

**Before Independent Commissioners**

**In Taupō**

---

Under the Resource Management Act 1991 (the Act)

In the matter of Plan Change 43 – Taupō Industrial Environment

---

**Summary statement of evidence of Darren Paul Clark for Mega Food Services Limited**

Dated 9 August 2023

---

## **1 Introduction**

1.1 My full name is Darren Paul Clark

1.2 I hold the position of Planner at McKenzie & Co Consultants Limited. I have been in this position since January 2023.

1.3 I hold a Bachelor of Planning (Hons) from the University of Auckland. I have worked in resource management and planning in New Zealand for over 13 years. These 13 years have all been in local government roles, including a compliance and monitoring role in Auckland Council, 8 years with Taupō District Council (**Council**) as a Consents Planner and then Intermediate Consents Planner, and one and a half years with Rotorua Lakes Council as a Senior Consents Planner. I have presented evidence at previous consenting hearings and for the Environment Court.

1.4 McKenzie & Co have been engaged by Mega Food Services Limited (Mega Food) to provide resource management advice and planning evidence before the Independent Hearing Panel (**Panel**), convened to hearing plan changes 38-43 to the Taupō Operative District Plan (**ODP**) in respect of Plan Change 43 (**PC43**) as it relates to Mega Food's site at 63 Broadlands Road, Taupō (**Property**). Having been engaged very recently in respect of this matter, I have not yet undertaken a site visit but have undertaken a desktop review and am familiar with the Taupō urban area and the Property and its surrounds having worked in the District since 2013.

1.5 In preparing this evidence I have reviewed the following:

- a) PC43 s32 Report.
- b) PC43 s42A report.
- c) Submissions.
- d) Operative District Plan.
- e) Waikato Regional Plan.

## **2 Code of conduct**

2.1 While this is not a hearing before the Environment Court, I confirm that I have read the Code of Conduct for expert witnesses contained in the Environment Court of New Zealand Practice Note 2023 and that I have complied with it when preparing my evidence. Other than when I state I am relying on the advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

2.2 Mega Foods has sought an extension of the evidence timetable to allow it to circulate a full statement of planning evidence by 16 August 2023. This summary statement of evidence is a high-level

synopsis of the issues and does not include full reasoning and analysis as it is intended that this will be provided in the full statement of evidence to be circulated next week.

### **3 Scope of evidence**

- 3.1 This evidence seeks to provide a high-level synopsis to draw the attention of the Panel to planning concerns over the process in which the proposed set of amendments to the originally notified Broadlands Road West rezoning have come about, which identify new 'Geothermal Significant Natural Areas' (**SNAs**) on the subject site, along with a corresponding set of specific restrictions.

### **4 Section 32AA**

- 4.1 The s42A report recommends amendments to the Broadlands Road West rezoning which seek to identify new SNAs on the Property, with a corresponding set of new rules. These amendments are as a response to submissions concerning ecological matters, which raised a lack of a consideration of ecological matters in Council's original section 32 Report.
- 4.2 It is my view that Council's s42A report has not undertaken a comprehensive s32AA assessment of the proposed changes. Given the lack of a full assessment, in my opinion, the Panel does not have adequate information before it to adopt the changes in a decision.
- 4.3 As noted in paragraph 22 of the s42A report, the panel is required under clause 10 of Schedule 1 of the Act to include reasons for accepting or rejecting the submissions. A decision must include a further evaluation of any proposed changes to PC43 arising from submissions, with that evaluation to be undertaken in accordance with section 32AA.
- 4.4 The s32AA assessment must be consistent with the requirements of s32(1) to (4) of the Act and undertaken at a level of detail that corresponds to the scale and significance of the changes. It must be specifically nuanced to show that they are the most appropriate way to achieve the objectives, identify and assess the benefits and costs, and assess the risk of acting or not acting.
- 4.5 My reading of the 42A report is that the 32AA assessment does not make a clear assessment against of all the listed requirements of s32(1) to (4) of the Act:
- No evaluation has been made of identifying other reasonably practicable options for achieving the objectives as required by s32(1)(b)(i).
  - The s32(1)(b)(ii) evaluation of assessing the efficiency and effectiveness of the provisions in achieving the objectives, does not set out how the benefits and costs of the matters set out in s32(2) were considered.
- 4.6 Any such evaluation must correspond to the scale and significance of the changes. I note that the proposed SNAs, their respective buffer areas and further restrictions would have an unquantified wider impact on how the rezoned land in the western part of the site could be utilised.

