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 Reply Statement by

CRAIG SHARMAN

Dated: 16 October 2023

Taupō District Plan

CHANGES - BUNDLE ONE

Preamble

1) My full name is Craig Melville Sharman. My qualifications and experience have been set out in my Section 42A Report dated 28 July 2023.

2) I reconfirm that I am familiar with the Environment Court's Code of Conduct for Expert Witnesses, contained in the Environment Court Practice Note 2023, and I agree to comply with it.

3) The purpose of this reply statement is to provide a written right of reply as requested by the panel of independent hearing commissioners (the panel). In particular this reply statement and attachments respond to the sixteen specific requests from the panel and provides a means of reporting back to the panel following several discussions with submitters following the hearing, and in consideration of material subsequently provided by those submitters. This includes Transpower New Zealand Limited (submitter 110), the 'energy cohort' of submitters (being submitters 57, 68, 84, 93 and 110), and the 'rural cohort' of submitters (being Horticulture New Zealand submitter 26, Federated Farmers of New Zealand submitter 91 and Cheal Consultants submitter 79).

4) The attachments to this reply statement include material provided by the above submitters; and tables and material prepared by the author as part of the responses to the panel. These attachments are as follows:
    - Attachment A – Commissioner Panel Requests – Plan Change 42
    - Attachment B – Plan Change 42 S42A Reply Statement Recommended Provisions
    - Attachment C – Application Table of the Seven Criteria for Inclusion within Rural Lifestyle Environment
    - Attachment D – Transpower NZ Ltd Post-Hearing Response
    - Attachment E – Table of Primary Submitters for 4b.2.1 Vehicle Movements and Further submitters on Waka Kotahi (113) submission points 113.5 and 113.11 (noise control overlay rules) and submission point 113.6 (Rule 4b.2.1 vehicle moments)
    - Attachment F – Updated Provision Cascade from Section 32 Evaluation Report
    - Attachment G – Rural Lifestyle vs General Rural Provisions Applying to Centennial Drive.

Panel Requests

5) The table below records sixteen specific requests from the panel seeking responses or clarifications from the section 42A planner. This table is also attached as Attachment A, and for ease of reference for the panel these requests are numbered 1 to 16. The nature and location of the response is then also listed in the table below.

6) The below discussion includes section 32AA Resource Management Act 1991 (RMA) commentary also in support, where further amendments to Plan Change 42 (PC42) provisions are proposed within this reply

statement. A request was also made by the panel for 'wayfinding' in this reply statement to direct the panel to key parts of the Section 32 Evaluation Report prepared in support of the notification of PC42. As shown within Attachment B, further amendments are shown in purple text with strikeout or underlining to indicate amendments. For clarity, the acronyms RLE (Rural Lifestyle Environment) and GRE (General Rural Environment) are used throughout this reply statement.

Panel Request Ref.	Panel Request	Nature of Response
1	Section 32AA reporting needed to support section 42A report amendments to district plan provisions (to be proportional to the scale and significance of the amendment proposed), in the form of a report.	Provided throughout this report topic by topic, and within the Energy Sector Agreed Response (on Council website), the Waka Kotahi evidence statements and Attachment D, the Transpower NZ Ltd response.
2	Update the 'provision cascade' of objectives and policies contained within the Section 32 Evaluation Report, to reflect section 42A report recommended amendments.	See Attachment F - Updated Provision Cascade from s32 Evaluation Report.
3	Prepare a table comparing the Rural Lifestyle Environment provisions (as applied to Centennial Drive) against the General Rural Environment provisions, to 'test' what the range of permitted activities are in the specific context of Centennial Drive RLE locality.	See Attachment G – Rural Lifestyle vs General Rural Provisions Applying to Centennial Drive.
4	Prepare a statement or table to replace paragraph 92 of the section 42A report (which reports on the various submitter requests for additional Rural Lifestyle Environment properties, to more clearly articulate (and to correct paragraph 92) how the RLE criteria was applied to these properties in preparing section 42A recommendations.	See discussion within this report under heading 'Rural Lifestyle Environment Inclusion' below.
5	Prepare a response to the rationale adopted for the 200 metre setback for 'buildings housing farmed animals' (in response to the evidence from Sarah Hunt).	See discussion within this report under heading 'Rural Cohort Provisions' below.
6	Prepare a response to the various Cheal Consultant provision points (presented in evidence from Sarah Hunt).	See discussion within this report under heading 'Rural Cohort Provisions' below.
7	Invitation to consider any further amendments to objectives and policies in response to the Te Kotahitanga o Ngāti Tūwharetoa evidence (presented by George Asher).	See discussion within this report under heading 'Te Kotahitanga o Ngāti Tūwharetoa evidence' below.
8	Contributing to the broader Plan Change 38 'energy cohort' discussions, in respect of energy-related provisions (and reporting back on outcomes in the context of PC42).	See discussion within this report under heading 'Energy Cohort Provisions' below.

9	Providing analysis of the national planning standards definitions of 'rural industry' and 'primary production' and the 'flow on' effects of incorporating these terms into the rural provisions.	See discussion within this report under heading 'Rural Cohort Provisions' below.
10	Related to above, respond to the merits of splitting 'home businesses' from 'commercial and industrial' within the rural provisions and study activity status given the 'avoid' direction within the associated policy applying to not all of these activities.	See discussion within this report under heading 'Rural Cohort Provisions' below.
11	Provide a response to the various Transpower NZ proposals for provisions and points (separate to the wider energy cohort discussions).	See discussion within this report under heading 'Transpower New Zealand Limited Provisions', and Attachment D – Transpower NZ Ltd Post-Hearing Response.
12	Analyse the NZ Agricultural Aviation Association scope available in the context of the further submission received from the NZ Helicopter Association relief on the topic of frost fans. Related is whether the use of frost fans is implicit in the national planning standards definition of 'primary production'.	See discussion within this report under heading 'Rural Cohort Provisions' below.
13	Panel requested a response on 4b.2.1 vehicle movements standard and the interpretation of the s42A addition to the forestry exception in the context of how existing use rights would apply.	See discussion within this report under heading 'Vehicle Movements Standard' below.
14	Panel requested a list of primary submitters on 4b.2.1 vehicle movements, and a list of further submitters on Waka Kotahi OS113.6.	See Attachment E – Table of Primary Submitters for 4b.2.1 Vehicle Movements and Further submitters on Waka Kotahi (113) submission points 113.5 and 113.11 (noise control overlay rules) and submission point 113.6 (Rule 4b.2.1 vehicle moments).
15	Panel requested a list of further submitters on the Waka Kotahi submission on the noise control overlay submission point.	See Attachment E – Table of Primary Submitters for 4b.2.1 Vehicle Movements and Further submitters on Waka Kotahi (113) submission points 113.5 and 113.11 (noise control overlay rules) and submission point 113.6 (Rule 4b.2.1 vehicle moments).
16	Panel requested advice on adequacy of transport network to support RLE at Palmer Mill Road, primarily from the Abley Report.	See discussion within this report under heading 'Adequacy of Transport Network' below.

Discussion

7) The sections that follow are structured around a series of topic headings. The panel requests are numbered 1 to 16 as per **Attachment A**, and that numbering is used within the sections that follow to demonstrate that the various panel requests have been responded to. The topic headings below are:

- Rural Lifestyle Environment Inclusion
- Submitter 74 Hawkins
- Centennial Drive Comparisons Between RLE and GRE Provisions
- Energy Cohort Provisions
- Transpower New Zealand Limited Provisions
- Rural Cohort Provisions
- Te Kotahitanga o Ngāti Tūwharetoa evidence
- Adequacy of Transport Network
- Waka Kotahi Provisions
- Vehicle Movements Standard

Rural Lifestyle Environment Inclusion

8) Panel request 4 is to 'prepare a statement or table to replace paragraph 92 of the section 42A report (which reports on the various submitter requests for additional Rural Lifestyle Environment properties), to more clearly articulate (and to correct paragraph 92) how the RLE criteria was applied to these properties in preparing section 42A recommendations.' **Attachment C** is a table containing a comprehensive re-assessment of the application of the seven RLE criteria to properties.

9) A key part of the formulation of PC42 was the creation of two 'environments', being General Rural Environment (GRE) and Rural Lifestyle Environment (RLE), and identification of a robust 'environment' boundary between them. This process was undertaken by Council officers and commenced with a GIS exercise based on analysis of property sizes throughout the Rural Environment, to identify existing smaller (four hectares and less) properties, and the location and extent of 'clusters' of these smaller properties. Following this initial step, a series of 'suitability criteria' were then applied with some properties being removed as being unsuitable as a result. The resulting preliminary RLE boundaries were then studied in detail and adjusted to 'regularise' the RLE boundaries to be a cohort boundary to apply district plan provisions to (resulting in minor adjustment to the RLE boundaries, with some properties added as a result to achieve practical RLE boundaries).

