

Taupō District Council

Recommendations of the Independent Hearings Panel

Addendum to Recommendation Report 5 – Plan Change 42: General Rural and Rural Lifestyle Environments

Submission OS74 (Steve Hawkins)

10 May 2024

This addendum relates to the submission by Steve Hawkins (OS74) on the provisions of Plan Change 42: General Rural and Rural Lifestyle Environments.

It is attached to **Recommendation Report 5** relating to all other submissions on that plan change.

This addendum should be in conjunction with that Recommendation Report. It should also be read in conjunction with:

- The **Index Report**, which contains an explanation of how the recommendations in all subsequent reports have been developed and presented, along with a glossary of terms used throughout the reports and a record of all Panel Minutes. It does not contain any recommendations *per se*.
- **Recommendation Report 2**, which contains the Panel's recommendations on Plan Change 38 dealing with Strategic Direction Objectives.

This addendum does not contain any appendices. For a schedule of attendances, a summary table of recommendation on each submission point, and recommended amendments to Plan Change 42 (both tracked and accepted versions), **Appendices 1 to 4** attached to **Recommendation Report 5** should be relied upon, respectively.

The Hearings Panel for the purposes of hearing Submitter OS74 was the same as that for Plan Change 42 as a whole i.e., Commissioner David McMahon (Chair), Commissioner Elizabeth Burge and Councillor Kevin Taylor.

Recommendation Report 5

Addendum relating to Submission OS74 (Steve Hawkins)

1 Preamble

Purpose and structure of this addendum

- 1.1 This addendum to **Recommendation Report 5** deals specifically with the submission by Steve Hawkins (Submitter/Submission OS74) to Plan Change 42 (PC42) to the Taupō District Plan (TDP) relating to the General Rural and Rural Lifestyle Environments provisions. The relief that the submitter sought evolved during the course of the submission and hearing process. That relief raised, in the first instance, considerations over matters of scope and, in the second, merit considerations, that are best addressed in this separate addendum to the main report on PC42.
- 1.2 This addendum should nevertheless be read in conjunction with **Recommendation Report 5**, the **Index Report**, and **Recommendation Report 2**; the latter which contains the Panel's recommendations on Plan Change 38 dealing with Strategic Direction Objectives. At appropriate points those reports may be referred to in this addendum.
- 1.3 This addendum is structured as follows:
 - a. The remainder of **Section 1** summarises the original submission and relief sought and sets out the sequence of directions, actions and exchanges that took place during the lead up to the hearing and during the course of the hearing itself, as a basis for describing the preferred relief that emerged during that process. This section is entirely factual in its content.
 - b. **Section 2** sets out our considerations and findings with respect to matters of scope where both the preferred relief and the relief as originally sought (in that order) are concerned. Here we find that there is no scope to consider the preferred relief, but sufficient scope to consider its original iteration. This is the first of our evaluative sections.
 - c. **Section 3** sets out our considerations as to the merits of the relief as originally sought. Here we find that merits provide an insufficient basis for adopting the relief sought. This is the second of our evaluative sections.
 - d. **Section 4** provides a summation of our conclusions in relation to Submission OS74 and confirms our recommendation that it be rejected. This is the third and last of our evaluative sections.

Nature of original submission and relief sought

- 1.4 As summarised by the Council,¹ Submission OS74 expressed opposition to the provisions of PC42 on the basis that they did not reflect the Council's obligations under the NPS-HPL that only Class 1 to 3 land should be protected by virtue of a non-complying activity status for subdivision. The submission was also opposed to the application of a General Rural Environment (GRE) Zone on the site located at 387 Whakarua Road. As part of the relief requested, the submitter sought a Rural Lifestyle Environment (RLE) Zone over the entirety of the site.

¹ *Plan Change 42, General Rural and Rural Lifestyle – Summary of Decisions Sought*, undated

- 1.5 Briefly, the site concerned comprises a 344 ha. block of land accessed via Whakaroa Road and located on an elevated promontory on the northern edge of Lake Taupō between Taupō and Kinloch. It currently accommodates a sheep and cattle farm. The site is illustrated in **Figure 1**. For the purposes of later assessment it is pertinent at this point to note that the subject site has a Rural Environment zoning in the operative TDP which would be rezoned to GRE under the provisions of PC42, and is subject to an operative Outstanding Landscape Area overlay (OLA65 – Whakaroa Peninsula) that the Council intends will not be altered by PC42.



