

**IN THE MATTER**

of the Resource Management Act 1991

**AND**

**IN THE MATTER**

of the application by Jerome Luiten to subdivide an existing 3.2083ha property located at 561 State Highway 1, RD1 Kauri into three lots being: Lot 1 (1.76ha); Lot 2 (0.87ha (0.69ha net site area)); and Lot 3 (0.61ha).

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**STATEMENT OF EVIDENCE OF DEAN MICHAEL CHRYSTAL FOR FONTERRA  
LIMITED**

**PLANNING**

**1 FEBRUARY 2018**

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**Russell  
McAugh**

B S Carruthers / M J Doesburg  
P +64 9 367 8000  
F +64 9 367 8163  
PO Box 8  
DX CX10085  
Auckland

## 1. SUMMARY

1.1 Fonterra Limited ("**Fonterra**") made a submission opposing the application by Jerome Luiten to subdivide an existing 3.2083 ha property at 561 State Highway 1, Kauri, into three separate lots on the basis that it:

- (a) would have significant adverse effects;
- (b) was contrary to the relevant objectives and policies; and
- (c) would establish a precedent and impact on the integrity of the Whangarei District Plan ("**District Plan**").

1.2 In summary, my evidence is that the proposed subdivision, through the subsequent expectation for dwelling development, has the potential to create reverse sensitivity effects on Fonterra's Kauri Milk Processing Site ("**Kauri Site**") and is contrary to a range of objectives and policies that seek to avoid subdivision to this level and in this type of location. This in itself I consider is sufficient to warrant the application being declined in terms of the threshold test of s104D of the Resource Management Act 1991 ("**RMA**").

1.3 Notwithstanding the above, I consider the proposal also has the real potential to establish a precedent, which would be difficult to avoid should similar applications be forthcoming, with the inevitable outcome being that the integrity of the key planning documents would be impacted.

1.4 In my opinion, given the strong policy stance taken against this form of development by the planning framework, which stemmed from previous concerns as to its effects, enabling this subdivision would be a poor planning outcome.

## 2. INTRODUCTION

2.1 My full name is Dean Michael Chrystal. I am a Director of Planz Consultants Limited, a planning consultancy based in Christchurch, Auckland, Dunedin and Queenstown. I have been employed in the practice of Planning and Resource Management for over 25 years, both in New Zealand and the United Kingdom. I hold a Bachelor of Regional Planning degree and I am a Full Member of the New Zealand Planning Institute and holder of their Distinguished Service Award. I am also an accredited Commissioner.

2.2 I have previously been involved in a number of major Fonterra manufacturing site development projects, and I have provided evidence for Fonterra on a

number of district plans throughout the country, including Plan Changes 85-85D and 86A to the District Plan. I am familiar with the Kauri Site and the surrounding area, including the location of the application site.

- 2.3 I have also been involved, as both a planning practitioner and as a Commissioner, in cases relating to rural subdivision. One of those Commissioner decisions, which I reference later in my evidence, was later upheld by the Environment Court<sup>1</sup> and specifically addressed the issue of precedent and plan integrity.
- 2.4 Evidence for Fonterra at this hearing is also being provided by Mr Hartigan, Fonterra's Kauri Site Operations Manager.
- 2.5 I confirm that I have reviewed the application details, the s42A report prepared by Mr Ian McAlley on behalf of the Council and the evidence prepared on behalf of the applicant by Mr Hewson.
- 2.6 Although this is a Council hearing, I have read the Environment Court's Code of Conduct for Expert Witnesses and agree to comply with it. My qualifications as an expert are set out above. I confirm that the issues addressed in this statement of evidence are within my area of expertise.

### **Scope of evidence**

- 2.7 My evidence will focus on the issues of reverse sensitivity, the objectives and policies of the operative district plan and those of Plan Changes 85, 85A and 85B, and the issues of precedent and plan integrity.
- 2.8 I will also address the statutory context of the application including the status of Plan Changes 85 – 86A, for which the Council's decisions were recently released on 17 January 2018.