10) These same seven criteria for property inclusion within RLE have been re-applied in preparing this reply statement. **Attachment C** sets out the evaluation of the seven criteria as applied to the various properties where, via submissions received, parties have sought inclusion within the RLE (acknowledging that some submissions sought multiple properties to be included, and for completeness include RLE localities where submitters sought retention within RLE). **Attachment C** is based on colour-coding to indicate compliance

(shown as green) or non-compliance (shown as red) for each property against the criteria, with comments on the specific details.

11) I also acknowledge an error in the section 42A recommendations (at paragraph 92) and the summary of recommendations spreadsheet in response to submission point 32.1, Unicorn Pacific Trust. It was stated that the property was rejected for inclusion within RLE because it was within land covered by 'the geothermal rule' meaning 4e.15 and therefore was considered unsuitable under the criteria applied. This was clarified during the hearing (by Ms Kirsteen McDonald) that the portion sought to be rezoned as RLE is not covered by the 4e.15 geothermal rule. This has been corrected in the re-evaluation within Attachment C.

12) It was evident during the hearing that submitters consistently interpreted the first RLE inclusion criterion of 'there is a presence or existing clusters of smaller/lifestyle lots' more loosely than did Council officers when undertaking the above evaluation process. The meaning of this phrase as applied by Council in formulating PC42 and in determining the RLE 'environment boundary' was whether the property itself is characterised by containing a 'presence' of smaller/lifestyle lots or is part of a cluster. This criterion was considered in conjunction with the third criterion of 'lots are smaller than 30 hectares (unless completely surrounded by smaller lifestyle blocks)'. The outcome through the Council identified process was a larger property in excess of 30 hectares that was adjacent to a cluster of smaller/lifestyle properties was rejected, unless it was almost entirely surrounded by smaller lifestyle blocks). Submitters during the hearing presented positions that downplayed the presence or absence of smaller/lifestyle lots within the property itself, and downplayed the size of the property itself, and instead focused on proximity to nearby clusters of smaller/lifestyle lots.

13) I acknowledge that the RLE inclusion criteria should have been more clearly and carefully articulated and are somewhat open to interpretation. I consider that consistently applying the RLE inclusion criteria to prospective properties is important, and hence Attachment C represents a re-assessment of the criteria to the submitter requests for inclusion of properties to provide confidence to the panel of the robustness of the evaluation and section 42A recommendations in this regard.

14) Of similar importance is the fundamental need for RLE land to be identified to provide housing choice to district residents, and to provide a contribution to housing supply within the district. But as articulated within the Section 32 Evaluation Report and plan change supporting material, identifying RLE land is not necessary to meet projections for housing demand, nor would it be an efficient or effective means of providing housing supply. To the contrary the plan change strongly articulates the purpose of identifying RLE locations is to relieve pressure for rural housing within the GRE (given the primary production and energy 'working/productive environment' that it is) and to identify RLE around existing clusters of smaller/lifestyle properties within the rural environment of the district (to recognise existing land use).

15) Whilst the Property Economics Report (July 2019) that is Appendix 5 to the Section 32 Evaluation Report recognises that RLE will make a contribution to district housing supply, this is not supply that is necessary to meet the district's housing needs and rather is about housing choice rather than meeting a shortage in supply. This is further addressed in the supplementary statement of Mr Phil Osborne dated 22 September 2023 (as uploaded to PC42 website). Whilst expressed in the context of submitter 74 Hawkins and the Te Tuhi Precinct proposal, at paragraph 3.9 of Mr Osborne's statement it is clear that even with the updated household growth projections (from the district's Housing Strategy work programme) that the RLE capacity enabled throughout PC42 is (and remains) sufficient to meet this demand. At paragraphs 3.17 to 3.18 of Mr Osborne's statement this is further expanded upon (in the context of submitter 74 Hawkins and the 387 Whakaroa Road property but with wider applicability) that PC42 as notified provides for 380 additional properties within the identified RLE locations, and in locations characterised by existing levels of rural residential development.

16) I concur, and in consideration of the in excess of 1,000 hectares of additional land that submitters have collectively sought be included within RLE, there is no housing supply driver for this, nor do these locations meet the seven criteria for RLE identification (as demonstrated by Attachment C). Therefore the site-specific merits for RLE inclusion are weak, and the potential displacement effect of fragmenting the future rural lifestyle development around a much wider dispersion of the district's rural environment is precisely the outcome that PC42 was formulated to avoid. It is apparent from analysis of the submitter requests for RLE inclusion that the majority of the additional land would 'fill the gaps' between the RLE locations identified by PC42. This would result in RLE land far in excess of any supply/demand dynamic, lead to 'ribbon development' along the district's rural roads to the north and west of Taupō township, lead to displacement of rural lifestyle development from consolidated locations, and lead to intensified potential reverse sensitivity effects given the additional areas proposed by submitters represent large areas of what PC42 proposed as GRE and with the overlay of the known geothermal fields (as represented by Areas X and Y and subject to the geothermal residential rule 4e.15).

17) I do not concur with the submitters presenting arguments for RLE inclusion on the basis that farming viability is under pressure due to wider economic and market factors (for example, submitter 32 Unicorn Pacific Trust (1450 Mapara Road), submitter 77 E.F. Deadman Ltd (40 Kaiapo Road)), nor do I consider that PC42 should be 'framed' as a response to broader economic trends in farming viability or as a response to nitrogen discharges into the lake (which is managed through the Waikato Regional Plan). Whilst I acknowledge that submitters (for example, submitter 77 E.F. Deadman Ltd, submitter 74 Hawkins and submitter 92 Samuel Gray in particular) made assertions during the hearing that individual properties were 'distinctive and exceptional' and should be included in the RLE. I consider this served to conflate the point submitters made during hearing presentations about 'proximity' to existing rural lifestyle development, with the RLE inclusion criteria which was whether the property in question itself was characterised by the presence of existing rural lifestyle development.

18) For the above reasons I do not recommend additional properties be included within the RLE (from the recommendations in the Section 42A report dated 28 July 2023).

Submitter 74 Hawkins

19) Council officers submitted to the panel and uploaded to the Council website four supplementary statements of evidence regarding submitter 74, as follows:

- Additional Economic Advice for Submitter 74 - Plan Change 42 – Mr Phil Osborne
- Landscape Advice Note for Submitter 74 – Mr Simon Button
- Geotechnical Letter for Submitter 74 – Ms Maddison Phillips
- Legal Advice re Submitter 74 Scope Plan Change 42 – Mr James Winchester

20) With the exception of the legal advice letter from Mr Winchester, the other statements represent a 'gap analysis' for 'fatal flaws' of the Te Tuhi Precinct Plan proposal but are not full 'merits assessments' given the limited scope of the current process and the incomplete nature of the submitter's proposals. The statements highlight various matters to be addressed, particularly around mana whenua engagement and cultural values (which then intersects with the landscape assessment) but are likely resolvable matters given time and resourcing to do so. I have reviewed all of these statements and comment as follows on the relief sought by the submitter and address the 'preferred relief' being the development represented by the Te Tuhi Precinct Plan.

21) I concur with the legal advice provided by Mr Winchester referred to above, and consider the preferred relief as articulated by the submitter to be outside of the scope of PC42 (see paragraph 4 of the 1 September legal advice letter). I consider the available scope to be whether the property be included within GRE or RLE, and to be about the activity status of the plan provisions that apply to the property. Both Council and submitter 74 representatives concur that the submission is 'on the plan change' and I concur with that view. The parties do not concur that in terms of 'reasonable foreseeability and fairness' the submission provides scope to consider the submitter's 'preferred relief' of the Te Tuhi Precinct Plan and the district plan provisions agreed with in the joint witness statement (see paragraphs 7 to 13 of the 1 September legal advice letter).

22) Mr Gardner-Hopkin's contention at paragraph 6 of the 'Second Memorandum on behalf of Steve Hawkins' dated 21 August 2023 that the preferred relief is 'more restrictive' than what was sought in the original submission is a contention I disagree with. I do not consider being more restrictive is particularly relevant to the 'reasonable foreseeability and fairness' scope question, but in any event in my view it is an incorrect statement. The Te Tuhi Precinct Plan presents a development with a higher density of dwellings (less than two hectares in size) than would be provided for within the RLE. I consider that the precinct plan presents a much denser development form than what the PC42 RLE provisions provide for. The merits of this would need to be tested through a separate statutory process and consider amongst

other things the location of the property within an Outstanding Landscape Area and the suitability of the landscape and cultural proposals.

