

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

SAM BERNARD LE HERON

On behalf of Hamilton City Council

22 July 2016

INTRODUCTION

Qualifications and Relevant Experience

1. My full name is Sam Bernard Le Heron. I have the qualifications and experience set out in my s42A reports dated 8 July 2016.

Expert Witness Code of Conduct

2. As stated in my s42A reports, 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. I confirm I have read the relevant parts of all evidence received and will be responding to the particular matters which require rebuttal in relation to the S42A Reports I wrote.
 4. This rebuttal evidence confirms my support for the relevant provisions of the variation as presented in my s42A reports and the supporting statements of evidence from the relevant technical experts who have advised Council on this variation.
 5. The purpose of this rebuttal evidence is to provide further comments in relation to:
 - a. Administrative amendments
 - b. Third party approvals and non-notification
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- c. Planning and urban design provisions for the Ruakura Medium Density Residential Zone
- d. AgResearch and Waikato Innovation Park provisions for the Knowledge Zone and Concept Plan Consents
- e. University of Waikato
- f. Transpower New Zealand
- g. Scope of submissions – Transpower, AgResearch and Waikato Innovation Park

Administrative Amendments

- 6. The S42A Report for Appendix 2 Structure Plans inadvertently identified the area of Percival and Ryburn Road as Large Lot Residential on Figure 2-14. The correct and amended Figure 2-14 has been attached to this rebuttal.
- 7. The rationale for the approach outlined in paragraph 6 is covered in Mr Murray Kivell's Rebuttal.
- 8. Mr Apeldoorn outlines that Rule 3.7.3.3.4 Medium Density Residential Staging Rule is no longer appropriate as there is no staging for medium density. Mr Alasdair Gray in his rebuttal concurs with Mr Apeldoorn.
- 9. I concur with both Mr Apeldoorn and Mr Gray as Rule 3.7.3.3.4 and 3.7.3.3.5 (General Residential Staging) are both appropriate to delete as there is no staging for the relevant zones. See Tracked Changes in Attachment A.

Third party approvals and non-notification

- 10. Mr Dylan Gardner, in his evidence representing both the New Zealand Transport Agency and Waikato Regional Council, identifies that the BOI Decision included three key areas where affected party approval would be required (NZTA paragraphs 23 – 36 and WRC paragraphs 59-67). This included for all Land Development Plans (LDP – 3.7.3.2.1), high traffic generating activities (>1500 vehicles per day), and for non-compliance with staging provisions (3.7.3.3.6) of development.
 - 11. I agree with Mr Gardner that as currently proposed Rule 3.7.3.2.2 Notification Rule only refers to applications for activities generating 1500 or more vehicle movements per day. One of the drafting principles of the Variation was to give effect to the BOI Decision where appropriate, and this applies to the notification provisions.
 - 12. Within Mr Kivell's S42A Report for Chapter 3.7 I responded under the section 3.7.3.2.3 Notification Rule to the relief sought by the NZTA and WRC, and accepted the approach outlined by the submitters. *"The BOI Decision was clear in its determination of what the relevant notification provisions were for the plan change, and it is appropriate to reflect this within the Variation"* (S42A Report Chapter 3.7 Section 3.7.3.2.3 Notification Rule P. 91). While I note that the intent of the submissions is accepted, the tracked change amendments made to reflect this relief still require further amendment to clarify the application of affected party approval in the manner summarised in paragraph 6 above (see Tracked Changes in Appendix A).
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13. Mr Peter Hall outlines some of the structural issues with the notification rule in Paragraph 113 of his evidence for Tainui Group Holdings Limited (TGHL). I concur with Mr Hall insofar as the intent of the Variation drafting is to give effect to the BOI Decision which provides for affected party approval from WRC, NZTA and WDC to apply for any LDP application, any activity of 1500 or more vehicle movements per day and any non-compliance with the staging provisions in 3.7.3.3.6.
14. I believe as currently proposed the provisions adequately deal with non-compliance with staging provisions in 3.7.3.3.6, and any activity generating 1500 or more vehicle movements within the relevant zone chapters (e.g. 10.8). In my opinion, with additional amendments to 3.7.3.2.2a) to clarify that this rule relates to Land Development Plans, subsequently all three relevant aspects of the BOI Decision for notification will be addressed.

