

In the matter of the Resource
Management Act
1991

And

In the matter of the Ruakura Variation
to the Hamilton
Proposed District Plan

STATEMENT OF REBUTTAL EVIDENCE OF

Murray Spencer Kivell

On behalf of Hamilton City Council

22 July 2016

INTRODUCTION

Qualifications and Relevant Experience

1. My full name is Murray Spencer Kivell. I have the qualifications and experience set out in my s42A report dated 8 July 2016.

Expert Witness Code of Conduct

2. As stated in my s42A report, I confirm that I have read and agree to comply with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014.

SCOPE OF EVIDENCE

3. The purpose of this rebuttal evidence is to provide further comments in relation to:
 - a. Framework for the administration of LDPs – their prescription and mapping;
 - b. Provisions for managing effects on the amenity values of the Percival-Ryburn Road rural residential enclave; and
 - c. Is the Ryburn Enclave Ruakura Logistics Zoning Pre-emptive?
 4. This rebuttal evidence confirms my support for the relevant provisions of the variation as presented in my s42A report and the supporting statements of evidence from the relevant technical experts who have advised Council on this variation.
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FRAMEWORK FOR THE ADMINISTRATION OF LAND DEVELOPMENT PLANS (LDPs) – THEIR PRESCRIPTION AND MAPPING

5. Mr Peter Hall, in his evidence on behalf of the two major landowners (TGH – paragraphs 92-111, and CPL – paragraphs 37-49) both cite the breakup of the Structure Plan into LDP ‘Areas’ as being an ‘impractical division’ and un-necessary for resource management purposes. The arguments in support of that assessment are outlined in paragraphs 101-107, and track change provisions sought and recorded under paragraphs 108-111 of the evidence relating to TGH and are mirrored in the evidence presented by Mr Hall on behalf of CPL.
 6. Council’s position has not changed in respect of this concern, and I support that position for the following reasons. The Council position has been informed by the Board of Inquiry decision where there was support for the concept (paragraph 132) and this was reflected by the inclusion of Figure 25H(3): Ruakura Schedule Area Development Areas, that ‘divided’ the Plan Change into fourteen ‘Areas’. The ‘Areas’ were supported at the time by the parties as being appropriate.
 7. The use of LDP ‘Areas’ was then adopted for application to the whole Ruakura growth cell. This is not a unique planning practice for Council. The approach is reflective of similar planning approaches adopted to manage urbanisation for three other growth cells in the City under the Proposed District Plan. Setting up a spatial framework for the urbanisation of greenfield land is promoted in a similar manner for Rotokauri, Rototuna and Peacockes.
 8. The Comprehensive Development Plan mechanism adopted for the urbanisation of the Rototuna growth cell is one example. A Concept Plan framework is provided for the Town Centre (Appendix 7, Figures 7-1 to 7-4 of the PDP refers). In that case, activities, drainage, movement corridors, public and open space areas are provided for. A ‘Note’ at the foot of Figure 7-1 records the plan is diagrammatic only. The Concept Plan Figures are presented as a development framework in the context of the larger Rototuna growth cell. For Rotokauri, a similar approach is adopted using Development Plan Cells (Appendix 6: Industrial Zone, Figure 6-1 Stage 1 Comprehensive Development Plan Cell and covers approximately 160 hectares). In both cases, the ‘Areas’ aren’t anchored directly to cadastral boundaries.
 9. While the criticism is that the LDP ‘Areas’ aren’t anchored to cadastral boundaries and they are arbitrary, they are land areas predominantly under the management of either TGH or CPL, and the areas themselves have a coherence in relation to the Council’s view of where infrastructure (Ruakura Strategic Infrastructure in this case) can likely go. Further, it is important for Council to know what ‘Areas’ are to be serviced, how and when, and their relationship to neighbouring ‘Areas’ and how those ‘Areas’ may be serviced over time. This is the essence of strategic infrastructure planning - not un-intentionally foreclosing service delivery options long term. It is both the immediate and long term provision for infrastructure that is critical for the City to consider given their responsibility for its operation and management long term.
 10. In summary, the LDP ‘Areas’ form part of a zoned area (Ruakura Structure Plan) which has to be serviced, and staging is the pragmatic management response to achieve its integrated delivery. Achieving integrated delivery requires a spatial context to achieve spatial coherence. Having an idea of the number of pieces of the jigsaw that comprise the whole is a helpful aid to management and delivery of infrastructure in my opinion.
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11. In response to the criticism that the consented LDPs are examples of the weaknesses of the current process, I suggest the very opposite; that is, it shows the flexibility and versatility of the provisions to cater for infrastructure provision in a pragmatic way for both the applicant and Council.
12. With respect to the views that there is no real risk of ad hoc and incremental development if LDP Areas are removed, I suggest that for the reasons outlined above, there are risks for Council in potentially not knowing how each part fits within the overall whole. The assumption that infrastructure will be developed and rolled out in a logical manner that meets the expectations of the Council and the landowner, while desirable, may not always be realistic. Providing Development 'Areas' gives a spatial framework and overall context to assist with decision making. I therefore continue to support the retention of Figure 2-16 Ruakura Land Development Plan Areas, as set out in the variation.
13. In paragraphs 94-96 of his evidence Mr Hall raised a concern regarding the vires of land development and new buildings in the absence of a Development Plan being non-complying, as provided for in Rule 3.7.3.2.1c). The potential for this provision to be ultra vires in light of the recent case law will be addressed further in legal submissions.

