

IN THE MATTER of the Resource Management Act 1991
(the **Act**)

A N D

IN THE MATTER of the Ruakura Variation to the Hamilton
City Proposed District Plan.

STATEMENT OF EVIDENCE OF TODD CYRIL WHITTAKER

Introduction

1. My full name is Todd Cyril Whittaker. I am currently the Director and Planner for Planning Works Limited and have recently held the role of Planning Manager for the Tauranga office of Harrison Grierson.
2. I have been working in the resource management sector for 22 years and over my planning career I have largely been domiciled in the Bay of Plenty. I have worked extensively in the Bay of Plenty and I have also worked across a number of regions including Taranaki, Gisborne, Waikato and Auckland. I have held a number of roles for various district and city councils and have worked for a wide range of private and public sector clients since working as a private planning consultant.
3. I have had considerable experience working on District Plan review processes including both private and council initiated plan change and variations. Examples of current and recent projects include 'Plan Your Town', Protected Trees, and Rural Subdivision plan changes for Matamata-Piako District Council, Airport and Mixed Use plan changes for Gisborne District Council, Airport Plan Change for Hamilton, Waikato and Waipa Councils, and large format retail and industrial business park plan changes for Waipa District Council.
4. I present this evidence in relation to the Ruakura Variation on behalf of the University of Waikato (the University). I have provided planning advice to the University since 2012 as part of the earlier District Plan review process and also through the more recent Board of Inquiry (BOI) hearing.

Qualifications and Code of Conduct

5. I hold a Bachelor of Resource and Environmental Planning from Massey University and I am a full member of the New Zealand Planning Institute(NZPI). I am an accredited NZPI member for the review and approval of new members to the institute and I am also serving my second term as a Board member of the NZPI. I am also a member of the Resource Management Law Association.

6. I have read the Code of Conduct for Expert Witnesses issued by the Environment Court in 2014. I confirm that my evidence and professional engagement and involvement with the Ruakura Variation has been in accordance with the Code of Conduct and my duties and obligations as a professional witness. With specific regard to my evidence, the matters which I address are within my area of expertise and I have not omitted any material facts that might alter or detract from the professions opinions that I express.

Scope of evidence

7. My evidence will only address those matters which are of direct interest to the University and which have formed the basis of the submissions and further submissions lodged by the University. This includes the University's further submission dated 15 July 2016 to the late submission from Hamilton City Council (HCC) dated 6 July 2016.

8. The specific topics areas that I will discuss are;
 - The broad context of planning provisions for the University campus;
 - My assessment and response to the recommendations in the S.42A report on the Knowledge Zone provisions including the late submission;
 - The objectives and policies for the Ruakura Industrial Zone and other planning provisions regarding Open Space that affect the University;
 - Broad commentary in terms of Part 2 of the Resource management Act 1991 (RMA).

9. I wish to record that in terms of my engagement by the University, I have not reviewed or assessed the broader planning issues and matters under consideration for the Ruakura Variation and therefore cannot offer an informed professional opinion or assessment outside those matters which I discuss in this evidence.

Executive Summary

10. In my opinion, the provisions for the Knowledge Zone as set out in the S.42A report prepared by Sam Le Heron and dated 8 July 2016 are generally acceptable. I have provided recommendations for some minor amendments which I consider will assist with the implementation of the Proposed Plan mechanisms.
11. With respect to the Ruakura Structure Plan provisions, I have reviewed the matters of direct interest to the University and I am satisfied with the recommendations outlined in the respective S.42A reports which predominantly adopt the outcomes from the BOI decision.

The University Campus and Broad context of planning provisions.

12. The University was established in 1964 on a 65 hectare site and today has a student population of 12,000 and employs around 2000 staff. It also has an annual turnover in excess of \$200m and therefore makes a significant contribution to the local and regional economy. The University not only serves an important role as a tertiary education facility, but it also plays a significant role as a key community focal point and place.
13. The background and established nature of the University campus is important in terms of the nature and type of planning provisions which may be considered appropriate for the campus. The University also holds an existing Concept Plan approval for the campus which was granted in 2009¹ with the University investing heavily in the long term planning of facilities and open spaces for the campus.