Planning and urban design provisions for the Ruakura Medium Density Residential Zone

15. Mr John Goodwin representing both TGHL and Chedworth Properties Limited (CPL) outlined relief in relation to the landscape buffer area for Percival Road. Mr Hall representing both TGHL and CPL outlined relief sought in regard to development controls and duplexes for the Ruakura Medium Density Residential Zone.
16. Mr Gavin Lister provided Council with expert landscape and urban design advice for the notified Ruakura Variation and further technical advice in response to submissions as part of S42A Reports. Mr Lister has provided rebuttal evidence to the points raised by Mr Goodwin and Mr Hall.
17. I rely on Mr Lister's rebuttal in concluding that no amendments are supported to either the Landscape Buffer for Percival Road or the development controls for Ruakura Medium Density Residential Zone or activity status for duplexes.

Percival Road Buffer

18. I rely on Mr Lister's assessment to form my views. Mr Lister in Paragraph 4.2 states "*I agree that it will not be possible to maintain exactly the same character as currently exists. I consider the sensible goal of the proposed buffer is to maintain an appropriate level of amenity in the context of the industrial activities for which the surrounding land is to be zoned and the rural residential nature of the enclave – until such time as the zoning is changed*" (Mr Lister, Rebuttal Evidence Paragraph 4.2).

Figure 2-17 Inland Port Building Setbacks and Landscape Controls

19. Mr Lister concludes for Figure 2-17 in Paragraph 4.4 that "*Mr Goodwin does not demonstrate that the changes would provide at least as effective a screen as provided for by the Board of Inquiry decision. Without such evidence I consider it would be unwise to deviate from the Board's provisions for the reasons given in paragraph 4.6 of my consolidated report*". I rely on Mr Lister's assessment to form my view that the BOI Decision Figure 2-17 is appropriate to retain.

Medium Density Residential Zone - Development Standards

20. Mr Lister outlines in his rebuttal that "*Mr Hall appears to accept removal of the HIRTB control but not the associated height standard. This amounts to picking and choosing standards rather*
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than considering them as a whole... Notwithstanding my opinion, I provided development standards that might be applied to stand-alone houses on sites less than 400m in order to maintain amenity. To put it another way, to maintain the amenity that would normally be controlled through design review processes.” (Mr Lister, Rebuttal Evidence Paragraph 5.2 – 5.3).

21. I agree with Mr Lister’s response and support the retention of the S42A Report approach outlined that introduced the new standards for single dwellings.

Duplex Dwellings

22. Mr Hall sought that duplexes should be permitted activities above 300m², rather than the proposed Restricted Discretionary status. While Mr Lister agrees that duplex configurations can be successful and designed well, especially when part of a mix of typologies as evident within LDP Area J. Mr Lister goes on to say *“However, my advice is that Council is unable to give weight to internal design review processes in an RMA sense unless it is part of an RMA process. Council needs to contemplate developments by other developers that are less well designed. Therefore I remain of the view that it is preferable to review design of duplexes, and other medium density typologies, for the reasons set out in paragraph 6.11 of my evidence in chief.”* (Mr Lister, Rebuttal Evidence Paragraph 5.6).
23. I rely on the conclusions of Mr Lister’s rebuttal for the reasons above and to the extent that the retention of the Restricted Discretionary approach will provide consistency with how duplexes are assessed across the rest of Hamilton and provide greater certainty of outcomes for the wider community.

AgResearch and Waikato Innovation Park provisions for the Knowledge Zone and Concept Plan Consents

24. Mr Dave Burton representing both AgResearch and Waikato Innovation Park highlights a number of issues in his evidence. Mr Burton in paragraph 6 states *“the principle issue of concern for both ... is the degree to which the Concept Plan Consent (CPC) regime proposed in the late submission ... will require definition of future building design and appearance as part of the consent application”*. Mr Burton’s concern is also expressed in paragraph 23, where he identifies if a CPC were to require detail of individual future building platforms/footprints and design the implications on this for Precincts A and B given their uncertainty of future built form could be seen as less of an incentive to obtain a CPC.
 25. The late submission made by Council was to ensure that the provisions of the Variation are *vires* to the RMA; and are consistent with the principles of the decisions of the Environment Court.
 26. I do understand the concern raised by Mr Burton regarding the level of detail that could be required as part of a CPC. This level of detail and information required for a CPC will be outlined in the Information Requirements and Assessment Criteria in Appendix 1 of Volume 2.
 27. Council’s Late Submission did not address any tracked changes to the Information Requirements or Assessment Criteria to give effect to amendments in relation to *ultra vires* provisions for the Concept Plan mechanism. Prior to the commencement of hearings Council will lodge tracked changes that clarify the Information Requirements and Assessment Criteria for CPCs. While it is acknowledged this would have been most appropriate as part of Council’s Late Submission, time constraints and the importance of getting the CPC provisions to be *vires*
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with the plan prevented the earlier lodgement of the amended Information Requirements and Assessment Criteria.