PROVISIONS FOR MANAGING EFFECTS ON AMENITY VALUES OF THE RYBURN-PERCIVAL ROAD ENCLAVE

14. The evidence of Mr Peter Hall on behalf of TGH (at paragraphs 53-64) questions the merits of policy which seeks to "protect" the amenity values of the rural residential enclave. It is suggested that this policy "sets the bar too high". I have considered this point further and remain of the opinion that the Council approach is appropriate and consistent with the Board's decision and the RMA purpose for the following reasons.
15. The policy was established through joint planning witness conferencing and supported by the Board in its 2014 decision after evaluating a considerable amount of evidence on the amenity effects an inland port operation might have on neighbouring residents and residents in the enclave. While the Board accepted that it had no jurisdiction to address all matters affecting amenity values given the Percival/Ryburn Road enclave was outside the boundaries of the Plan Change area, it was systematic in considering the range of effects likely to impact the amenity values of the enclave as a whole and other neighbouring suburbs (Silverdale, Fairview Downs).
16. From their examination, the Board's recorded position in relation to the Percival/Ryburn Road enclave, in section 17 Amenity (paragraphs 1054-1072), is (at paragraph 1072):

Overall, we find that amenity for the residents of the Percival/Ryburn enclave will be appropriately maintained with the mitigation proposed and the amended provisions we have proposed.

17. From this conclusion, the Board adopted the objective-policy suite 25H.4.SF.10 (where SF is an abbreviation of the term, Strategic Framework). The Board determined that the objective should be to 'protect' and Council has not seen the need or justification to depart from that
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position with respect to those “surrounding communities and facilities”. Policy 4.2.10b is a policy derived from the Board’s decision at 25H.4.SF.10 now referenced as objective 3.7.2.2 in the variation which states:

Development and land use activities in the Ruakura Structure Plan are designed, developed and implemented in a manner which protects the amenity values of the surrounding communities and facilities, while providing for urbanisation (emphasis added).