Figure 1: View of subject site (Source: *Te Tuhi Estate Design Statement*, August 2023)

- 1.6 The decisions that the submission sought were as follows:
- a. To amend Rule 4b.5.1 to make subdivision that results in lots smaller than 10 ha. a discretionary activity, together with any other consequential amendments to give effect to that relief.
 - b. To amend the rural environment chapter to reflect the objectives and policies of the NPS-HPL.
 - c. To amend the zoning of the site located at 387 Whakaroa Road to RLE Zone, as, according to the submission, investigations have confirmed that the site is suitable for rural lifestyle development.
- 1.7 The original submission drew one further submission in opposition to the relief sought. This further submission, from Waikato Regional Council, was opposed to the requested RLE rezoning due to the potential for land fragmentation, loss of productive capacity, increased greenhouse gas emissions, and transport and infrastructure concerns.²

² FS212.12

Sequence of directions, actions and exchanges during the course of the hearing

- 1.8 Over the course of the hearing process relating to PC42 as a whole, the following directions, actions and exchanges occurred between 25 July and 16 October 2023 with respect to Submission OS74:
- a. An initial memorandum filed by Mr James Gardner-Hopkins on behalf of the submitter seeking to formally update the Panel as to the refined relief being sought, and addressing matters of scope in that respect.³
 - b. Minute 6 issued by the Panel directing:⁴
 - i. Council’s legal counsel to provide their legal opinion as to whether or not the ‘more specific relief/refined relief’ sought by the submitter at a. was within scope of both PC42 and the original submission; and
 - ii. the Council’s and submitter’s planners to conference on a “without prejudice” basis the planning provisions provided by the submitter at a. to assess their efficacy and workability.
 - c. In the context of Minute 6 we granted leave for the Council’s reporting officer to submit a supplementary statement addressing any ‘planning policy impediment’ to granting the ‘refined’ relief as sought.
 - d. The Section 42A Report on submissions to PC42 as a whole prepared by the Council’s reporting officer Craig Sharman, referencing the memo at a., direction ii. in Minute 6 above, and the forthcoming Joint Witness Statement (f. below).⁵
 - e. Evidence filed by⁶ and on behalf of the submitter and, where the latter was concerned, relating to planning, landscape, design, ecology, engineering, transportation and economics matters.⁷
 - f. The Joint Witness Statement (JWS) on planning matters addressing direction ii. in Minute 6 above and prepared with the input of Mr Sharman and Ms Hilary Samuel (Policy) for the Council, Ms Stephanie Blick and Mr Andrew Cumming, for Submitter OS74, and Ms Megan Kettle for the Regional Council as further submitter.⁸
 - g. Evidence filed by Ms Samuel also addressing direction ii. in Minute 6 above and outlining the Taupō District Growth Management ‘story’ to provide context for how and why PC42 was developed in the way it has been and to outline the subject site’s planning history in relation to the TDP.⁹
 - h. Advice on matters of scope prepared by Mr James Winchester, barrister, for the Council, and addressing direction i. in Minute 6 above.¹⁰

³ *Memorandum on behalf of Steve Hawkins*, prepared by James Gardner-Hopkins, project manager for the submitter, 25 July 2023

⁴ *Minute 6 of the Independent Hearing Panel*, 27 July 2023

⁵ *Section 42A of the RMA Report by Craig Sharman*, 28 July 2023, Section 5.10

⁶ *Statement of Evidence of Steve Hawkins*, 11 August 2023

⁷ Prepared by Andrew Cumming and Stephanie Blick (planning), Dave Mansergh (landscape), Lauren White (design), Treffery Barnett (ecology), Alan Blyde (engineering), Don McKenzie (transportation) and Fraser Colegrave (economics), dated 11 August 2023 or thereabouts.

⁸ *Joint Witness Statement – Planning*, undated (presumably 14 August 2023)

⁹ *Statement of Evidence Hilary Samuel*, 14 August 2023

¹⁰ *Plan Change 42 to the Taupō District Plan – Advice on Scope – Submission by Steve Hawkins*, 14 August

- i. A supplementary statement prepared by Mr Sharman addressing direction ii. and addressing any identified 'planning policy impediment' as provided in c. in Minute 6 above, and referencing his original Section 42A Report (d. above), the outcomes of conferencing as set out in the JWS (f. above), Ms Samuel's evidence (g. above) and Mr Winchester's advice (h. above).¹¹
- j. A second memorandum filed on behalf of the submitter responding to Mr Winchester's advice (h. above) and seeking that the Panel consider the merits of the proposal associated with the refined relief, independent or ahead of matters of scope being decided.¹²
- k. A legal peer review of the advice filed to date regarding matters of scope (and referencing a., h. and j. above) prepared by Lara Burkhardt, barrister and solicitor, for Submitter OS74.¹³
- l. Minute 16 issued by the Panel, signaling (among other matters) an opportunity for Council officers to provide merit evidence regarding Submitter OS74 should they choose to do so.¹⁴
- m. A third memorandum filed on behalf of the submitter responding to specific matters arising during the hearing unrelated to matters of scope.¹⁵ Accompanied by post-hearing evidence and information prepared on behalf of the submitter by Ms Blick providing a brief account of engagement with mana whenua and the Department of Conservation.¹⁶
- n. Further advice on matters of scope prepared by Mr James Winchester, barrister, for the Council, and addressing the memo and peer review referred to in j. and k. above.¹⁷
- o. Post-hearing evidence and information filed on behalf of the Council relating to landscape, geotechnical and economics matters.¹⁸
- p. A reply statement filed by Mr Sharman addressing submissions on PC42 as a whole, but also specifically matters of scope and merit raised in relation to Submission OS74.¹⁹ Prepared with reference to the opportunity provided via Minute 16 (l. above), and referencing his supplementary statement (i. above) and evidence filed by other Council experts (o. above).