23) During the hearing, the imposition of RLE to the property was described as a 'fall back' position. An important consideration though is that given a criterion for RLE inclusion was the absence of overlays (Outstanding Landscape Areas, Significant Natural Areas and others) and that the RLE provisions do not adequately integrate Outstanding Landscape Area provisions (as the intention is that there is no overlap between RLE properties and Outstanding Landscape Areas with the exception of one location at Bonshaw Park of already developed rural lifestyle land use). The PC42 GRE provisions have a stronger integration with the Outstanding Landscape Area provisions (for example 4b.1.8, 4b.2.5 and 4b.2.6) given the extent of spatial overlap that exists between GRE and Outstanding Landscape Areas. Whilst this 'fall back' position is clearly within the scope of the submission, it is not relief that I support given the unsuitability of the submitter's property for inclusion within the RLE.

24) As I expressed during expert conferencing on the submitter 74 proposals, whilst agreement was reached on a framework of proposals to incorporate the Te Tuhi Precinct Plan into the Rural Environments provisions, there remained a concern that a statutory conflict was being established that a proposal of the nature of the Te Tuhi Precinct could be granted resource consent in a future process given the wider suite of Taupō District Plan objectives and policies in respect of Outstanding Landscape Areas. Whilst conferencing was able to agree a set of plan provisions that created a framework for the Te Tuhi Precinct, those provisions were not in my opinion able to resolve the wider question on whether the Te Tuhi Precinct Plan development (or a similar development) would be capable of being granted a resource consent given this wider suite of objectives and policies and section 6 RMA. The provisions agreed in conferencing appeared to presume that the landscape effects were manageable to an acceptable extent of effects and that future consents could accordingly be granted. This proposition expressed during conferencing was one that the Council representative Ms Hilary Samuel and myself considered was unresolved and 'still in play'. The concern I held and still hold is that if the submitter's property was included within the RLE with the Te Tuhi Precinct Plan provisions as per the joint witness statement, that the subsequent development may not be capable of being granted consent pursuant to section 104 RMA. Further that the inclusion of the submitter 74 property within the RLE would therefore create an expectation of a successful consenting process that would then not be able to be fulfilled by the subsequent consenting process.

25) The activity status for such future applications would be discretionary in many cases, due to provisions such as 4b.5.10 which states '*any subdivision of land where more than twelve (12) allotments share a single common access in the General Rural Environment or Rural Lifestyle Environment is a discretionary activity*'. Similarly, 4b.3.3 within the Operative District Plan sets out that 'any subdivision of rural land that is located within an Outstanding Landscape Area… where the resulting lots are 4 hectares or larger' is a discretionary activity. The similar provision within PC42 is 4b.5.8 'Subdivision – Outstanding

Landscape Areas' which is a non-complying activity if the resultant lots are less than ten hectares in size. Whilst in conferencing it was proposed that the provisions could be amended to avoid a non-complying activity status, the broader position adopted during formulation of the PC42 position is that subdivision within Outstanding Landscape Areas involving lots of less than ten hectares in area should generally be discouraged as being 'inappropriate subdivision, use, and development'. Whilst any consent applicant could present a case as to why a specific application should be granted consent, the point of contention during conferencing is that the Te Tuhi Precinct provision proffered by the submitter's agents appeared to presume that such a level of development would be a suitable outcome on the submitter's property, without any 'testing' of the merits of that proposition. I retain that concern and consider that the proposition is instead 'tested' through a private plan change or resource consent process, rather than PC42.

26) I have included the submitter 74 property at 387 Whakaroa Road within the Attachment C table, for consistency and I have applied the seven RLE inclusion criteria to the property. My finding is that three criteria are not complied with being: the property size is well in excess of 30 hectares, the presence of an Outstanding Landscape Area across the whole of the property, and that the property is not part of a cluster of existing rural lifestyle development (being instead a 344 hectare rural property used for pastoral use). I accept the matter of inclusion of the submitter's property as RLE is clearly within the scope of the submission, but the recommendation remains to retain the property as GRE. Inclusion of the property as RLE would enable circa 100 rural lifestyle properties to be developed (assuming four hectare blocks around the perimeter of the site and two hectare blocks within the central portion of the site). As above, there is no housing supply or housing choice reason for the district to require another 100 rural lifestyle properties, the property is not currently characterised by rural lifestyle development, and sufficient RLE land is available within the notified PC42.

27) As described within the Section 42A report dated 28 July 2023, I retain concerns expressed that planning policy impediments remain. These being the rezoning a 344 hectare rural property to rural lifestyle development (within the context of PC42 being 'zoning' as RLE), in a location not suitable for such development, within a district where there is no demonstratable housing supply 'driver' for increasing the extent of RLE land, and in an ad hoc manner that is contrary to the outcome sought within the Taupō District Growth Strategy (which instead identifies growth cells and future development areas) to create ample land supply to meet housing need, and remains in my view contrary to the Waikato Regional Policy Statement.

28) The question around what the Te Tuhi Precinct proposal should be defined as, is not straight forward. The submitter has requested via the original submission that it should be RLE. However, the 'preferred relief' (which would be non-complying under the RLE provisions as notified) is clearly not rural lifestyle development. The ODP does not explicitly define 'urban development', however it sets the parameters for what 'urbanisation' of the rural environment would look like through minimum lot sizes and also the

use of non-complying activity status. This philosophy was tested through the Sade Environment Court decision (available here).

29) The Court observed in Sade when discussing 'urbanisation' of the rural environment, *"that the plan has fixed the non-complying activity status at a lot size smaller than 4 hectares to prevent urbanisation of the Rural Environment."* Also that:

"The rules set new thresholds for rural subdivision based on lot size. The rules provide for:

- *rural lots of 10 hectares or larger in area and notional building sites of the same land area, to be controlled activities;*
- *lots of between 10 hectares and 4 hectares to be discretionary activities; and*
- *lots below 4 hectares in area are discouraged by non-complying status.*

These rules have been designed to prevent uncontrolled urban change in the Rural Environment. (emphasis added)

30) Although the lot sizes have been modified under PC42 to allow for the new RLE, and to further prevent fragmentation of the GRE (with the removal of the discretionary activity status between 4ha and 10 ha), the intent of prevention of urbanisation of the rural environment remains clear within the district plan, particularly when read together with the objectives and policies of Plan Change 38 Strategic Directions and also within section 3e of the ODP. Objective 3e.2.1 and associated policies is particularly relevant:

***3e.2.1** Provide for and manage urban growth so as to achieve the sustainable management of the District's natural and physical resources.*

POLICIES

i. Recognise the appropriateness of Urban Growth Areas as an important resource for providing for new urban land development and as the focus for future urban growth.
ii. Ensure patterns of future urban development are consistent with the identified Urban Growth Areas as described in 3e.6
iii. Prevent urban development in the rural environment outside of the identified Urban Growth Areas.
iv. Avoid the cumulative effect that subdivision and consequent fragmented land ownership can have on the role of the Urban Growth Areas in providing the supply of land for urban development.
v. Ensure that urban development of an identified Urban Growth Area occurs by way of a Taupō District Structure Plan Process and associated plan change process.

31) Applying the Court's interpretation that lot size (and land use densities) and the non-complying activity status are all key mechanisms used by the ODP to manage 'urbanisation' of the rural environment, the Te Tuhi Precinct proposal should be considered 'urbanisation' of the rural environment. It therefore needs to be measured against the objectives and policies of Plan Change 38 Strategic Directions (Strategic Direction 3 Urban Form and Development) and also section 3e of the ODP.

32) The Te Tuhi Precinct proposed number of lots, the small size of those proposed lots (below 5000m²), the overall site intensity and proximity of lots/dwellings to each other, the reduction in productive capacity of the property inherent in the proposal, the roading and services proposed, and the clear residential purpose, are all strongly suggestive of and highly consistent with a low density residential environment

rather than RLE. As above, I consider that the proposal is instead 'tested' through a private plan change or resource consent process (or as part of the future Residential Chapter Plan Change process as a Low Density Residential Area), rather than PC42.

33) I acknowledge that the property and the Te Tuhi Precinct Plan proposal presents some distinctive landform, cultural and locational characteristics, and that the precinct plan seeks to present a site-specific proposal that responds to those characteristics. The submitter is invited to continue engaging with Council officers regarding the project and progressing it via alternative processes as above. I do not consider the relief sought of including the property within the RLE is an appropriate outcome and the recommendation remains inclusion within GRE as per the notified PC42 and hearing section 42A recommendations.