28. Mr Burton in paragraphs 19 and 20 outlines that a consequence of amendments to Chapter 8 will make a resource consent required for both a CPC and any new building within Precincts A and B (8.3.1e). Mr Burton goes on to refer to a discussion HCC Staff and Mr Grant Eccles had, where he states *"HCC's intent is that buildings authorised by way of a CPC would not require further resource consent in order to be established"* (Dave Burton Evidence, Paragraph 20). I attended this discussion with Mr Eccles referred to by Mr Burton, and concur that the intent of the CPC is to include the consenting of buildings as part of the CPC, thus 8.3.1e) will only relate to where a CPC has not been achieved, or the building is not identified as part of the Concept Plan which is an Information Requirement for a CPC.
29. I do not share the same concerns Mr Burton has raised as I believe there is a clear distinction between 8.3.1a) and 8.3.1e).
30. Mr Burton identifies within 'Activity Status for New Buildings (Precincts A and B)' that he disagrees with the S42A Report rationale and states *"the Campuses are large and integrated with built areas located a considerable distance from publicly accessible areas"* (Dave Burton Evidence, Paragraph 17). Mr Burton seeks relief that is closer aligned with the activity statuses provided for the University of Waikato.
31. For the reasons outlined in my S42A Report for Chapter 8 Knowledge Zone, I stand by my assessment as I am not convinced by the rationale in Mr Burton's evidence.

University of Waikato

32. Mr Todd Whittaker for the University of Waikato primarily supports the S42A Report for Chapter 8 Knowledge Zone.
33. In paragraph 33 Mr Whittaker states *"I support the proposed amendments subject to the rule mechanism which specifically apply to the University for Permitted Activities also being retained... the initial drafting of the notified Ruakura Variation was very ambiguous in terms of Concept Plan mechanisms and how these integrated with the Permitted Activity provisions. In my opinion, the amended provisions provided in the S42A Report largely resolve this ambiguity"* (Mr Whittaker, Technical Evidence, Paragraph 33 – 36). I support the sentiment of Mr Whittaker where in my opinion the provisions for Concept Plan Consents are appropriate.

Transpower New Zealand

34. Mr Chris Horne representing Transpower New Zealand Limited in paragraphs 18-21 outlines amendments to Assessment Criterion N9 to align with the BOI Decision. The S42A Report rejected this submission on the basis of a misunderstanding of the agreed position between Transpower New Zealand and TGH.
35. I have further considered the submission point identified by Transpower and accept that the amendments proposed are important for alignment with the BOI Decision. See Tracked Changes for Attachment A.

Scope of Submissions

Transpower New Zealand Limited

36. Mr Chris Horne representing Transpower New Zealand Limited in paragraph 17 of his evidence states *“Transpower’s legal advisors do not agree with the Councils opinion on the jurisdictional matter and will address that at the hearing as required if not resolved with Council staff or advisors prior”*. Subsequent communication by James Gardner-Hopkins representing Transpower has confirmed Mr Horne’s concern.
37. Putting aside the jurisdictional point which will be addressed through legal submissions, I have considered the merits of the relief sought from a planning perspective.
38. Mr Horne in paragraph 17 states *“the purpose of the Variation is to align the planning regime for Ruakura in the PDP with the outcome of the BOI Decision. That decision clearly has a requirement for Transpower to be an affected party for any earthworks infringing the rules in relation to National Grid transmission lines”*. I agree with Mr Horne’s interpretation of the BOI Decision and the appropriateness of providing a note to clarify that where resource consent is required due to proximity with the National Grid transmission lines then Transpower are appropriate to be identified as an affected party.
39. The relief sought by Transpower New Zealand as outlined by Mr Horne in paragraphs 12 – 21 of his evidence is supported. Whilst I acknowledge that the current situation provides for a note in the relevant City Wide section for Network Utilities and the Electricity National Grid Corridor, an additional reference within the section for Earthworks and Vegetation Clearance will avoid any ambiguity when undertaking earthworks within or near the Electricity National Grid Corridor. See Tracked Changes in Attachment A.