1.9 We further reference the directions, actions and exchanges above to the extent that they are relevant, in our considerations as to scope and merit in **Sections 2** and **3** of this addendum.

2023

¹¹ *Section 42A Supplementary Statement by Craig Sharman*, 16 August 2023

¹² *Second Memorandum on Behalf of Steve Hawkins*, 21 August 2023

¹³ *Plan Change 42 to the Taupō District Plan – Peer Review Opinion on Scope – Submission by Steve Hawkins*, 22 August 2023

¹⁴ *Minute 16 of the Independent Hearing Panel*, 28 August 2023

¹⁵ *Third Memorandum on Behalf of Steve Hawkins*, 1 September 2023

¹⁶ *Supplementary Statement of Evidence of Stephanie Louise Blick*, 1 September 2023

¹⁷ *Plan Change 42 to the Taupō District Plan – Advice on Scope – Submission by Steve Hawkins – Response to Further Memorandum and Legal Advice on behalf of the submitter*, 1 September 2023

¹⁸ Prepared by Simon Button (landscape), Maddison Phillips (geotechnical) and Philip Osborne (economics), dated 20 – 22 September 2023.

¹⁹ *Section 42A Reply Statement by Craig Sharman*, 16 October 2023, paras 19 – 33

Evolution of relief sought during the course of the hearing

- 1.10 As alluded to in a. above, the relief originally sought by the submitter evolved during the course of the hearing, reflecting the development of future/proposed applications for resource consent relating to the subject site.²⁰ Those consent applications would centre around the creation of the 'Te Tuhi Development Area' (TTDA) to provide for the development of what the submitter refers to as rural lifestyle allotments.
- 1.11 The relief as latterly 'refined' and sought by the submitter can be summarised as follows:
- a. amendments to the rural environment chapter of the TDP to:
 - i. reference the purpose of the TTDA in the Introduction section;
 - ii. introduce a new objective and policy relating to subdivision, use and development in the TTDA;
 - b. amendments to the general rules section for the RLE Zone to:
 - i. provide for buildings or structures generally in accordance with the TTDA Structure Plan as a discretionary activity;
 - ii. provide for buildings or structures not generally in accordance with the TTDA Structure Plan, minor residential units, and intensive indoor primary production activities in the TTDA as non-complying activities;
 - c. amendments to the subdivision rules for the RLE Zone to:
 - i. create an exception applying to the TTDA to a rule that makes the subdivision of land in the GRE or RLE Zones a non-complying activity where they are also located in an Outstanding Landscape Area (OLA) and involves the creation of lots less than 10 ha. a non-complying activity;
 - ii. provide for subdivision generally in accordance with the TTDA Structure Plan as a discretionary activity;
 - iii. provide for subdivision not generally in accordance with the TTDA Structure Plan as a non-complying activity; and
 - d. include the TTDA Structure Plan as an appendix to the TDP.
- 1.12 As noted in paragraph 1.8 of this addendum, the submitter's 'refinement' of their relief in this manner led us via Minute 6 to direct Council's legal counsel to provide a legal opinion as to matters of scope. Specifically, we asked counsel as to advise whether the 'more specific relief/refined relief' was within scope of:
- a. PC42; and
 - b. the original submission.
- 1.13 These are the matters that Mr Winchester, together with Mr Gardner-Hopkins and Ms

²⁰ As we understand it, those applications remain in development and have not yet been lodged with the relevant consent authorities.

Burkhardt, turned their minds to in their subsequent submissions. We address their difference of opinion and reach our findings in relation to matters of scope in **Section 2** of this addendum.

- 1.14 Having settled those matters in relation to the 'refined' relief summarised in paragraph 1.11 above, we have also been obliged to apply the same test outlined in a. above, where the relief sought in the original submission was concerned. We briefly set out our findings in this respect in **Section 2** also.
- 1.15 Finally, having settled all matters relating to scope, we have turned our attention to considering the merits of the relief as originally sought and as summarised in paragraph 1.6 of this addendum. We set out our findings in this respect in **Section 3**, and reach our overall conclusions and recommendations in relation to Submission OS74 in **Section 4**.

2 Consideration as to matters of scope

Preferred relief

- 2.1 As our starting point for considerations as to scope it is logical to work backwards from the 'more specific relief/refined relief' (or 'preferred relief' as we will refer to it from here on) to the relief as originally sought by the submitter.
- 2.2 With respect to the former then, it was Mr Gardner-Hopkins' position, as set out in his initial memorandum, that the preferred relief was more restrictive than the original relief sought as:
 - a. *"while it still seeks rezoning of the site to Rural Lifestyle;*
 - b. *instead of seeking a discretionary status for all subdivision under 10ha it is seeking for that discretionary status to remain only if subdivision is generally in accordance with a detailed structure plan."*²¹
- 2.3 In his view, the offering up of a specific directive objective and policy, together with some supporting rules, acted to reinforce this more restrictive relief.²² With reference to case law, Mr Gardener-Hopkins went on to opine that the preferred relief aligned with the purpose of PC42, related to land proximate to other areas proposed for an RLE zoning as notified, could not be considered to be 'out of left field' when considered against the scope of the original submission, and would not result in the creation of any 'newly affected parties'.²³
- 2.4 As noted earlier, it was on this basis that we directed Council's legal counsel to provide a legal opinion as to matters of scope, via Minute 6. To remind the reader, the questions posed related to whether the preferred relief was within the scope (or 'on') PC42 and the original submission.
- 2.5 Mr Winchester subsequently indicated that he had no issues with the submitter's position that the preferred relief is 'on' PC42;²⁴ we also accept that. However, in relation to the