Centennial Drive Comparisons Between RLE and GRE Provisions

34) Panel request 3 sought that a table be prepared that compared the RLE provisions (as would apply to Centennial Drive in the context that much of the locality is adjacent to GRE, and in the context of the existing lot sizes between 0.95ha and 4.5ha) against the GRE provisions. The purpose of this is to 'test' what the range of permitted activities are in the specific context of Centennial Drive RLE locality and the statutory impact of the rule provisions that would apply. Attachment G 'Rural Lifestyle vs General Rural Provisions Applying to Centennial Drive' is that table.

35) This panel request was primarily in response to the hearing presentation of Contact Energy and evidence statement of Mr Chrisp (paragraphs 28 to 40) in respect of whether the Centennial Drive locality be included within RLE or GRE. In particular the assertions from Mr Chrisp that including the Centennial Drive locality within the RLE represents a 'Claytons zoning', that the outcome of 'zoning' to RLE provides no additional housing capacity given an already developed rural residential enclave exists (paragraph 28), that there is no point to 'rezoning' Centennial Drive to RLE (paragraphs 30, 31 and 32) and that 'zoning' as RLE simply serves to reinforce amenity expectations from residents (paragraph 34). The key point is that Centennial Drive is undoubtedly characterised by being an existing rural lifestyle enclave with existing and long-established rural residential development. For that reason, whilst I acknowledge that Mr Chrisp criticises the RLE criteria for inclusion of properties within the RLE, key amongst them is the criterion about the presence of existing rural lifestyle development as a primary determinant of suitability for RLE inclusion. There appears no dispute regarding the physical presence of existing lifestyle development at Centennial Drive, although clearly there is dispute on whether that should lead to inclusion within RLE.

36) At paragraph 36 of Mr Chrisp's statement he addresses what is described as 'the nub of the issue' that Council is seeking to address about the ability of large sheds to be built and land use conflicts within the Centennial Drive enclave itself. This only partly captures the point and over-simplifies it, as the discussion in June 2023 referred to, and the actual issue is around the suitability of applying GRE provisions to

Centennial Drive, rather than applying RLE provisions. The GRE provisions are formulated with the express purpose of enabling and managing primary productive uses and rural industry on large rural properties, typically of at least ten hectares and in many instances far larger. Therefore, all of the various land use rules and accompanying performance standards are based on far larger property sizes than exist at Centennial Drive. This is shown in the table at **Attachment G** with the key metrics and thresholds within the provisions shown in yellow highlighting and intended to assist the panel to understand the differences in provisions.

37) The key differences in provisions in respect of land use activities provided for are that within GRE there is provision for 'industrial', 'rural industry' and the provision for 'intensive indoor primary production' (which for RLE involves a scale threshold of 100m² whereas for GRE this is controlled by building size performance standards). In respect of the performance standards, the key differences are in respect of the 'maximum building size' for a single building that applies (being 5,000m² in GRE and 500m² in RLE), the vehicle movement standards (being 200 'EVM' per day in GRE and 50 'EVM' per day in RLE) which acts as a scale threshold in the sense that it acts as a consenting 'trigger' for high vehicle generating activities, and the setback standard (in RLE where adjoining a property within GRE is a 50 metre setback, and the 'buildings for the management of farmed animals' setback standard of 200 metres in GRE within PC42 as notified which, when applied to Centennial Drive properties, would 'trigger' the need for consent for any such buildings given the existing property sizes).

38) It is apparent from the **Attachment G** table that the GRE provisions are less suitable as a suite of provisions applying to existing lot sizes between 0.95 hectares and 4.5 hectares in two respects. Firstly, that the GRE rule provisions allow a wider range of rural activities that are generally suitable in GRE but not in RLE (given the smaller lot sizes and the different mix of activities likely to be present); and secondly, that the GRE performance standards have been formulated assuming a lot size of ten hectares or larger, which is a very different context to localities where RLE has been applied (being characterised by lot sizes of between 2 and 10 hectares). Applying a suitability lens the RLE PC42 provisions are more suitable to apply to Centennial Drive than the GRE PC42 provisions and are generally preferred for that reason.

39) There was discussion during the hearing about the meaning of the phrase 'adjoining the General Rural Environment' within the subdivision rule 4b.5.2 (as a two hectare minimum lot size applies pursuant to 4b.5.3, whereas otherwise a four hectare lot size applies). To assist the panel, the Operative District Plan (ODP) definition of 'road' states "*Where the road has two adjoining Environments the provisions shall extend to the centre line of the road*". The ODP Planning Maps displays the legal road reserve as shown in the figure below as not belonging to an 'Environment', with instead district-wide network utility rules applying to activities within legal road reserve. Accordingly, I do not consider that Centennial Drive properties within RLE are 'adjoining the General Rural Environment' for the purposes of Rule 4b.5.2 and 4b.5.3, but rather they are adjoining legal road reserve which is not assigned an Environment under the ODP. Therefore, the applicable subdivision rule would be Rule 4b.5.3 which does allow a two hectare

minimum lot size. This is largely a moot point as the lot sizes of most of the properties fronting Centennial Drive are less than four hectares in size, remain subject to Rule 4b.5.6 (iv) and (v) as are located within Areas X and Y, and therefore would not be subdividable under either of the rules. The panel should note however that some (and typically the larger) properties on Centennial Drive do have a rear boundary that is 'adjoining the General Rural Environment'.

Figure 1: Operative District Plan Map (source Taupō District Plan)

Energy Cohort Provisions

40) Panel request 8 is 'contributing to the broader Plan Change 38 'energy cohort' discussions, in respect of energy-related provisions and reporting back on outcomes in the context of PC42'. The 'energy sector agreed provisions' table (as uploaded to PC42 website) has a right-hand column being 'section 42A report writer comments'. The energy cohort table in relation to PC38 and PC42 of 'agreed energy-related provisions' was sent to the panel on 8 September (with my section 42A comments included on the PC42 provisions).

41) There are fifteen provisions addressed within this table, including 4b.1.7 'high voltage transmission lines' which is addressed in the following section as it concerns Transpower New Zealand Limited. Of the remaining fourteen provisions, within the 'energy cohort agreed positions' document I indicated agreement to seven, I indicated I did not agree with four, with three 'likely to be agreed to'.

42) I have now made recommendations in respect of each within **Attachment B** 'reply statement recommended provisions', reflective of the wider consideration of the PC42 provisions in preparing this reply statement. In summary, the recommendations are:

- New definition – renewable electricity generation activities – Agreed (as shown in Attachment B)
- Revised definition – reverse sensitivity – Agreed (as shown in Attachment B)
- Revised Objective 3b.2.2 – Agreed (as shown in Attachment B)
- Policy 3b.2.9 – Revised, partially as per energy cohort agreed provisions (as shown in Attachment B)

- New Objective 3b.2.9 Renewable Electricity Generation and Transmission Activities – Agreed (as shown in Attachment B)
- Revised Objective 3b.2.4 – Agreed (as shown in Attachment B)
- Revised Policy 3b.2.13 – Agreed (as shown in Attachment B)
- Revised Policy 3b.2.14 – Agreed (as shown in Attachment B)
- Revised Rule 4b.1.2 – Agreed (as shown in Attachment B)
- Revised Rule 4b.1.4 – Revised, partially as per energy cohort agreed provisions (as shown in Attachment B)
- Rule 4b.1.7 – As per Transpower New Zealand Ltd discussion below.
- Rule 4b.1.8 – Not agreed.
- Rule 4b.1.9 – Not agreed.
- Rule 4b.2.1 – Agreed (as shown in Attachment B)
- Rule 4b.2.13 – Not agreed.

43) In relation to the agreed on points above I rely on the section 32AA evaluations within the table as I concur with those evaluations. In respect of the others, Rules 4b.1.4 (in part as some energy cohort agreed revisions concurred with), 4b.1.8, 4b.1.9 and 4b.2.13 all represent in my opinion a substantial broadening of the statutory impact of the provisions with the wording proposed by the energy cohort, especially the 'including within Electricity Generation Core Sites' wording. Whilst the energy cohort describes these provision amendments as providing "clarity without changing the underlying intent of the rule", and further states that "there is no cost to the recommended amendment to the rules, and it will provide a benefit to electricity generators…', I do not concur. The statutory impact of the amendments sought by the energy cohort would be that renewable electricity generation activities would be exempted from the above rules, whether the activity takes place within the mapped Electricity Generation Core Sites or outside of these mapped areas. Whilst the identification and mapping of Electricity Generation Core Sites likely needs to be addressed, this can be progressed through a future district plan change process. Widening the statutory impact of these provisions to anywhere where renewable electricity generation activities may take place is not an appropriate outcome. Several minor amendments (geothermal areas rather than steamfields) proposed by the energy cohort within Rule 4b.1.4 have been recommended as workable enhancements to the provision.