AgResearch and Waikato Innovation Park

40. Submission points received by AgResearch and Waikato Innovation Park in relation to Chapter 25.2 Earthworks and 25.13 Three Waters were considered out of scope and identified as such within the City Wide S42A Report.
 41. Mr Burton in paragraph 40 of his evidence for AgResearch and Waikato Innovation Park states *“these submissions seek to include the same or similar provisions for earthworks and three waters matters for a Concept Plan in the Knowledge Zone that apply where a Concept Plan under the Major Facilities Zone is concerned...the Consent Order issued on 27 April sets out amendments to the earthworks rules (Chapter 25.2)”* (Mr Dave Burton, Paragraph 40).
 42. Putting aside the jurisdictional point which will be addressed through legal submissions, I have considered the merits of the relief sought from a planning perspective.
 43. I have discussed the intent of the relief sought with Mr Paul Ryan (Senior Policy Planner for Hamilton City Council) who worked on the appeal relief provided to the Major Facilities Zone. Mr Ryan has confirmed that there is similarity between the two zones in terms of activities and scale. I conclude the following from these discussions.
 44. Council wishes to ensure that the actual and potential adverse effects of earthworks within the City are appropriately managed. Provided a Concept Plan Consent for the relevant Precinct prepared under Chapter 8 Knowledge Zone includes conditions managing the adverse effects of earthworks, there is no need for the restrictions set out in Rules 25.2.4.1 (f) and (g) to apply to activities authorised by such a Concept Plan Consent.
 45. Amending Rule 25.2.4.1 h) (ii) in the manner Mr Burton seeks would avoid doubling up the requirement to consider the effects of earthworks for those activities and would be consistent
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with the approach confirmed by the recent consent order relating to Rule 25.2.4.1 issued by the Environment Court. See Tracked Changes for Attachment A.

46. Mr Burton also sought the inclusion of the Knowledge Zone within Rule 25.13.4.6 Water Impact Assessments and putting aside the matters raised in paragraph 42 of my rebuttal I provide an assessment below.
47. The relief sought by Mr Burton would trigger a Water Impact Assessment for the Knowledge Zone where the creation of a new building for non-residential activities (other than industrial activities) with a gross floor area greater than 3,000m²; or providing residential accommodation for more than 13 additional people, not being accommodation for hospital patients. I have discussed this matter with Mr Ryan and concluded that the types of activities and scale of the sites for the Major Facilities Zone and the Knowledge Zone offer similarities. In my opinion it would be appropriate to provide the relief sought by Mr Burton.
48. I expect Council will manage activities in the Knowledge Zone in much the same way as it manages activities in the Major Facilities Zone. Therefore, I consider it appropriate that the same Water Impact Assessment triggers should apply in both zones in relation to new buildings for non-residential activities (other than industrial activities) and residential accommodation (not being accommodation for hospital patients). See Tracked Changes for Attachment A.

CONCLUSIONS

49. In summary, a number of amendments are supported to improve the proposed provisions to achieve the outcomes intended in terms of alignment with the BOI Decision. I have attached tracked change recommendations as part of this rebuttal to reflect these amendments for third party approval and non-notification, assessment criteria and submissions in relation to scope.
50. Where I have not made any amendments I have explained my rationale and my overall conclusions for those matters have not changed.

Sam Le Heron
22 July 2016

Attachments

Attachment A: Tracked Change Version
Attachment B: Figure 2-14 Land Use

Attachment A

Third party approvals and non-notification

3.7.3.2.2 Notification Rule

a) Except as provided for by sections 95A(2)(b) and (c), 95B(2) and (3) and 95C(1) to (4) of the Act applications for any Restricted Discretionary Activity identified with an asterisk (*) in the relevant zone chapter ~~section 4.5.4 of Residential Zones, 8.3.2, 8.3.3 and 8.9 of Knowledge Zone, 10.3, 10.6 or 10.7 of Ruakura Logistics Zone or 11.3, 11.6 or 11.7 of Ruakura Industrial Park Zone~~ shall be considered without notification or the need to obtain approval from affected persons except that applications for activities generating 1500 or more vehicle movements per day, Land Development Plans and for non-compliance with staging provisions (3.7.3.3.6) shall be limited notified to the following unless they have given their affected party approval:

- New Zealand Transport Agency, Waikato Regional Council and Waikato District Council.