²¹ *Memorandum on behalf of Steve Hawkins*, prepared by James Gardner-Hopkins, project manager for the submitter, 25 July 2023, para 6

²² *Memorandum on behalf of Steve Hawkins*, prepared by James Gardner-Hopkins, project manager for the submitter, 25 July 2023, para 7

²³ *Memorandum on behalf of Steve Hawkins*, prepared by James Gardner-Hopkins, project manager for the submitter, 25 July 2023, paras 15 - 28

²⁴ *Plan Change 42 to the Taupō District Plan – Advice on Scope – Submission by Steve Hawkins*, 14 August 2023, para 11

second question, it was Mr Winchester's view that the "*position sought to be advanced by the submitter would be beyond the scope of the original relief and, as a consequence, unfair.*"²⁵

- 2.6 In sum, his view was founded on concerns that:
- a. the preferred relief was significantly different from the original relief in scope, content and intended effect;
 - b. the preferred relief was arguably more enabling than restrictive when considered against the original relief;
 - c. more importantly than considerations relating to relative restrictiveness, the preferred relief would lead to outcomes that could not have reasonably been appreciated or foreseen by other submitters or members of the public having only the original relief to hand; and
 - d. as a consequence, it would be unfair to accommodate the preferred relief through the PC42 hearing process.²⁶
- 2.7 Mr Gardner-Hopkins returned to the matter of scope in his second memorandum. Focusing on the ultimate questions of scope and fairness, Mr Gardner-Hopkins provided an analysis of why, in his view, all three parts of the original submission (as summarised in paragraph 1.6 of this addendum) provided sufficient scope for our consideration of the preferred relief. It remained his view that the structure plan provisions were by their very nature more restrictive than the relief as originally sought. Finally, in his view, observing that the Regional Council had sought to oppose the original relief by way of a further submission, then it followed that other parties also had had that opportunity, even if they elected not to.²⁷
- 2.8 In reviewing Messrs Gardner-Hopkins' and Winchester's advice, Ms Burkhardt indicated that she preferred the former's, on the basis that she considered his analysis to be more detailed and comprehensive.²⁸ She appeared to accept Mr Gardner-Hopkins' contention that the preferred relief was more restrictive and therefore within the scope of the original relief and took the view that the thrust of both the original and preferred relief seeking a rezoning were sufficiently similar. Unfortunately, as Ms Burkhardt's review was tabled by the submitter we were unable to test the conclusions she had reached, at the hearing.
- 2.9 The final word on matters of scope was provided by Mr Winchester, having had the opportunity to consider both Mr Gardner-Hopkins' and Ms Burkhardt's advice. He continued to hold the opinion that the preferred relief was beyond the scope of the original relief and that it would be unfair to accommodate it.²⁹
- 2.10 In sum, we agree with Mr Winchester that the differences between the relief advanced at the hearing and that contained in the submission are "*wide-ranging and material*"³⁰ and

²⁵ *Plan Change 42 to the Taupō District Plan – Advice on Scope – Submission by Steve Hawkins*, 14 August 2023, para 25

²⁶ *Plan Change 42 to the Taupō District Plan – Advice on Scope – Submission by Steve Hawkins*, 14 August 2023, pars 12 – 24

²⁷ *Second Memorandum on Behalf of Steve Hawkins*, 21 August 2023, paras 11 – 26

²⁸ *Plan Change 42 to the Taupō District Plan – Peer Review Opinion on Scope – Submission by Steve Hawkins*, 22 August 2023

²⁹ *Plan Change 42 to the Taupō District Plan – Advice on Scope – Submission by Steve Hawkins – Response to Further Memorandum and Legal Advice on behalf of the submitter*, 1 September 2023, para 31

³⁰ *Plan Change 42 to the Taupō District Plan – Advice on Scope – Submission by Steve Hawkins – Response*

are "beyond the scope of what a reasonable person could have envisaged from reading the submission."³¹ On the latter point, we concur with Mr Winchester's observation that the degree of explanation and interpretation that the submitter felt was necessary in enunciating their position went to a reasonable conclusion that "it would have been relatively difficult for any person reading the submission on its face to understand what the submitter had in mind when he wrote the submission, let alone what he now proposes."³²

- 2.11 To expand on this point, we agree with Mr Winchester that, with respect to the preferred relief and the accompanying TTDA provisions:

*"It is a matter of fact that the planning approach, the planning mechanisms now relied on, the level of detail advanced, the density and number of house sites, and the type of outcome envisaged are all significantly different from the relief sought in the submission, and are not foreshadowed in any way in the submission."*³³

- 2.12 We note that, from a planning perspective, Mr Sharman agreed with Mr Winchester, in stating that:

*"The modified relief is presented as being 'within the scope' of the relief sought within the original submission. I do not accept that this is the case, and in my opinion the modified relief on the basis of density alone, significantly expands and is far more enabling of development on this property than the RLE provisions being introduced by PC42."*³⁴

- 2.13 With respect to the development of the TTDA proposal, we have considerable sympathy for the position presented by Ms Samuels, that:

*"The refined provisions proposed by Submitter 74 hang heavily on the compliance of any future development with the structure/precinct plan. However, the precinct plan proposed by the submitter has been lodged as evidence five working days before the hearing, so was excluded from the First Schedule process for Plan Change 42. There has been no mechanism for the Council or the community to have inputted into the precinct plan."*³⁵

- 2.14 Finally, we agree with Mr Winchester that the case law referenced by the other witnesses in their submissions was not generally applicable to the specifics of the matter before us.

- 2.15 Accordingly, while we do not disagree that the preferred relief is in scope of and 'on' PC42, we find we do not have jurisdiction or scope to entertain the preferred relief on the basis that it is beyond the scope of the original relief sought in Submission OS74 and that to do so would raise substantive questions of fairness that we are not comfortable with.

- 2.16 We are left with no doubt in this respect. What this means, as a consequence, is that there are no grounds for us to consider the merits of the TTDA proposal encapsulated in the preferred relief.

to Further Memorandum and Legal Advice on behalf of the submitter, 1 September 2023, para 26

³¹ Plan Change 42 to the Taupō District Plan – Advice on Scope – Submission by Steve Hawkins – Response to Further Memorandum and Legal Advice on behalf of the submitter, 1 September 2023, para 7

³² Plan Change 42 to the Taupō District Plan – Advice on Scope – Submission by Steve Hawkins – Response to Further Memorandum and Legal Advice on behalf of the submitter, 1 September 2023, para 13

³³ Plan Change 42 to the Taupō District Plan – Advice on Scope – Submission by Steve Hawkins – Response to Further Memorandum and Legal Advice on behalf of the submitter, 1 September 2023, para 8

³⁴ Section 42A Supplementary Statement by Craig Sharman, 16 August 2023, para 37

³⁵ Statement of Evidence Hilary Samuel, 14 August 2023, para 32

- 2.17 Having said that, we do acknowledge the efforts of the planning witnesses, Mr Sharman, Ms Samuel, Ms Blick, Mr Cumming, and Ms Kettle in conferencing on the efficacy and workability of the TTDA provisions set out in the preferred relief, as directed by us via Minute 6, and as set out in the JWS. We note in that context that while the witnesses reached some agreement regarding the mechanics of those provisions, they were unable to reconcile their differences regarding the satisfactory integration of those provisions with broader TDP objectives and policies.
- 2.18 We also acknowledge the efforts of the submitter and their expert team to develop the TTDA proposal and we have more to say on the appropriate means for pursuing it further in **Section 4**.

Original relief sought

- 2.19 Having settled the matter of scope where it applies to the preferred relief, we note that no argument has been presented to us that the original relief was not in scope of or 'on' PC42. In fact, it was made clear by Mr Gardner-Hopkins that, even were we to conclude that there is a jurisdiction issue with the preferred relief (as we have), then the submitter's 'fall back' position remains the original relief sought.³⁶
- 2.20 This original relief is the proposal that we must now turn our minds to in terms of considering it on its merits.

3. Consideration of original relief sought on its merits

Introduction

- 3.1 As a starting point, it is helpful here to return to the intent of the original submission; that is, to facilitate the development of the subject site located at 387 Whakaroa Road for rural lifestyle purposes. To achieve that, the submission first seeks to apply the RLE Zone to the subject site, in preference to the GRE zoning as notified. The submission also seeks that Rule 4b.5.1, which provides for subdivision in the GRE Zone, is amended to make subdivision that results in lots smaller than 10 ha. a discretionary activity (rather than a non-complying activity as notified).
- 3.2 We note at this point that the two main reliefs sought can be seen as separate means to an end where the submitter's aspirations for their property is concerned. The requested rezoning of the subject site to an RLE zoning is obviously a site-specific request. The requested change in subdivision activity status would apply to the subject site and the GRE Zone in general, given that the rule concerned (4b.5.1) applies to that zone alone. This second relief can be seen as representing an alternative means of facilitating the site's development for rural lifestyle purposes, although of course its reach would be considerably wider. This is a generous interpretation on our part, observing that Mr Sharman pointed to the somewhat contradictory nature of the two reliefs.³⁷
- 3.3 In this respect, we do not accept Mr Gardner-Hopkins' view that the submission seeks a discretionary activity status for subdivision across both the GRE and RLE.³⁸ This is not clear from a plain reading of the components of the submission. Ultimately, though, the intent of the submission is clear; i.e., as stated above, it is to provide a means for enabling the development of the site for rural lifestyle purposes. That allows us to consider the two reliefs sought in a collective manner.