18. In the variation, the enclave is zoned Large Lot Residential to reflect this existing environment and that zoning is likely to remain for the life of the new Plan. Conversely, Council has no evidence to suggest the need for this land to become part of the inland port over the next decade to warrant reconsideration of the zoning.
19. Council has accepted however, for reasons previously outlined, that long term, a Logistics zoning is necessary, and this is reflected in the Structure Plan (Figure 2-14 Ruakura Structure Plan- Land Use) attached to Mr le heron’s rebuttal evidence.
20. The supporting policy 3.7.2.2a provides for an “appropriate” level of urban amenity for existing and future residential activities in the context of providing for urbanisation (paraphrasing).
21. Existing residential amenity therefore needs to be acknowledged and that is the basis for promoting the large lot residential zoning for the enclave. This provides the baseline for assessing potential environmental effects and amenity values. The existing rural residential amenity values are to be protected through the suite of planning controls for the operation of the inland port and through the Interface Design Control Area provisions for example. Why else would these provisions be put in place if not to protect existing amenity values? This approach in the variation simply sought to extent the Board’s approach across an artificial Plan Change boundary that excluded the Board from fully considering amenity effects on the enclave and to address amenity values for all residential areas outside the Plan Change area.
22. The Board did further note at paragraph 1066:

Of all the residents, those who live in the Percival/Ryburn enclave will experience the most dramatic change to amenity they currently enjoy as a result of the activities proposed ...

23. The Council position that I support is that future amenity values will be able to be better assessed at the time of rezoning of the enclave to Logistics.
 24. In summary, the current zoning is supported by an objective 4.2.10 to “protect”, “while...” recognising that longer term the land use will change and residents will experience a ‘most dramatic change’ in amenity values. The variation explicitly records that a separate planning process will be required when there is sufficient information and evidence to require the rezoning to occur. Then it would be appropriate to review and ‘reset’ the policy settings and rules as an integrated package of zone provisions to address amenity values for the changed environment.
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25. The accompanying text in 4.1.4 Large Lot Residential Zone, was more detailed than might otherwise be the case given the unusual and unique circumstances that face the residents, the developer and the Council in a resource management planning context. It purposely describes this existing environment for the reasons outlined above.
26. Finally, the Council S32 report at pages 18-20 (sub heading 5.4.1 *Key objective and policies 3.7.2.2*) covers the same matter that is subject to challenge by TGH. The assessment emphasizes that these provisions need to be read as a whole and there needs to be an acknowledgement of the existing environment when setting the current policy framework.

IS THE RYBURN ENCLAVE RUAKURA LOGISTICS ZONING PRE-EMPTIVE?

27. A related matter is raised in in section 6 Zoning, of the statement of evidence from Mr Nicholas Roberts on behalf of the Ruakura Residents Group. This concerns the merits of the Structure Plan identifying the enclave as Logistics.
28. The Board of Inquiry was not required to address this matter as its jurisdiction did not extend to include the enclave. However, the Board did endorse the regional industrial land allocation at paragraphs 39-45 and 84-87 of its decision as noted in the Council's own s32 Report (page 21 refers). The table is referenced as table 25H(1): Industrial Land Allocation in the Future Proof Area in the Board decision.
29. This same table now is part of the variation recorded under 3.7j). Ruakura is a line item recorded under "Strategic Industrial Nodes located in Central Future Proof area". Giving recognition to this industrial node in a planning context therefore had to be addressed in the variation (and was a matter deferred for consideration as part of the Council hearings on the Proposed District Plan during 2014).
30. Mr Roberts provides a useful summary of the strategic documents that influence how this matter is to be addressed in his paragraph 4.11. I agree with this analysis. It mirrors Council's own analysis. On this basis, and consistent with the Council's s32 assessment (5.4.3 *Giving Effect to the RPS - The Rationale for Safeguarding 405 hectares*) and my further assessment in the s42A report (*paragraph 3.3 The merits of the long term zoning of Logistics promoted under the Structure Plan for the enclave*), I conclude that the now operative RPS provides the directive to identify this 35-hectare area for the nationally and regionally significant infrastructure of an inland port. I remain of this view that the Logistics notation on the Structure Plan is the preferred way to do this along with the current description of the enclave under 4.1.4 Large Lot Residential Zone. Together this is sufficient to inform Plan users in my opinion.

CONCLUSION

31. In summary, I have no reason to alter my overall conclusions in relation to the above planning matters.

Murray Kivell
22 July 2016