¹ It is noted that the legal status of the Concept Plan resource consent may well be questioned in light of the case law on the nature of resource consents for Concept Plans.

14. The University along with other stakeholders within the Knowledge Zone were given the opportunity to engage with HCC with respect to the merits of establishing a common Knowledge Zone through the earlier Proposed Plan review process. The University was keen to support the Knowledge Zone concept subject to there being appropriate recognition of the established nature of the campus and the broad range of education, community and technical activities that are accommodated within the University facilities and grounds.
15. In my opinion, an appropriate planning framework for the University campus is one that;
 - Recognises the existing amenity and presence which the University has within the community and enables a wide range of activities including education, community activities and technical research and innovation;
 - Supports the mechanism of a Concept Plan for comprehensive and long term planning while enabling a wide range of Permitted Activities subject to appropriate performance standards;
 - Provides appropriate standards to manage development around the external boundaries of the campus being the interface with surrounding residential areas.
16. In reviewing the notified version of the Ruakura Variation and in discussions with Council staff I was originally concerned with some aspects of the proposed rule mechanisms. I was of the opinion that the rule mechanisms were neither efficient or effective in enabling appropriate activities on the University campus and I assisted the University with making submission on the proposed provisions.
17. In my opinion, the revised provisions for the University campus which form a sub-set of the Knowledge Zone provisions are now largely acceptable and will promote positive and appropriate environmental outcomes.

S.42A Report Recommendations

18. I have reviewed the S.42A recommendations for the Knowledge Zone which respond to the submissions made by the University and other submitters with landholdings within the Knowledge Zone.
19. I support the recommendations and consider that the proposed amendments adequately resolve the matters raised in the submission by the University apart from those specific matters discussed below and which I have summarised in Attachment A to the evidence.

Purpose Statement

20. Further details are provided to describe the existing character of the various precincts within the Knowledge Zone. A new paragraph 8.1(h) refers to development being *encouraged to occur through a comprehensive consent applications for concept development consents*
21. I support these amendments noting that para.8.1(h) does not make a Concept Plan Consent a mandatory process.

General Objectives and Policies for the Knowledge Zone

22. Some minor wording changes are proposed to Objective 8.2.1 and the associated policies 8.2.1(a) to 8.2.1(e). A new Policy 8.2.1(g) is proposed regarding long term planning and integration of development within Precincts A, B and D with the respective Concept Plan Consent.
23. I support the minor wording amendments however I am not clear on the need or purpose of Policy 8.2.1(g). This policy seems to require that development should comply with the granted Concept Plan Consent however any consent holder would be obliged under the RMA to comply with the terms and conditions of their consent regardless of this policy. If the policy is referring to other activities which may be permitted or approved by way of another resource consent mechanism, then the wording would require some amendment and clarification.

24. In my opinion, the current wording may also be misinterpreted to mean that a Concept Plan Consent must exist as a pre-requisite for any development. Given that Policy 8.2.6(g) provides a similar policy specific to the University, then it may be considered that there is no conflict with the plan mechanisms for the University.
25. In my opinion, the purpose of Policy 8.2.1(g) should be clarified or alternatively the policy should be deleted.

Objectives and Policies for the University

26. Objective 8.2.6 and Policies 8.2.6(a) to 8.2.6(e) are recommended to be retained as notified. A new Policy 8.2.6(f) is proposed that refers to the submission of a *Concept Plan* as part of an application for a Concept Plan Consent. Policy 8.2.6(g) seeks to encourage long term planning through the use of applications for Concept Plan Consents.
27. In my opinion, the new Policy 8.2.6(f) does not add value to the planning framework and may in fact confuse matters by introducing an additional reference to the Concept Plan. In my opinion, the policy also reads much like a rule mechanism for information requirements and overlaps with new Policy 8.2.6(g). In my opinion, Policy 8.2.6(g) can also be improved by deleting reference to ... *the use of applications for Concept Plan Consents* such that the reference is to the actual granted consent and not to the *application* which has limited status.
28. I support and endorse Policy 8.2.6(g) with minor amendment and in my opinion Policy 8.2.6(f) should be deleted.

