. This cannot be justified on the basis of demand factors for rural housing in my opinion and based on the economic evaluations, nor is the Te Tuhi Precinct consistent with PC42 proposals for RLE and the intentionally limited provision for rural housing within the GRE.
- 28) As articulated within the JWS, agreement was reached between the parties as to a set of district plan provisions that are generally workable. The concept of a 'precinct plan' has been adopted from national planning standards but in many respects it is the equivalent of a structure plan, as referred to within Section 3e of the Operative District Plan and as commonly used by planners to describe a comprehensive planning process for landholdings typically larger than a single property. Also, as expressed within the JWS, the planning conferencing on this matter was conducted in 'the abstract', in the sense that key elements of the precinct plan for the property, including technical assessments and appropriate consultation, had not been demonstrated as adequate at the time of conferencing. Technical assessments and supporting material have now been submitted (on Friday 11 August) but at the time of writing this statement have only been briefly reviewed.
- 29) The other concern expressed within the JWS was that whilst a workable set of Te Tuhi Precinct provisions has been agreed, this still presumed the suitability of the broad outline of the proposal on this specific site. As above, I do not consider that the suitability of the proposal (or any proposal at the density proposed or similar) has been demonstrated, either at the macro level (applying the RLE identification criteria as per PC42), or at the micro level (considering property-specific matters). The density of the Te Tuhi Precinct proposals is well in excess of the PC42 RLE provisions at the macro level. At the micro level, the suitability of the density proposed has not been adequately demonstrated, nor has the merits of the clustering layout proposed, nor the proposal as a response to the OLA provisions, and nor has suitability of the proposal in the context of the growth management objectives proposed by Plan Change 38 Strategic Directions been demonstrated.
- 30) The Te Tuhi Precinct proposal represents a challenge to the OLA objectives and policies, and the Plan Change 38 Strategic Directions objectives, for avoiding/managing subdivision and development within

an OLA, and for managing the location of housing growth within the district. The concern expressed in the JWS that I hold is whether the consideration of objectives and policies could be resolved in favour of allowing the proposal to proceed in its current form or even in a modified form. Attachment 1 to Ms Samuel's statement sets out the hierarchy of Waikato Regional Policy Statement provisions (implementing TD2050); Plan Change 38 Strategic Directions Objective 2 and Objective 3 (well-functioning and compact urban forms, development consistent with TD2050 and protection of the effective functioning of the GRE); and the PC42 Objectives 3b.2.2 and 3b.3.4 (maintain the established general rural character; consolidate rural lifestyle activities).

- 31) Ms Blick and Mr Cumming record within the JWS that in the case of this conflict the more specific objectives and policies would prevail. Although broadly this concept may be one that is applied when that situation arises in specific circumstances, the fact is that this proposal risks intentionally inserting conflicting objectives and policies into the district plan. It fails to recognise that Plan Change 38 Strategic Directions sits as an overarching set of objectives and policies, as do the district-wide objectives and policies that address natural values (including OLAs) and that are in turn underpinned by Part 2 of the Resource Management Act 1991 (RMA). Further from my initial evaluation of evidence of Ms Blick and Mr Cumming, it appears that the proposed objectives and policies have not been assessed appropriately through an adequate section 32 RMA process. The lack of evidence being presented on section 32 RMA matters and whether it is 'the most appropriate way to achieve the purpose' of the RMA is an issue resulting from the inadequate process followed.
- 32) Whilst within the JWS was agreement around an objective and a policy relating to the Te Tuhi Precinct, the wording of the provisions are based on 'giving effect to the Te Tuhi Precinct Plan'. This presumes that the Te Tuhi Precinct Plan itself is an appropriate outcome for a property within the OLA, and that the level of housing density proposed is appropriate. Neither of these key presumptions have been proven at this time, in my view.

Conclusion

- 33) The introduction of the modified relief is addressed by Mr Winchester and considered out of scope, an opinion I concur with for the reasons given above. There are questions of fairness and appropriateness of how the modified relief has been introduced into the PC42 process, whether other parties could have reasonably foreseen such relief as a natural outcome of the limited relief sought within the original submission (of submission 74), and how significantly expanded and more enabling the modified relief is (relative to the original submission). I consider that the modified relief cannot be reasonably introduced into the PC42 process in this manner.
- 34) I consider that there is a lack of any demonstrated need for additional RLE land, with sufficient housing choice and availability within the identified RLE locations and the district's urban areas to comfortably

meet housing demand. Therefore, any such provision for additional land will lead to a displacement effect on other RLE locations, or from urban areas in a manner contrary to TD2050 and the Waikato Regional Policy Statement. An economic evaluation will also be presented during the hearing from Mr Osborne to address the absence of demand for additional RLE land. This will address issues around demand and need and will address the evidence provided by Mr Colgrave on behalf of the submitter.

- 35) From a planning policy perspective, the modified relief appears to ignore the established growth management framework. This framework is set out in Ms Samuel's statement and in particular Attachment 1 to that statement. The district has a history of identifying growth areas through the TD2050 strategy, progressing them in a collaborative manner through structure planning exercises, and then 'zoning' these areas via private plan changes or Council adopted plan changes. It is respectfully suggested that the submitter engages with Council officers regarding a private plan change, or progress resource consent applications either prior to decisions being released on PC42 or within the context of the Rural Lifestyle Environment following decisions on PC42.
- 36) I have applied planning evaluations of the modified relief at a 'macro' level (applying RLE identification criteria to this property), and also at a 'micro' level (considering property-specific or locational factors) that might make this property unique or distinctively different to other similarly sized rural properties in the district. With both evaluations I do not consider that there is a demonstrable need for additional RLE land, either at this site or at all within the wider Rural Environment of the district. In regard to the latter, I see no property-specific factors that make this property more suitable than other similar sized rural properties in the district, and the presence of an OLA makes it less suitable for such development. The section 42A recommendations on submission 74 are entirely consistent with the recommendations made on other similar submissions (seeking additional RLE).
- 37) The modified relief is presented as being 'within the scope' of the relief sought within the original submission. I do not accept that this is the case, and in my opinion the modified relief on the basis of density alone, significantly expands and is far more enabling of development on this property than the RLE provisions being introduced by PC42.
- 38) The Te Tuhi Precinct Plan and the proposed objective and policy that refers to subdivision and development within the precinct 'giving effect' to it, sets up a future conflict in that (and I consider this a distinct possibility) the development proposal shown on the precinct plan cannot be adequately reconciled with the OLA provisions and section 6 RMA matters that apply to the site and also the existing policy direction of avoiding fragmentation within the rural environment. This cannot be reconciled within the current PC42 process given the lateness of the precinct plan being submitted.
- 39) My section 42A reporting planner recommendation remains to reject submission 74 Hawkins in its entirety, for the reasons given within the Section 42A Report and above.

Craig Sharman

Consultant Planner (Beca Limited)

Section 42A Reporting Planner on behalf of Taupō District Council

16 August 2023