44) The energy cohort amendments to Policy 3b.2.9 'Maintaining the General Rural character' have in part been recommended for acceptance, for the reasons given within the section 32AA evaluation of the energy cohort. This policy also featured within the 'rural cohort' provision discussions as a policy of interest to multiple sections. A series of amendments are now recommended in response to the submission points as referenced in the footnotes of Attachment B (with the policy re-numbered as Policy 3b.2.10). These recommended amendments are following the discussions with the parties and consideration of the 'agreed energy cohort' positions and represents an amalgam of both. The

recommended amendments are the deletion of the word 'established' as I do concur with the parties that the purpose of the policy is not to maintain the established rural character without change, but rather to maintain the character as defined by elements described in clauses a) to g). This is an important distinction as the 'General Rural Environment character' will evolve over time, and the amended wording better responds to the revised Objective 3b.2.2 which states 'enable a range of activities' in GRE 'that are compatible with and cumulatively do not erode rural character' and whilst avoiding the 'cumulative erosion of rural character through incremental subdivision and associated development'. The amended policy better responds to the revised objective wording directives of land use activities being 'compatible', and 'avoiding cumulative erosion…through incremental subdivision and associated development', all within the enabling directive for primary production and rural industry.

45) The section 32AA evaluations relief upon here are those contained within the 'energy cohort agreed positions' table, together with those contained within the statements of evidence of Ms Lynette Wharfe and Jo-Anne Cook-Munro.

46) The recommended amendments to clauses a) to g) of the policy are in part a rationalisation of the clauses (for example clause c), d) and h) being rolled into a single clause), explicit recognition of the predominant rural activities (primary production, rural industry, renewable electricity generation activities, buildings ancillary to such uses), and the description of the key environments effects descriptors.

47) In respect of Rule 4b.1.7, the discussion is under the heading 'Transpower New Zealand Limited Provisions' below.

Transpower New Zealand Limited Provisions

48) Panel request 11 to 'provide a response to the various Transpower NZ proposals for provisions and points (separate to the wider energy cohort discussions)' resulted in a discussion with Ms Pauline Whitney (on behalf of Transpower New Zealand Ltd) on 4 September to discuss the national grid provisions within the 'energy cohort agreed provisions'. Some workability and consistency of wording points were discussed and subsequently agreed. The outcome of these discussions is attached to this reply statement as Attachment D 'Transpower NZ Ltd post-hearing response' and are incorporated within Attachment B.

49) The resulting provisions with amendments recommended in this reply statement are:

- Policy 3b.2.21
- Policy 3b.3.18
- 4b.1.7
- 4b.1.11
- 4b.2.16
- 4b.2.17
- 4b.3.7

- 4b.3.8
- 4b.4.16
- 4b.4.17
- 4b.5.11
- Definitions (within Section 10 Definitions).

50) Supporting section 32AA RMA evaluations are within Attachment D and within the 'energy section agreed provisions' (as uploaded to PC42 website). I concur with the section 32AA evaluation expressed on these points.

Rural Cohort Provisions

51) There are several panel request items relating to the 'rural cohort' of parties which are Federated Farmers of New Zealand (submitter 91), Horticulture New Zealand (submitter 26) and Cheal Consultants (submitter 79). As requested by the panel, following the hearing a meeting was arranged with representatives for these submitters being Jo-Anne Cook-Munro, Lynette Wharfe and Catriona Eagles (in place of Sarah Hunt on behalf of Cheal Consultants). The agenda was based on the statements of evidence presented at the hearing on behalf of these parties. The discussion below represents responses to panel requests 5, 6, 9, 10 and 12. The amendments to PC42 provisions as contained in Attachment B and referenced in footnotes to submitters 26, 79 and 91.

52) In respect of panel request 5, to prepare a response to the rationale adopted for the 200 metre setback for 'Buildings for the management of farmed animals' (in response to the evidence from Ms Sarah Hunt on behalf of Cheal Consultants), being Rule 4b.2.6(iv) 'Minimum building setbacks' applying to the GRE. Unlike the described rationale for this standard by submitters (who referred to visual amenity and character), the drafting intent of the provision was to manage reverse sensitivity effects by targeting the form of building most likely to give rise to such effects, being buildings housing farmed animals particularly where near property boundaries. The drafting intent had been to apply clarity of the impact of the provision with the definition, with a significant setback from boundaries of 200 metres to ensure effects generated from such activities were contained within the same site. The 200 metre distance was selected based on an analysis of other district plans in the region, but acknowledging typically were setbacks applying to 'intensive farming' activities such as piggeries and poultry farms.

53) The problems with the drafting identified by submitters were that, despite the definition which sought to limit the statutory impact of this provision to buildings used for such intensive farming activities, and including the floor area exemption of 50m² or less, the drafting intent was not being delivered effectively or efficiently. Acknowledging the concerns expressed by the rural cohort of submitters, the phrase used (and associated definition) set up confusion with the phrase 'intensive indoor primary production' and other land use categories. The definition issues are addressed separately below including adding the floor area exemption into the definition for added clarity. I do acknowledge the broadness of the defined

phrase does mean that it will apply to some domestic-scale rural activities (i.e. not associated with commercial-scale activities), but a setback remains important to manage effects between properties, even within the GRE (as otherwise only a 15 metre setback would apply as 'other buildings' pursuant to 4b.2.6 (ii)). I consider this particularly important given the relatively permissive 5,000m² gross floor area (relative to the ODP of 1,000m²) for a single building standard (4b.2.3), that enables relatively large buildings that can contain a wide range of activities, including intensive farming operations capable of generating potentially significant levels of effects. Given that the defined phrase (despite the qualifications within the definition) will apply to buildings wider than commercial-scale intensive farming (within the PC42 provisions as amended the phrase 'intensive indoor primary production' would include piggeries and poultry farms and similar i.e. what is in other contexts described as 'intensive farming'), several options have been considered to address the points made by the submitters. However, rather than focusing on the setback in relation to larger rural buildings that are much more likely to contain more intensive forms of farming or primary production activities and require a larger setback for this form of building (as more likely to contains effects generating activities), I consider the response should be to ensure that smaller domestic-scale (i.e. non-commercial) buildings are exempt from the rule.

54) Having studied the district plan provisions on this topic in the region (South Waikato District Plan, Waipa District Plan, Matamata-Piako District Plan, Waikato Proposed District Plan) it is evident the rural building setbacks are typically between 15 and 50 metres, except for 'intensive farming' activities where the setback (sometimes measured from 'sensitive activities' rather than property boundaries) are between 100 and 300 metres. In analysis of the proposed 4b.2.6, the setbacks range from 15 metres to 30 metres. I recommend retaining the 200 metre setback, but increasing the exemption that applies from 50m² to 150m², both within the performance standard and the definition. This will ensure that the standard applies to the genuinely larger-scale rural buildings and effects-generating activities housed within them, whilst not applying to smaller rural domestic-scale buildings more typically used by households on rural properties.

55) In respect of panel request 6, to prepare a response to the various Cheal Consultant provision points (as presented in evidence from Sarah Hunt), the following points are in the same sequence as presented by Ms Hunt (and as discussed during the rural cohort discussions).

- Proposed Rural Lifestyle Zoning in the Kinloch Structure Plan Area – Paragraphs 8 to 12 – I concur with this point. Attachment A to Ms Hunt's evidence (as per the figure below) displays an area of overlap (the orange area). The Kinloch Structure Plan Area is an existing urban structure plan within the ODP that includes several areas of 'Kinloch Rural Residential'. The Kinloch Structure Plan is a self-contained framework, including with minimum lot sizes and standards applying to subdivision and development within the 'Kinloch Rural Residential' area. By PC42 including an area within RLE, it establishes a contradictory set of district plan provisions which lacks therefore clarity

and is not efficient or effective. The recommendation is to remove the relevant portion from RLE and align the PC42 RLE boundary with the Kinloch Structure Plan Area boundary.