Late Submission and Concept Plan Consent

29. I am familiar with the case law regarding the approval of Concept Plans and have had experience in applying the findings of these decisions to plan provisions. I understand that the Concept Plan Consent will authorises the actual development and this may be regarded as a superior planning mechanism than approving a plan to which subsequent activities must be assessed to ascertain whether or not a further resource consent is required.

30. That said, I am also aware of many situations whereby significant infrastructure funding and staging issues need to be determined and this process may involve multiple agencies and landowners. The concept plan approach has been used as an intermediary step between the zoning and associated development of plan provisions and then a final development consent. This step can often enable negotiations and agreements to be reached prior to the final development consent being considered and determined.
31. With respect to the University campus I consider that there are no infrastructure or multi agency issues affecting development on the campus and I consider that amending the rule provisions and consenting regime to a Concept Plan Consent is appropriate. In my opinion, a range of Permitted Activities is also necessary for the University such that the Concept Plan Consent is not a mandatory planning rule. In my opinion, the University should be able to rely on a Permitted Activity framework or the Concept Plan Consent as both equally valid planning mechanisms to progress any future development on the campus.
32. As a result of the late submission, Rule 8.3.1(a) is proposed to be amended to refer to the specific activities which may comprise a Concept Plan Consent. The Restricted Discretionary activity status is proposed to be retained.
33. I support the proposed amendments subject to the rule mechanism which specifically apply to the University for Permitted Activities also being retained. In this way, the University may well continue to prepare and advance its own future development plans which could form the basis of a Concept Plan Consent. Alternatively it may undertake appropriate development on the campus in accordance with the Activity Status tables and subject to the appropriate performance standards.

Activity Status Tables for the University

34. The key amendments since the notified version of the Ruakura Variation are:
 - (i) Clarification of the dual plan rule mechanisms for either a Concept Plan Consent or Permitted Activity rule provisions to enable appropriate development on the campus;

- (ii) Introduction of a 150m² restriction for permitted development not located within an Interface Area.

- 35. The opportunity for the University to retain the ability to carry out appropriate development on the campus as a Permitted Activity has been an important principle which has always been central to the University submissions. While the Concept Plan Consent process may be adopted and have merit, it is my opinion that the University should not be held to such a mechanism which would in effect require all activities on the campus to be approved by way of resource consent. This in my opinion would not be an efficient or effective approach to the rule provisions for the University.
- 36. The initial drafting of the notified Ruakura Variation was very ambiguous in terms of the Concept Plan mechanisms and how these integrated with the Permitted Activity provisions. In my opinion, the amended provisions provided in the S.42A report largely resolve this ambiguity however there may still be a residual issue in terms of implementation if the same activity is subject to two competing activity status provisions. In such cases, the more onerous activity normally prevails.
- 37. In my opinion it would be appropriate to remove any ambiguity in its entirety by adding a note under the activity status on page 8-11 as follows (or other suitable wording):

5. Activities within the Knowledge Zone may be subject to the provisions for a Concept Plan Consent and may also have a distinct and separate activity status. In such cases, the distinct and separate activity status can be retained without the activity status or provisions of a Concept Plan Consent affecting or applying to the activity.

Building Footprint Threshold

38. The S.42A report recommends a 150m² footprint threshold to manage the scale of any development on the campus which is not located within the Interface Area (and which could otherwise be considered a Permitted Activity). While I have considered the need for and merits of setting this threshold, I can accept that there may be a scale of development within the campus which should be managed in terms of the visual and amenity values of the University and surrounding locality.
39. The 150m² threshold does provide a practical allowance for smaller alterations or new buildings which may not be part of an approved Concept Plan Consent and, as such, I am not opposed to this new rule mechanism.