³⁶ *Third Memorandum on Behalf of Steve Hawkins*, 1 September 2023, para 11

³⁷ *Section 42A Supplementary Statement by Craig Sharman*, 16 August 2023, para 8

³⁸ *Second Memorandum on Behalf of Steve Hawkins*, 21 August 2023, paras 12 – 19

3.4 In our view, the questions that are determinative to our consideration of the merits of the original relief as sought are as follows:

a. Are there any fundamental impediments to rezoning or altering subdivision consent status to facilitate the development of the subject site for rural lifestyle purposes, such that the requests should not proceed?

b. What is the nature of these fundamental impediments (if any)? Are they:

- i. Policy barriers?* (these might include a misalignment with the purpose of PC42, those arising from conflicts with regional or district policy settings, or a lack of demonstrated need for the provision of further lifestyle development opportunities in the Taupō District as a whole)
- ii. Site-specific physical constraints, values or potentially adverse effects?* (of such significance that means that the requests should not proceed)
- iii. Information gaps?* (of sufficient significance that means we are unable to determine some element of ii. above)

3.5 We deal with each of these elements in turn under the following three sub-headings. We do note that there is a third element to the original submission; seeking that the rural environment chapter be amended to accommodate the objectives and policies of the NPS-HPL. This is a discrete matter that we reach a separate finding on under the fourth and final sub-heading below.

3.6 In all instances our reference points for a merits assessment are the evidence and information available to us with respect to the reliefs sought in the original submission, and not as later 'refined'. Practically, this limits the reference set available to us as the evidence and information presented during the course of the hearing tended to focus on the submitter's preferred relief, rather than that sought in the original submission. Nonetheless, there are still some findings that we are able to reach with reference to general information available to us on certain matters, such as those related to demonstrated need, for example.

Policy barriers

3.7 As noted in question b.i. above, policy barriers may include a misalignment with the purpose of PC42, those arising from conflicts with regional or district policy settings, or a lack of demonstrated need for the provision of further lifestyle development opportunities in the Taupō District as a whole. These we deal with in turn below.

Purpose of PC42

3.8 There is no perfect distillation of the purpose of PC42 that we have been able to ascertain from our reading of the materials associated with PC42, including the Section 32 Report.³⁹ The 'purpose' of PC42 as described in the Section 42A Report reads more as a description of the main changes to the TDP wrought by PC42, rather than a rationale for those changes.⁴⁰

3.9 Nonetheless, reading the materials at a broader level, it is apparent that, to avoid

³⁹ Section 32 Evaluation Report: Plan Change 42 Rural Chapter – General Rural Environment and Rural Lifestyle Environment, undated

⁴⁰ Section 42A of the RMA Report by Craig Sharman, 28 July 2023, Section 2.2

cumulative effects such as a loss of productive potential associated with the fragmentation of the rural environment into lifestyle properties, the Plan Change seeks to direct such development into identified, suitable areas, subject to an RLE zoning, and separate from the balance of the rural environment within which the productive potential of land, and other natural and acquired values, are to be preserved. Minimum lot sizes for both the GRE and RLE, consent status for infringing lots, and bespoke objectives and policies are then proposed to be brought to bear to the consideration of proposals requiring resource consent.

- 3.10 Mr Sharman's view is that the merits of amending the zoning of the property to RLE are weak. He based his view partly on the observation that "*[d]espite not being highly productive land, the property is a large unfragmented block of land generally suitable for pastoral or rural purposes, and is not unique to many other large rural properties in the district.*"⁴¹
- 3.11 We concur with Mr Sharman in this respect, and would go further in finding that requested amendments to PC42 to enable the development of the site for rural lifestyle purposes are misaligned with the broad purpose of the Plan Change, in that they would not preserve the productive potential of rural land as PC42 generally intends.

Regional and district policy settings

- 3.12 In opposing the requested rezoning of the property, Council planning witnesses Mr Sharman and Ms Samuels have placed considerable weight on the position that the relief sought would be contrary to the outcome sought within the Taupō District Growth Strategy (TD2050). We find ourselves unable to provide equivalent weight to TD2050 given that it is a non-statutory document not produced under the Resource Management Act 1991 and dating from 2006, albeit we acknowledge that it was reviewed in 2018. We are also unable to overly rely on Mr Sharman's assessment of key planning impediments as the (correct) focus of his assessment at that time was on the TTDA-related proposal.⁴²
- 3.13 More relevant and applicable to our minds, are the provisions of the Waikato Regional Policy Statement (WRPS), operative TDP and the proposed Strategic Directions provisions (the subject of Plan Change 38).
- 3.14 The Regional Council did not file any evidence at the hearing, although it did table a letter expressing concern that *ad hoc* RLE rezoning requests were contrary to the WRPS.⁴³ Ms Samuels helpfully set out the hierarchy of WRPS provisions, operative TDP objectives and policies, Plan Change 38 Strategic Directions objectives and relevant PC42 objectives and policies relating to (variously) the management of future growth, the fragmentation of the rural environment, rural subdivision and outstanding landscapes, in her supplementary statement.⁴⁴ We agree with Ms Samuels that the objectives of both PC38 and PC42 all have legal effect from notification and must be accorded some weight.⁴⁵
- 3.15 It is our assessment that to grant the relief as originally sought by the submitter would be contrary to:
- a. WRPS Method UD-M5 relating to district plan provision for rural-residential