## **5 National Policy Statement on Indigenous Biodiversity**

5.1 There appears to be a procedural issue in how the SNAs have been proposed and adopted as part of PC43, in that the prescribed process in the National Policy Statement on Indigenous Biodiversity (NPS IB) has not been followed. The NPS IB was gazetted on 7 July 2023 and has legal effect as at 4 August 2023.

5.2 The s42A report acknowledges and assesses the NPS IB provisions, but very briefly and does not seem to consider the full set of provisions.

5.3 Clause 3.8(6) of the NPS IB sets out the process that must be followed by the territorial authority as follows:

*(6) If a territorial authority becomes aware (as a result of a resource consent application, notice of requirement or any other means) that an area may be an area of significant indigenous vegetation or significant habitat of indigenous fauna that qualifies as an SNA, the territorial authority must:*

*(a) conduct an assessment of the area in accordance with subclause (2) as soon as practicable; and*

*(b) if a new SNA is identified as a result, include it in the next appropriate plan or plan change notified by the territorial authority.*

5.4 In respect of the above, an assessment under clause 3.8(2) must be undertaken. That includes an assessment of the listed principles under clause 3.8(2) and the assessment criteria in Appendix 1 of the NPS IB.

5.5 I note that no such assessment is provided in the s42A report or in the ecology evidence submitted by Mr Shaw of Wildland Consultants Ltd.

5.6 I note the proposed SNAs were not included in PC43 as notified, but rather introduced as an amendment post submissions. In my view, adequate opportunity to consider the implications of new SNAs via submissions has not been provided.