General Standards, Matters of Control and Assessment Criteria

40. The provisions are largely unchanged since the notification and I do not have any substantive comments. I note that there appears to be an administrative error with Rule 8.6.3 which refers to Rule 8.6.2(b). Rule 8.6.3 concerns site permeability and Rule 8.6.2 refers to a height plane which appears to have no relevance to the site permeability rule. This will need to be reconsidered.
41. The University has also submitted that the Matters of Discretion (Rule 8.9) for activities which have a larger footprint than 150m² should correctly refer to Section C (Knowledge Zone) rather than Section N Ruakura. This appears to be supported in the S.42A report (page 32) and therefore it may be an oversight that this has not been corrected in the amended version of the Knowledge Zone provisions.

Ruakura Provisions

42. The University has participated in the Board of Inquiry process and has had good engagement with Tainui Group Holdings (TGH)/Chedworth Properties Limited (CPL) and Hamilton City Council through the development of the plan review and plan change process.

43. The University has maintained a position of acceptance and support for the Ruakura Structure Plan, acknowledging that it will provide tangible and significant benefits to Hamilton City while at the same time changing the existing character and sense of place around the University through the urbanisation process. The University has made submissions to the various plan review process to ensure that any adverse effects on the University and the wider environment are appropriately managed and mitigated within this context.
44. The University has made submissions on the current Ruakura Variation that the findings of the BOI process should largely be adopted into the Proposed District Plan given the extensive and comprehensive amount of evidence and assessment committed to this process which led to the robust findings of the BOI. I support this principle and I understand that this has been a central thesis of the Ruakura Variation which has now been confirmed in the S.42A reports.

Objective 3.7.2.1

45. TGH/CPL made submissions to Objective 3.7.2.2 to overturn the premise of the objective and to amend it to allow activities if a *significant* level of environmental effects was not breached. This was opposed by the University and was subject to a number of further submissions².
46. In my opinion, the overall planning framework for the Ruakura Structure Plan is enabling and Objective 3.7.2.2 as notified, provides an appropriate and balanced objective when viewed in the context of the full package of planning provisions for the Ruakura Structure Plan including the associated policies and provision that support the urbanisation of this area.

² It is noted that the University further submission incorrectly referred to Objective 3.7.2.1. The discussion within the further submission is specific to Objective 3.7.2.2.

47. The S.42A report recommends that the existing Objective 3.7.2.2 be upheld given the BOI decision and that the objective is both necessary and appropriate given the planning provisions for the Structure Plan. I very much support retention of the existing Objective 3.7.2.2 and consider that the alternative wording promoted by TGH/CPL would lead to inappropriate outcomes, particularly when the objective is considered as a guiding principle for any resource consents for activities which do not comply with the performance standards.
48. In my opinion, Objective 3.7.2.2 is a critical objective for managing the effects of the Ruakura Structure Plan and provides an appropriate balance of enabling urbanisation within appropriate environmental guidelines.

Provision and Location of Open Space

49. One of the key areas of interest for the University is the interface with the Ruakura Structure Plan and how the provision of open space and bulk and location controls will provide effective management of the potential effects on the sense of place and character of the University and surrounding locality.
50. The University has made further submissions on the submissions by TGH/CPL to Clause 1.2.2.25(g) - Requirements for Land Development Plans, 3.7(f) - Vision Statement for the Ruakura Structure Plan, and 3.7.1 – Structure Plan Components.
51. The TGH/CPL submissions in board terms seek greater flexibility in undertaking the final layout, design and construction of the Open Space areas. In my opinion, the Proposed Plan should provide some opportunity for practical refinement of final design measures to give effect to the Structure Plan however certainty must also be provided that the level and effectiveness of any mitigation is maintained.
52. With regard to the original submission points, and the further submissions of the University and others, I note that the S.42A report recommends;-
- No change to Clause 1.2.2.25(g) such that location and dimension of open space must still be consistent with the purpose of the Open Space Zone and Ruakura Structure Plan,

- No change to Vision Statement 3.7(f) regarding the constituent parts of the Ruakura Structure Plan map series, and
- Minor amendments to 3.7.1.8 – Open Space Network.