⁴¹ Section 42A of the RMA Report by Craig Sharman, 28 July 2023, para 119

⁴² Section 42A Supplementary Statement by Craig Sharman, 16 August 2023, paras 13 – 14

⁴³ Waikato Regional Council – Letter to be Tabled for Plan Change 42, General Rural and Rural Lifestyle Environments, 14 August 2023, para 15 – 16

⁴⁴ Statement of Evidence Hilary Samuel, 14 August 2023, Attachment 1

⁴⁵ We have already considered submissions to PC38 and recommend the adoption of amendments that, where relevant, have been reflected in paragraph 3.15 of this addendum (refer **Recommendation Report 2**).

development;

- b. Operative TDP Objectives 3b.2.1 and 3b.2.2 relating to the maintenance and enhancement of rural amenity and character;
 - c. Operative TDP Objective 3h.2.1 and associated policies relating to the protection of OLA;
 - d. PC38 Objective 2.3.2.1 relating to the protection of the productive capacity of rural land;
 - e. PC38 Objective 2.3.2.2 and an associated policy relating to the effective functioning of the GRE; and
 - f. PC42 Objectives 3b.2.2 and 3b.3.4 relating to the maintenance of established rural character and the consolidation of rural lifestyle activities.
- 3.16 We cannot see any obvious pathway around the policy barriers identified in a. to f. above at this point. Fundamentally in our view, to ostensibly cater for rural lifestyle purposes on the subject site by rezoning and/or altering the consent status of subdivision would be to set up an unresolved tension with regional and district level policy settings, particularly those seeking to avoid the fragmentation of the rural environment and protect outstanding landscapes. The latter raises RMA s6(c) considerations that also remain unresolved in our minds.

Demonstrated need

- 3.17 In concluding that the merits of amending the zoning of the property are weak, Mr Sharman relies in part on the finding of Council's economic assessments that there is no need for additional rural lifestyle land in the district, and that PC42 proposals for RLE zones, as notified, are sufficient to meet anticipated demand and provide choice.⁴⁶
- 3.18 Indeed, this is the general conclusion that Mr Philip Osborne reached in his primary statement of economic evidence, on behalf of the Council.⁴⁷ In economic evidence presented on behalf of the submitter,⁴⁸ Mr Fraser Colegrave's position was that, in 'unabashedly' catering for a 'high-end' rural lifestyle, broad conclusions about additional rural residential capacity did not meaningfully apply to the site in question. We are unable to give Mr Colegrave's views much weight in this regard as his vision of the proposal relates to that promoted via the preferred relief, which we have already determined we do not have scope to consider.
- 3.19 In response, Mr Osborne returned to the matter of demand in his supplementary statement. It remained his view, that "[t]he RLE capacity enabled through PC42 is still sufficient to meet [the] level of [predicted] demand."⁴⁹ We have not heard anything to convince us otherwise, and we therefore accept the Council's position in this respect, in that there is no demonstrated need for the additional rural lifestyle capacity that changes in zoning or subdivision consent status on the subject site would effect.

⁴⁶ Section 42A of the RMA Report by Craig Sharman, 28 July 2023, para 119

⁴⁷ Statement of Evidence of Philip Osborne on behalf of the Taupō District Council – Economics, 27 July 2023, para 8.5

⁴⁸ Statement of Evidence of Fraser Colegrave, 9 August 2023

⁴⁹ Supplementary Statement of Evidence of Philip Osborne on behalf of the Taupō District Council – Economics, 22 September 2023, para 3.9

Site-specific physical constraints, values and effects

- 3.20 While largely focused on the merits of the TTDA proposal (which is not within scope of our consideration), Mr Sharman's supplementary statement did set out a useful perspective on the site's 'micro' suitability for a proposed RLE zoning. We consider that this is worth quoting in full:

*"The property is not adjacent to a proposed RLE location, is not characterised by existing rural lifestyle development or small allotments, is well placed in terms of proximity to Acacia Bay and Taupō but is not particularly more so than many other similar sized rural properties in the wider locality, is subject to several fault lines based on technical hazards assessment work undertaken by TDC, appears to have high landscape and natural values as recognised by the OLA notation and the adjacent significant natural areas notation and, whilst near to Kinloch township, is not connected to it in a practical sense. I therefore do not consider that there are property-specific or locational factors that make this property more suitable for RLE land use than for other similarly sized properties within the wider Rural Environment."*⁵⁰