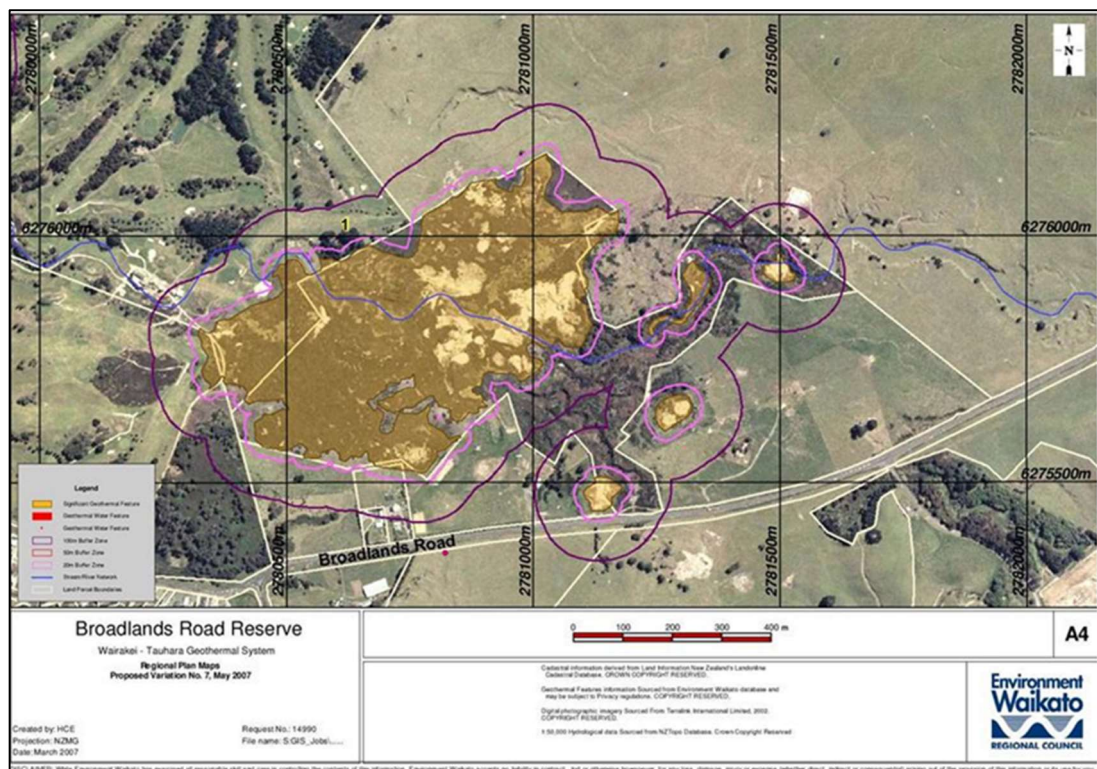
## **6.0 Waikato Regional Plan**

6.1 The proposed amendments seek to draw on aspects of the Geothermal Module of the Waikato Regional Plan (**WRP**), as raised by submissions. There is reference in both the s42A report and Mr Shaw's evidence to the term 'Significant Geothermal Features' (**SGFs**) which stems from the Waikato Regional Plan. The s42A report relies on the proposed 20m buffers as being in accord with Rule 7.6.6.2 of the WRP. I disagree that this is the correct planning approach.

6.2 Rule 7.6.6.2 of the WRP applies to SGFs. SGFs are defined as being:

*In Development and Limited Development Geothermal Systems are those Geothermal Features which are listed in Tables 7-5 and 7-6 and mapped in section 7.10. In protected, Research and Small Geothermal Systems, Significant Geothermal Features are Geothermal Features of the types defined in the table below.*

6.3 The Property is located within the Wairakei-Tauhara 'Development Geothermal System', mapped in Section 7.10 of the WRP (see below). As such, the SGF applicable to the site are those shown in the map. The proposed new areas shown in Mr Shaw's evidence and as referred to in the s42A report are not currently mapped in the WRP and therefore the investigated areas do not appear to meet the definition of SGF as defined by the WRP. The corresponding set of rules under the WRP therefore do not apply to these investigated areas, noting they are currently 'unprotected'. Equally, the corresponding listed criteria for SGFs in 'Protected, Research and Small Geothermal Systems', do not appear to apply to the site, because the site is in a 'Development Geothermal System'.



6.4 Until such time that the WRP is updated via a plan change with new mapping to propose further identified SGFs and the associated 20m protection buffers, the WRP does not apply to the investigated areas.

6.5 Proposing an equivalent protection status in the Taupō District Plan via PC43 would therefore introduce rules and terms that conflict with the current WRP framework for managing activities in proximity to SGFs.

## 7.0 Operative District Plan

- 7.1 As noted at paragraph 193 of the s42A report, the rezoning to Taupō Industrial Environment (**TIE**) as recommended in the s42A Report, introduces protections for these investigated ‘ecologically significant features’ that would not otherwise exist under the operative Rural Environment.
- 7.2 The proposed ‘Sensitive’ overlay that sits as part of the proposed TIE zoning, already has a set of corresponding provisions in the TIE section of the ODP that recognise geothermal and ecological sensitives. The relevant rules are noted below:

*4h.3.7 Any subdivision of land identified as “Sensitive” within the Taupō Industrial Environment is a **discretionary activity** and will be subject to the recommendations of appropriate technical assessments including, but not limited to: a geotechnical assessment, and an ecological assessment where the activity affects land identified as a Significant Natural Area.*

*4h.2.9 Any landuse within an identified “Sensitive” Environment in the Taupō Industrial Environment is a **discretionary activity**.*

- 7.3 The s42A report does not appear to have assessed the appropriateness of applying this existing set of provisions in being able to manage the effects of future development, as an alternative to the proposed amended set of rules that would apply to the Property. The proposed ‘Sensitive’ overlay in itself would introduce greater restrictions on the ability to undertake permitted activities on the site (which are currently enabled by the operative Rural Environment zoning).
- 7.4 The ODP recognises and protects SNAs by way of identifying such areas and applying a set of corresponding provisions that apply to the area of the SNA. The ODP does not apply a concept of 20m buffers from SNAs. The introduction of new 20m buffers in addition to the identification of SNAs themselves seems to conflict with the current ODP rule framework which manages activities on SNAs, not in proximity to SNAs.

**Darren Paul Clark**

**9 August 2023**