53. I note that the boundaries of the Open Space areas have some specificity given the provision of the explanatory note 3.7(m) which states that, .. *The Ruakura Open Space Zone is fixed on Figure 2-14*. In my opinion this is appropriate given the necessary mitigation offered by the Open Space Zone.
54. As a minor point, it appears that 1.2.2.25(g) has some erroneous wording which should be corrected through the decisions process.
55. In my opinion, the recommendations contained within the S.42A report are acceptable and will in my opinion provide appropriate outcomes both for the proponents of the Structure Plan and the University.

Part 2 and Conclusions

56. There has been considerable investment in terms of time, cost and resources into the preparation, assessment, debate, review and determination (in part) of the appropriate provision for both the Knowledge Zone provisions and the Ruakura Structure Plan provisions.
57. The University has maintained an active interest and participation in the planning process as it is directly affected by the Knowledge Zone provisions and the University campus interfaces directly with the Ruakura Structure Plan.
58. With respect to the Knowledge Zone provisions I consider that these will provide an effective and efficient set of planning provisions which will support a wide range of educational, community and research activities while maintaining and promoting high levels of amenity which form part of the character of the University and surrounding locality. I have recommended some minor changes to the provisions of the Knowledge Zone and consider that these will ensure that the plan provision can be administered effectively.

59. The scale of the Ruakura Structure Plan is significant and this will change the sense of place and character north of the University campus. This is inevitable in any urbanisation process of this scale and magnitude.
60. The Ruakura Structure Plan raises a number of significant environmental and infrastructural challenges which have been addressed with the BOI hearing and determinations and the University is generally comfortable with the adoption of the BOI decisions into the Proposed Plan.
61. In my opinion, the plan provision for the Ruakura Plan Change do need to provide certainty to the long term investment and development of the various stages and precincts that comprise the Structure Plan. However certainty must also be provided to the nature and effectiveness of the mitigation measures which have been integrated into the Structure Plan and which serve to protect the interests of existing communities and landowners around the Structure Plan area.
62. The University submissions on the Ruakura Structure Plan have a relatively narrow focus and in my opinion, the recommendations outlined in the S.42A reports are appropriate. I support the retention of the key Objective 3.7.2.2 which sets the guiding principle for protecting the amenity values of surrounding communities and facilities while recognising that a urbanisation process will occur. Furthermore, I support the need for certainty around the location and extent of the Open Space Zone which provides a key mitigation measure for the interface of the Structure Plan with the surrounding community.
63. Insofar as the matters which I have reviewed and have provided a professional opinion on, I am satisfied that the Ruakura Variation will enable sustainable management in accordance with the purpose of the RMA subject to the minor changes which I have outlined in this evidence and which are summarised in Attachment A.



Todd Whittaker
MNZPI

15 July 2016

Appendix A

Summary of Recommendations in Response to S.42A Reports:

Plan Provision	Recommendation
Policy 8.2.1(g)	Clarify purpose of Policy 8.2.1(g), reword or delete. Ensure policy is not misinterpreted to read that a Concept Plan Consent is required as a pre-requisite for all development.
Policy 8.2.6(f)	Delete.
Policy 8.2.6(g)	Amend the policy to read. <i>Encourage long term planning for the University which integrates buildings, facilities and open space through the use of applications for Concept Plan Consents.</i>
New Rule Note under Activity Status Table pg 8-11.	Insert. <i>5. Activities within the Knowledge Zone may be subject to the provisions for a Concept Plan Consent and may also have a distinct and separate activity status. In such cases, the distinct and separate activity status can be retained without the activity status or provisions of a Concept Plan Consent affecting or applying to the activity.</i>
Rule 8.6.3	Correct or delete reference to Rule 8.6.2(b)
Rule 8.9(a)xxvii	Replace Assessment Criteria <i>N Ruakura</i> with <i>C Knowledge Zone</i> .
1.2.2.25(g)	Correct erroneous wording.