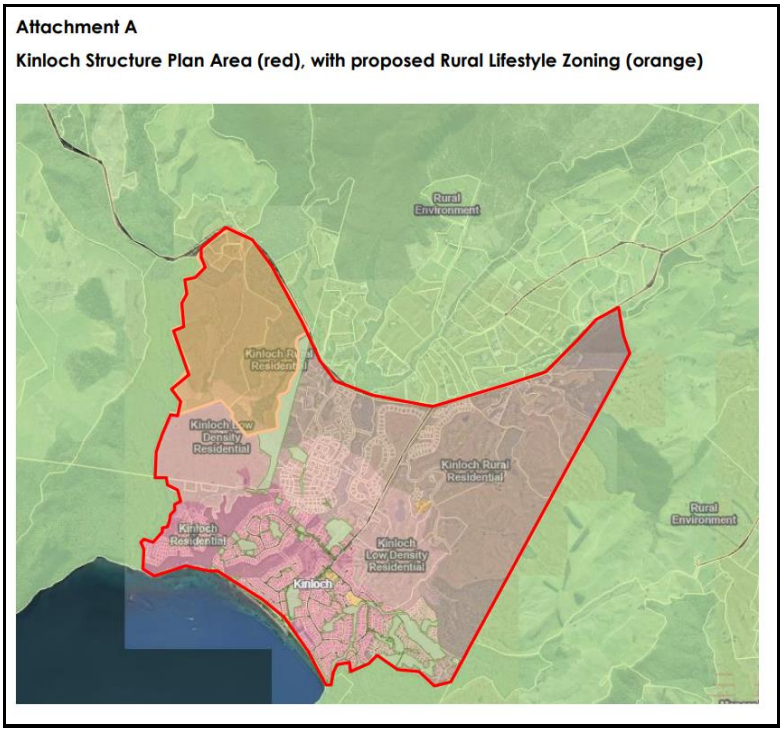

Figure 2: Overlap between Kinloch Structure Plan Area and proposed RLE (resulting from PC42)

- Terminology with 'minor residential units', 'primary residential units' and 'dwellings' – Paragraphs 13 to 14 - These definition points are addressed in the below sections.
- Rule 4b.2.7 Minor Residential Unit and 4b.2.4 Maximum density of primary residential units – Paragraph 15 – The point being made is that within GRE the former provision is a minor residential unit 'per allotment' whilst the latter provision is a primary residential unit 'per 10 hectares'. The practical implication of this (and the example used by Ms Hunt) is if a 30 hectare property within GRE is held within a single title, the 4b.2.4 would allow three primary residential units (on the same title), yet pursuant to 4b.2.7 only one minor residential unit would be allowed, as the wording of 4b.2.7 refers to 'per allotment'. Given that a dwelling is provided for in GRE per 10 hectares (4b.2.4) and a subdivision creating 10 hectare lots (4b.5.1) is provided for in GRE, the 'per allotment' does not achieve any useful outcome and is recommended for deletion. As a comparison the equivalent provision within RLE is 4b.4.5 and does not have the 'per allotment' wording, meaning consistency between the two minor residential unit rule provisions is enhanced.
- Areas X and Y – Paragraphs 16 to 19 - The submitter's statement at paragraph 16 is correct, being that Rule 4e.15 relates to Planning Map D1, and not to Areas X and Y (which are referenced in the subdivision rules and shown on Planning Map D3). As noted by the submitter, the Planning Map D1 (4e.15) does not cover the same area of land as Areas X and Y. The section 42A recommendation response to this submission point OS79.49 is confusing I agree. However, the

relief sought is to 'seek clarification how this relates to Areas X and Y' which is unclear relief in any event. At paragraphs 18 and 19 of the evidence it is clearer what is being sought, but the relief remains confused as it is about seeking consistency between the density provided for within 4b.4.4 and the minimum lot sizes within the subdivision rules as applies to Areas X and Y. This was not a matter pursued in the rural cohort discussions and the recommendation remains to reject the submission point with no amendment in response.

- Objective 3b.3.1 Maintain the character of the Rural Lifestyle Environment – Paragraph 20 – An alternative wording is considered by the submitter to be an improvement, to reflect 'the intended character' rather than 'hold to an existing character which will rapidly change'. The content of the submitters point is a scenario where existing four hectare blocks will be subdivided within RLE and therefore a change in character will occur. The recommended response (to other submissions) is to alter the phrase to 'maintained and protected from inappropriate subdivision and development'. I consider this does respond to the submitter's point as subdivision and development is enabled as provided for within rules and standards, and the objective focuses on 'inappropriate' forms of subdivision and development, and not maintain and protect from 'all' subdivision and development.

- Policy 3b.3.9 Character of the Rural Lifestyle Environment – Paragraph 21 – the submitter seeks to include reference to 'minor residential units' in the policy to provide a policy framework for this form of development. However, I consider that the presence of some minor residential units in the RLE does not form a strong part of the RLE character and need not be referenced (not all forms of development can be referenced in the policy), although such minor residential units could be addressed through a resource consent process on their merits.

- Rule 4b.1.5 and Rule 4b.3.3 Commercial, Industrial and Home Businesses – Paragraphs 22 to 23 – The submitter asserts that additional matters of discretion be added beyond the character matter and address other points such as reverse sensitivity, hours of operation and signage. I do not consider this to be necessary as there are separate performance standards for signage and vehicle movements, and reverse sensitivity effects in RLE are not a key matter in the sense that scale standards apply to commercial and home businesses (4b.4.9). The other submitter point is that RLE does not explicitly assign an activity status to industrial activities, but as identified by the submitter is a discretionary activity pursuant to 4b.3.1(ii), as is the drafting intent of PC42.

- 'Buildings for Management of Farmed Animals' – Paragraphs 24 to 25 – The submitter identifies the confusion with the similar national planning standards land use activities of 'intensive indoor primary production'. The recommended response is the addition of the words 'for the purposes of Rule 4b.2.6 only' within the definition of 'Buildings for Management of Farmed Animals' to make clear this distinction. The other submitter point (paragraph 25) is that the approach between GRE and RLE is different and inconsistent. I regard this inconsistency as an intentional drafting distinction as the context within GRE and RLE is very different and the larger setback within Rule

4b.4.7 in relation to RLE is where buildings are near the boundary with GRE with a 50 metres setback, in recognition that this is needed to manage potential reverse sensitivity effects given RLE likely represents a greater density of sensitive activities.

- Buildings for Management of Farmed Animals - Definition – Paragraph 26 – The submitter seeks that the 50m² floor area exemption be inserted also into the definition. I concur and this is recommended for acceptance.
- Rule 4b.2.6 and 4b.4.7 Minimum Building Setbacks – Paragraph 27 – The submitter's point is in respect of activity status for a non-compliance with these setback rules. This is an unclear point as these standards are no different to non-compliance with other standards and has the same default within 4b.3.1 and 4b.1.1.
- Rule 4b.5.9 Subdivision – More than 12 Allotments – Paragraphs 28 to 30 – The submitter's point is that there is not a clear and obvious framework of supporting objectives and policies. This provision is a 'roll-over' from the ODP Rural Environments chapter in the sense that the wording is unchanged from the ODP. The subdivision rule is effectively a 'back-stop' that ensures that any large-scale subdivision defaults to discretionary, enabling a wide ranging consideration of effects on the environment and infrastructural matters to be addressed, irrespective of how the proposal relates to the various other GRE and RLE subdivision provisions. The relief sought is unclear and I consider the existing rule as drafted is satisfactory without further change.
- Rule 4b.5.6 Subdivision – Other – Paragraph unnumbered – The submitter identifies a minor cross-referencing error, and this has been rectified in the recommendations included within Attachment B (noting the provision numbering is now 4b.5.7 Subdivision – Other).

56) In respect of panel request 9, the requested task is to provide analysis of the national planning standards definitions of 'rural industry' and 'primary production' and the 'flow on' effects of incorporating these terms into the rural provisions. This was discussed in detail with the rural cohort of parties as Horticulture New Zealand and Federated Farmers of New Zealand in particular sought much greater use of national planning standards definitions than the notified drafting of PC42 had incorporated. As incorporated within the amendments displayed within Attachment B, agreement was reached, and practical implementation issues were discussed to resolve several matters. In respect of section 32AA evaluations, the evidence statements provided by Jo-Anne Cook-Munro and Lynette Wharfe provide the necessary section 32AA commentary.

57) The recommended amendments to the suite of definitions are as follows:

- Intensive indoor primary production – reverting to the national planning standards wording, in particular replacing 'growing produce' with 'growing fungi', which reflects that the national planning standards were addressing the horticultural growing activities that typically generate greater effects, such as mushroom growing. The phrase 'growing produce' had been preferred in formulating PC42 as a broader phrase as the form of horticulture presently in the district is the

growing of tomatoes and capsicums within greenhouses and not the growing of mushrooms. This has been addressed with an additional definition for 'greenhouses'.