Further to clause (a), all activities within the Inland Port (Sub Area A (Inland Port)- see Appendix 2, Figure 2-14) classified as a Restricted Discretionary Activity by Rule 25.8.3.14a) shall be considered without notification or the need to obtain approval from affected persons.

Comment [HCC1]: 34.03

Comment [HCC2]: 21.21, 34.03

Comment [HCC3]: Clause 16

~~3.7.3.3.4 Medium Density Residential Staging Rule~~

Comment [HCC4]: Clause 16

~~3.7.3.3.5 General Residential Staging~~

Comment [HCC5]: Clause 16

Transpower New Zealand

Appendix 1.3.3 N)

N9	<p>For the unloading and loading of containers, stacking containers, container stacks, operation of mobile plant associated with these activities and Light Towers, noise walls and fences greater than 2.5 metres high, the matters to which the Council shall restrict its discretion are limited to the actual and potential effects of these structures, buildings and activities on the safe and efficient operation and maintenance of the National Grid.</p> <p>In determining any applications for resource consent for these structures, buildings and activities, the Council shall have regard to the following matters:</p> <p>a) Any operational procedures and physical measures to ensure compliance with NZECP:34, including layout and allowable height limits for container stacking.</p> <p>b) Light towers shall ensure sufficient clearances in accordance with NZECP:34 are provided including any setback requirements for mobile plant required for maintenance and lamp replacement.</p> <p>c) Suitable mechanisms are in place to ensure that mobile plant and machinery moving in the National Grid Corridor can not infringe safe</p>
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Comment [HCC6]: 23.16

	<u>clearance distances specified in NZECP:34. This may include physical, operational or electronic measures.</u>
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Scope of Submissions – Transpower New Zealand Limited

25.2.4.2 Earthworks Within any National Grid Yard

a) Earthworks within a National Grid Yard shall:

- i. Be no deeper than 300mm within 2.2m of a transmission pole support structure or stay wire.
- ii. Be no deeper than 750mm between 2.2m and 5m from a transmission pole support structure or stay wire.
- iii. Be no deeper than 300mm within 6m of the outer visible edge of a transmission tower support structure.
- iv. Be no deeper than 3m between 6m and 12m from the outer visible edge of a transmission tower support structure.
- v. Not create an unstable batter that will affect a transmission support structure.
- vi. Not result in a reduction in the ground to conductor clearance distances as required by NZECP.

Provided that:

- vii. Earthworks undertaken by a Network Utility Operator are exempt from i to iv above.
- viii. Earthworks undertaken as part of agricultural or domestic cultivation, or repair, sealing or resealing of a transport corridor, footpath or driveway are exempt from i to iv above.
- ix. Vertical holes less than 500mm in diameter and more than 1.5m from the outer edge of a pole support structure or stay wire are exempt from i and ii above.

Note

1. Consultation with Transpower New Zealand Limited (or its successor) is advised when undertaking any earthworks under or adjacent to high voltage transmission lines. Transpower New Zealand will be an affected party for any earthworks not meeting the standards in Rule 25.2.4.2 where the earthworks occur within the Ruakura Structure Plan area. In other areas this will be determined in accordance with S95E of the RMA.

Comment [HCC7]: 23.08

Scope of Submissions – AgResearch and Waikato Innovation Park

25.2.4.1 Earthworks in All Zones

- (h) Rules 25.2.4.1(f) and (g) do not apply to: ...
 - (ii) Activities authorised by a consent for a Concept Plan for a Major Facility prepared under Chapter 17, or a Concept Plan Consent for a Precinct prepared under Chapter 8, or any other land use consent, that includes conditions managing the adverse effects of earthworks.

Comment [HCC8]: 38.06, 47.05

25.13.4.6 Water Impact Assessments

(a) A Water Impact Assessment, as described in Volume 2, Appendix 1.2.2.5, is required for any development or subdivision: ...

- (vii) Within the Major Facilities Zone and Knowledge Zone:
1. Creating a new building for non-residential activities (other than industrial activities) with a gross floor area greater than 3,000m²; or
 2. Providing residential accommodation for more than 13 additional people, not being accommodation for hospital patients.

Comment [HCC9]: 38.06, 47.05

Figure 2-14: Ruakura Structure Plan – Land Use