- 3.21 Mr Sharman further considered the site-specific merits of the submitter's 'fall back' position in his reply statement. He noted that one criterion for inclusion in the RLE Zone was the absence of overlays relating to OLAs etc., and that the RLE provisions tend not to integrate those overlay provisions given that no or very little spatial overlap is intended (this differs from the GRE provisions). This went to Mr Sharman's conclusion that the submitter's property did not meet the necessary selection criteria⁵¹ and was therefore unsuitable for inclusion in the RLE Zone.⁵²
- 3.22 In considering site-specific physical constraints, values and effects at a more detailed level, we are unable to place meaningful weight on the technical evidence supplied on behalf of the submitter or as latterly commissioned by the Council as it was largely focused on an assessment of TTDA-related proposal attached to the preferred (and out-of-scope) relief. A case in point is Mr Simon Button's supplementary evidence on landscape,⁵³ which comprised a gap analysis of that information relating to the TTDA proposal. This is not intended to be critical of Mr Button's or anyone else's evidence; it is only to emphasise that we are unable to reach any definitive finding as to the significance of site-specific physical constraints, values and effects associated with the relief as originally sought, beyond indicating a concurrence with Mr Sharman's general concerns above. This goes to the next matter we deal with, relating to the comprehensiveness of the information available to us.
- 3.23 We note that the Council did not seek to contest much of the submitter's own technical evidence by fielding its own, although to a considerable extent this came down to an assumption by the Council that the preferred relief would not proceed for scope reasons.⁵⁴ Nevertheless, it is possible that some of these site-specific physical constraints, values and effects do not represent an impenetrable obstacle to the site's development in some shape or form, and could be resolved through an alternative process, but that is not a finding we are able or obliged to reach given the information before us.

⁵⁰ Section 42A Supplementary Statement by Craig Sharman, 16 August 2023, para 26

⁵¹ Section 42A Supplementary Statement by Craig Sharman, 16 August 2023, para 23 and Section 42A Reply Statement by Craig Sharman, 16 October 2023, para 26

⁵² Section 42A Reply Statement by Craig Sharman, 16 October 2023, para 23

⁵³ Right of Reply – Advice Statement of Simon Leigh Button on behalf of the Taupō District Council – Landscape, 20 September 2023

⁵⁴ Refer letter to the Panel titled *Evidence on Submission 74*, dated 4 September 2023

Comprehensiveness of information provided

- 3.24 As signaled previously, the submitter's case, and the Council response to that case, has tended to focus on the relief as modified during the course of the hearing. In paring back our consideration to the relief as originally sought, we are faced with a consequential lack of information to assist us in our deliberations, that we are obliged to acknowledge. This goes to assessing the risk of acting, where there is uncertain or insufficient information about the subject matter.⁵⁵
- 3.25 A case in point is our appreciation and understanding of cultural values and how these might be affected by the relief sought; something that is almost entirely absent from the materials before us. We appreciate that the submitter has made some efforts in the space⁵⁶ and agree that matters such as these are potentially resolvable given time and resourcing;⁵⁷ however, those efforts have generally related to the out-of-scope TTDA proposal and as such, any outcomes arising are not directly applicable to the original relief.
- 3.26 This leads us to a general conclusion that we do not have sufficient information regarding the implications of the original relief sought to enable it to proceed.

Accommodation of NPS-HPL objectives and policies

- 3.27 Briefly, and as noted earlier, there was a third element to the original submission; seeking that the rural environment chapter be amended to accommodate the objectives and policies of the NPS-HPL. In this respect, we agree with Mr Sharman that this "*point of relief appears to incorrectly interpret the NPS-HPL as providing direction for more lenient subdivision on soils which are not Class 1-3.*"⁵⁸ On that basis, we do not propose to consider the matter further.

4. Overall conclusions and recommendations

Overall conclusions

- 4.1 We have found that we do not have scope to consider the relief as modified or 'refined' by the submitter during the course of the hearing, as it falls outside the scope of the relief sought in the original submission.
- 4.2 We further find that the relief as originally formulated by the submitter and requesting the rezoning or altering of subdivision consent status to facilitate the development of the subject site for rural lifestyle purposes should not proceed due to the following fundamental impediments:
- a. it is misaligned with the purpose of PC42;
 - b. it is contrary to relevant WRPS, operative TDP, PC38 and PC42 provisions including specific objectives and policies and would set up unresolved tensions with those provisions;
 - c. no demonstrated need for further rural lifestyle capacity in Taupō District has been demonstrated; and

⁵⁵ s32(2)(c), RMA

⁵⁶ Refer *Supplementary Statement of Evidence on Stephanie Louise Blick*, 1 September 2023

⁵⁷ *Section 42A Reply Statement by Craig Sharman*, 16 October 2023, para 20

⁵⁸ *Section 42A Supplementary Statement by Craig Sharman*, 16 August 2023, para 8

d. at a broad level, site-specific physical constraints, values and potential effects may be able to be overcome but we are not able or obliged to reach a definitive finding on this matter given an absence of sufficient information and the risk of acting in that context.

4.3 We would make one final observation. Given the above, we do not think that the relief sought, either as originally formulated or as subsequently modified, is correctly pursued through a submission on PC42. We appreciate that the submitter has been prompted to act by the promulgation of the Plan Change and that their ideas have evolved over the course of that process. That of course is understandable, but the proposal as it now stands has not been presented as a comprehensive package from the outset, it has led to the relief straying out-of-scope and information gaps opening up during the course of its evolution.

4.4 Without prejudice to an eventual outcome, we consider this may be best resolved by reconstituting the proposal or some version of it and pursuing it through a private plan change and/or resource consenting process at an appropriate point.

Recommendations

4.5 For the reasons summarised above, we recommend the rejection of Submission OS74. No amendments to PC42 are proposed as a consequence.

DATED THIS TENTH DAY OF MAY 2024



DJ McMahon
Chair



EA Burge
Independent Commissioner



K Taylor
Councillor