- Greenhouses – a new definition recommended to address the above, as the wording includes 'cultivation or protection of plants in a controlled environment'. This term has been incorporated into the relevant PC42 provisions referring to 'intensive indoor primary production' to now include 'greenhouses'. Operating in tandem these two land use activities cover Council's intent in the original PC42 provision drafting.
- Buildings for the management of farmed animals – retained but with the addition of the words 'for the purposes of rule 4b.2.6 only', and inclusion of the floor area exemption also (for completeness). The concerns expressed by submitters and discussed in the rural cohort meeting was that this phrase had become a de facto land use category, alongside and with a confusing relationship with 'intensive indoor primary production', 'rural industry' and the various other phrases the provisions rely on. This was not the drafting intent, and rule 4b.2.6 is the only use of this phrase, and the addition of the words within the definition makes this abundantly clear.
- Minor residential unit and primary residential unit – being two phrases used in the PC42 provisions not defined within the ODP, as raised by the rural cohort and discussed with those parties. From analysis it is apparent that 'primary residential unit' has the same meaning as 'dwelling' which is defined in the ODP, whilst 'minor residential unit' is the definition from national planning standards but with a clarification that applies to the Rural Environments only given the limited scope of PC42 and the tendency otherwise for that phrase to be potentially used in other contexts.
- Primary production – as with the above, the introduction of the national planning standards definition.
- Rural industry – retained as per the section 42A recommendations with no change.

58) In respect of panel request 10, the request is to respond to the merits of splitting 'home businesses' from 'commercial and industrial' within the rural provisions and study activity status given the 'avoid' direction within the associated policy not applying to all of these activities. The GRE provisions relevant to this are Objective 3b.2.3, Policy 3b.2.14 and performance standard 4b.2.8. Submitters are correct that the objective states '*rural industry is enabled whilst general commercial and industrial activities not having a locational need to be within the General Rural Environment, other than home-businesses, are avoided*'. The policy then clarifies how this is achieved by stating '*limit the scale of commercial and industrial activity (excluding rural industry) to avoid the uptake of general rural land…*'. The policy is then given effect to by the performance standards with a 100m² scale threshold that applies to '*commercial, industrial (excluding rural industry) or home businesses*'. I accept that the performance standard applies to all three land use activities, whilst the objective and policy focus on 'commercial and industrial activity' and with an avoid directive, but 'home businesses' are a form of commercial land use and the provisions

are drafted as they are for practical reasons to avoid disaggregating the provisions leading to duplication and added complexity. I am satisfied that the cascade of provisions is clear, concise and consistent.

59) In respect of panel request 12 and analysing the New Zealand Agricultural Aviation Association (NZAAA) (submitter 23) scope available in the context of the further submission received from the New Zealand Helicopter Association (NZHA) (submitter 227) relief on the topic of frost fans. Related is whether the use of frost fans is implicit in the national planning standards definition of 'primary production'. The only mention of 'frost fans' in submissions is from OS26 Horticulture New Zealand who sought various amendments to recognise horticultural activities but no specific relief directly relevant to frost fans. OS23 NZAAA did not use the phrase 'frost fans' nor is there considered scope within the submission to introduce provision wording for 'frost fans'. Accordingly, there is no scope for NZHA as a further submitter on OS23 to seek provisions on the topic of 'frost fans'.

60) The national planning standards definition of 'primary production' includes "…any… agricultural, pastoral, horticultural …. activities …" Given the presumption of section 9 RMA I consider that the use of frost fans is part of 'horticultural activities' (being a component of 'primary production') unless there is a district plan rule that is being contravened. For the avoidance of doubt and relying on scope provided by OS26.47 and OS26.48 Horticulture New Zealand, I recommend within 4b.2.13 i) adding the words "including ancillary activities such as the use of frost fans and bird scaring devices…".

61) In respect to the same provision, it is recommended to amend 4b.2.13 Maximum Noise – Other to replace the 'agricultural aircraft and support vehicles' with 'agricultural aviation and support vehicles' as sought by OS23 NZ Agricultural Aviation Association and supported by NZ Helicopter Association. This was supported by Federated Farmers of New Zealand (submitter 91) and Horticulture New Zealand (submitter 26) during discussions on this matter.

62) In respect of Horticulture New Zealand's request for provisions around 'worker accommodation', I would direct the panel to the GRE density provision of 4b.2.4 which allows 'one primary residential unit per 10 hectares'. Whilst the ODP definition of 'dwelling' refers to a household, I would see no particular issue with a household including workers on the same property as this is operating as a household for the purpose of the ODP definition. This one dwelling per 10 hectares is also designed to match the 10 hectare minimum lot size provision in Rule 4b.5.1. I consider this is a relatively permissive standard that allows additional rural dwellings on larger rural properties that could be used for seasonal worker accommodation (without the need for additional bespoke provisions for seasonal worker accommodation).

63) In respect of Rule 4b.5.1 which provides for subdivision within GRE resulting in lots that are 10 hectares or larger as a controlled activity, this attracted some criticism from Mr Cumming (on behalf of submitter 74 Hawkins) and Horticulture New Zealand that the provision failed to give effect to the Waikato Regional Policy Statement and NPS-HPL suitably and challenged whether 10 hectare lots can be considered

'productive properties'. In respect of the former, Council officers have provided to me subdivision statistics of rural subdivision within the ODP Rural Environment over the past five years, involving subdivision creating allotments of between 10 and 20 hectares in land areas, being that there have been 21 such subdivision applications granted. This provision was included within PC42 to provide a level of flexibility for 'family subdivision' of farming properties and was provided for on the basis that 10 hectare properties are far larger than typically 'rural lifestyle' owners would want with a low risk as a result of wide spread subdivision of this nature occurring. I consider that the rate of approximately four such subdivisions per year over the past five years in a district the size of Taupō district appropriate and cannot be considered to be a failure to protect the rural land resource as being asserted by the submitters. I note that subdivision resulting in lots within GRE that are smaller than 10 hectares is a non-complying activity, and this is primarily the response to the Waikato Regional Policy Statement and NPS-HPL, rather than whether 10 hectares or larger is a controlled activity or a discretionary activity as sought by several submitters. In respect of the latter, I note that any subdivision of highly productive land must still be considered pursuant to clause 3.8 of NPS-HPL. These points are made to provide some context of the panel in considering these matters.

Te Kotahitanga o Ngāti Tūwharetoa evidence

64) Panel request 7 is an 'invitation to consider any further amendments to objectives and policies in response to the Te Kotahitanga o Ngāti Tūwharetoa evidence' (presented by Mr George Asher). I have read the written statement by Mr Asher and further considered the adequacy of the PC42 framework in respect of 'tāngata whenua values', 'Māori cultural values' and 'papakāinga', all terms used within the provisions.

65) PC42 introduces a wider definition of 'papakāinga', a new objective 3b.2.7 regarding papakāinga, new policies 3b.2.17 and 3b.2.18 which are all enabling within GRE. Within RLE objective 3b.3.8 regarding papakāinga, policy 3b.3.14 and policy 3b.3.15 are all introduced which are likewise intended as enabling provisions. Within GRE rule 4b.1.6 provides for papakāinga on 'Māori customary land and Māori freehold land' as a permitted activity in compliance with performance standards (otherwise as a restricted discretionary activity), and with a notification exclusion to provide certainty of non-notification to future applicants. Within many of the applicable performance standards there is then either an exemption entirely from the standard, or a more permissive standard that applies specifically to papakāinga. All future resource consent applications also have the benefit of the enabling framework of objectives and policies that exist.

66) Similarly, with RLE rule 4b.3.6 provides for papakāinga on 'Māori customary land and Māori freehold land' as a permitted activity in compliance with performance standards (otherwise as a restricted discretionary activity), and with a notification exclusion to provide certainty of non-notification to future

applicants. Similarly with the performance standards, exemptions and more permissive standards apply to such applications, with a similarly enabling framework of objectives and policies.

67) I consider that PC42 introduces a much more enabling framework of district plan provisions that support tāngata whenua values, 'Māori cultural values' and 'papakāinga'. I am advised by Council staff that the submitter was involved in various discussions during the formulation of the plan change provisions. I also note that the submitter did not identify any specific deficiencies with the provisions, nor propose any specific amendments, but rather spoke broadly on the topic and sought further engagement with Council. Whilst Council will continue to engage with the submitter as a key partner, I do not consider any further amendments to objectives and policies, or other provisions are necessary.

Adequacy of Transport Network

68) Panel request 16 is a request for advice on the 'adequacy of the transport network to support RLE at the Palmer Mill Road locality, primarily from the Abley Report' in support of PC42. This request was made following the appearance of submitter 63 Debs Morrison.

69) In response, I refer the panel to Appendix 6 to the PC42 Section 32 Evaluation Report which was prepared by Abley and titled 'High Level Transport Assessment of Proposed Rural Lifestyle Areas', dated 6 September 2022. Section 3.3 of the report addresses 'Site 3' being Palmer Mill Road, and addresses 'network capacity', 'road safety performance' and 'alignment with transport strategy priorities' as key evaluation matters in support of the plan change. 'Site 3' was scored as fourth amongst the eight potential RLE sites being evaluated, with no specific network capacity or other issue identified.

70) I consider that the panel can be satisfied that there are no particular transport capacity or safety issues at or near Palmer Mill Road that would prompt a wholesale re-evaluation of the suitability for RLE for this locality.

Waka Kotahi Provisions

71) As identified within the Section 42A Report dated 28 July 2023, in regard to several Waka Kotahi submission points (OS113.5, OS113.11) at the time of writing that report there was an agreement in principle to include Noise Corridor Boundary Overlay provisions and mapping of the extents that the overlay would apply, but the topic (and provisions that would apply) was still being studied by Council officers and Waka Kotahi representatives. Since the adjournment of the hearing, further discussions have taken place and an agreed position reached as to the provisions to be included, and a set of overlay mapping showing the corridors has been circulated amongst the parties as a set of GIS shapefiles (and will be made available to the panel via the Council website).

72) The agreed position provisions are contained within **Attachment B** and are as follows:

- GRE – Rule 4b.1.12 and Performance Standard 4b.2.18

- RLE – Rule 4b.3.9 and Performance Standards 4b.4.18.

73) The rule provisions are to manage reverse sensitivity effects along the state highway corridors and are in recognition that the state highways represent regionally-significant infrastructure as recognised within the Waikato Regional Policy Statement. The rule provisions give effect to Objectives 3b.2.5, 3b.2.6 and Policy 3b.2.14 in the context of GRE regarding 'avoidance of reverse sensitivity' and 'impacts on infrastructure', and in the context of RLE give effect to Objectives 3b.3.2 and 3b.3.6. The rule provisions are set up as either a permitted or restricted discretionary activity, dependent on whether compliance with the relevant performance standard is achieved. The performance standards are formulated with two pathways for achieving compliance, being either 'designed, constructed and maintained to achieve indoor design noise levels not exceeding the maximum values in Table 1'; or a distance threshold expressed as 'at least 50 metres from the carriageway of any state highway and is designed so that a noise barrier entirely blocks line-of-sight from all parts of doors and windows to the road surface'.

74) Section 32 RMA analysis is attached to the statement of evidence of Mr Luke Braithwaite, and I concur with the material provided and consider no additional section 32AA analysis is necessary. The figure below is an example of the mapping of the overlay within which the above provisions will apply. The corridor is broadly 100 metres in width (50 metres on each side) along state highway corridors. Modelling undertaken collaboratively between Council and Waka Kotahi indicate there are approximately 130 existing dwellings within this corridor.

Figure 3: Noise Corridor Boundary Overlay, source: Waka Kotahi

75) In respect of other Waka Kotahi submission points, a discussion on the vehicle movements standards is below. There are no changes to the recommendations from the Section 42A Report dated 28 July 2023 regarding signage (see 4b.2.15 (vi) and 4b.4.10 (vi)), or in respect of artificial lighting (see 4b.4.12).

Vehicle Movements Standard

76) Panel request 13 is seeking a response in relation to 4b.2.1 vehicle movements 'and the interpretation of the s42A addition to the forestry exception in the context of how existing use rights would apply.' By way of background, PC42 proposed a performance standard within GRE (and 4b.4.1 in RLE) that establishes a vehicle movement threshold as a permitted activity, reliant on a definition of 'equivalent vehicle movements' within the Operative District Plan. An exception to both standards was proposed such that the standards would not apply to 'traffic movements involved in forest harvesting operations', in recognition that management of plantation forests is based around a 25-30 year cycle, with harvesting typically being the peak in respect of generation of traffic movements in and out of the plantation forests. The exceptions were also in recognition that the plantation forests in the district are vast in scale, involve multiple land parcels making the concepts 'per allotment' or 'per site' problematic, and that harvesting activity will constantly be occurring in several parts of a plantation forest at any one time (and therefore never ceases, simply moves in location).

77) In response to submitter 113 Waka Kotahi, a section 42A recommendation was made to incorporate wording 'where access is to a local road' in 4b.2.1 effectively applying a different standard to state highways (but not within 4b.4.1 as RLE property does not have frontage to a state highway). Evidence was presented during the hearing by Ms Sally Strang on behalf of Manulife Forest Management NZ Ltd (NZFM) and Ms Jackie Egan on behalf of New Zealand Forest Managers (submitters 25 and 207). The evidence presented was that these are existing plantation forestry entrances onto state highways (in evidence NZFM stated they currently have 40 entrances onto a state highway whilst Manulife currently have 23), and that these are used intermittently dependent on the rotational cycles of forestry and the location of harvesting and other operations at any given time. Further that the section 42A recommendation to incorporate the 'where access is to a local road' wording effectively removed the exemption, resulting in a statutory position of requiring resource consent or placing reliance on existing use rights.

78) I consider that reliance on the forestry companies proving existing use rights is too uncertain and is not effective or efficient as a proposition. The purpose of the PC42 exemption for 'traffic movements involved in forest harvesting operations' to 4b.2.1 vehicle movements is expressly to avoid uncertainty about consenting requirements for continued (but intermittent) use of these entrances. This recognises the long-standing presence of the plantation forestry activities (and forest entrances to roads) within the district, that harvesting is an inevitable part of forestry activities, that otherwise the forest entrances have only intermittent and generally low levels of usage, that there is an absence of evidence that a traffic safety or efficiency issue exists, and that Waka Kotahi have other powers available to manage entranceways onto a state highway (see paragraphs 21 to 26 of Ms Strang's evidence and paragraph 4.4 to 4.7 of Ms Egan's evidence).

79) The statutory impact of accepting the additional wording from Waka Kotahi of 'where access is to a local road' was not fully understood when the section 42A recommendation was prepared, nor was the presence of the large number of existing entrances to plantation forests in the district. I do not consider that a reliance on proving existing use rights is an appropriate outcome, as in many instances it will not be possible to demonstrate existing use rights under section 10 RMA given the entrances will have been established decades ago, not necessarily with documentation still in existence, and the specific cyclical nature of plantation forestry operations occurring at different parts of the forest at any one time, all make placing a reliance on proving existing use rights an unsuitable outcome.

80) The recommendation is therefore amended to reject OS113.6 Waka Kotahi and to remove the words 'where access is to a local road' within the provision 4b.2.1(i).

Conclusion

81) This reply statement is intended to provide responses and supporting information in reply to the sixteen requests received from the panel. The statement also responds to several matters that arose during the hearing to provide clarification to the panel. **Attachment B** provides a revised set of recommended amendments to the Plan Change 42 district plan provisions, reflective of where recommendations have changed within this reply statement relative to the Section 42A Report dated 28 July 2023. Unless detailed within this reply statement that there is a change in the recommendation, in all other cases the recommendations remain as per the Section 42A Report dated 28 July 2023. Section 32AA evaluation is included within this report to the extent proportional to the scale and significance of the amendment proposed, and reliance is also placed on the submitter statements of evidence where they contain section 32AA evaluations, as referred to within this statement.

Craig Sharman
Consultant Planner (Beca Limited)
Section 42A Reporting Planner on behalf of Taupō District Council
16 October 2023

Attachments:

Attachment A – Commissioner Panel Requests – Plan Change 42

Attachment B – Plan Change 42 S42A Reply Statement Recommended Provisions

Attachment C – Application Table of the Seven Criteria for Inclusion within Rural Lifestyle Environment

Attachment D – Transpower NZ Ltd Post-Hearing Response

Attachment E – Table of Primary Submitters for 4b.2.1 Vehicle Movements and Further Submitters for Submission points 113.5, 113.6 and 113.11.

Attachment F – Updated Provision Cascade from Section 32 Evaluation Report

Attachment G – Rural Lifestyle vs General Rural Provisions Applying to Centennial Drive