## **3. INTRODUCTION**

- 3.1 The application involves a proposal to subdivide an existing 3.2083 ha property at 561 State Highway 1, Kauri, into three separate lots ranging in size from 0.61ha – 1.76ha. There is an existing dwelling on proposed Lot 1 but no proposed dwellings at this stage on Lots 2 and 3. Dwellings on these lots would therefore be subject to further consents.

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<sup>1</sup>

*Tait v Hurunui District Council* EnvC Christchurch C106/2008, 29 September 2008.

3.2 Fonterra opposed the application on the basis of reverse sensitivity effects on the Kauri Site, adverse traffic effects, adverse effects on the rural character of the surrounding environment, the establishing of a precedent for small lot subdivision in Whangarei's rural areas; and the undermining of the integrity of the District Plan. Fonterra sought that the application be declined.

#### 4. STATUTORY CONTEXT

4.1 In his section 42A report, Mr McAlley has indicated that the site is zoned Countryside Environment in the operative District Plan. The subdivision provisions in the District Plan are at controlled activity status at 20ha and, as outlined by Mr McAlley, provide for a discretionary activity status where the minimum average net site area of all proposed allotments is 4ha. Anything below 4ha is a non-complying activity and thus first subject to the s104D gateway tests before the s104 requirements may be considered.

4.2 Decisions on Plan Changes 85 – 86B to the District Plan were recently notified on 17 January 2018. Of particular relevance are Plan Changes 85, 85A, 85B and the Consequential Amendments to the Noise and Vibration Section. Therefore, within the context of this application the Commissioner is able to now have regard to all these provisions and not just the objectives and policies and now that a formal Council decision has been released these provision should be given weight.

4.3 The Plan Changes are discussed in more detail below, however it is noted under PC85A that the proposal site is within the Rural Countryside Environment, which encompasses a large area of the Whangarei District. In terms of status, the activity of subdivision to the levels proposed remains a non-complying activity.

4.4 As noted by Mr McAlley, the proposal is subject to the gateway test of s104D of the RMA and, should it pass those tests, the requirements of s104(1) where, subject to Part 2, regard is to be had to:

(a) *any actual and potential effects on the environment of allowing the activity; and*

...

(b) *any relevant provisions of –*

...

*(v) a regional policy statement:*

*(vi) a plan or proposed plan; and*

(c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

4.5 The High Court<sup>2</sup> has noted none of the matters listed has more or less weight than the other and that the "*absence of adverse effects was not determinative, and that enquiry should be made whether the proposal would achieve the objectives of the plan*".

## 5. ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT

5.1 In my opinion, in this circumstance the act of subdivision in itself has little in the way of actual effects on the environment. However, as noted in the operative District Plan "*most people who buy a vacant site, do so with an expectation of being able to build a house or other building on the site*<sup>3</sup>". I agree that the proposed subdivision, given the size of the proposed lots, brings with it the expectation of dwellings to follow. It is therefore the consequences of subdivision that need to be taken into account and in my opinion those consequences represent a potential effect in terms of s104(1)(a).

5.2 In this situation the subsequent development of sensitive activities in the form of residential dwellings raises the issue of reverse sensitivity. As the Commissioner will be well aware, reverse sensitivity is a planning effect which can arise where sensitive activities are introduced to an environment where existing intensive activities generating effects such as noise, dust and odour are taking place and subsequently compromise those existing activities. This generally begins with complaints against the existing activity and can also manifest itself in surrounding landowners opposing further development or intensification on the subject site.

5.3 District Plans, including Whangarei, include objectives and policies that specifically address reverse sensitivity issues along with associated rules. Councils have therefore recognised that the balance of costs/benefits falls in favour of some land use controls in order to preserve the efficient and effective operation of essential infrastructure, significant industry or specific effects-generating activities.

### **Techniques to manage reverse sensitivity**

5.4 The use of specific rules to manage reverse sensitivity can take a variety of forms to suit the particular situation. Such methods include limiting the density of sensitive activities in the vicinity of existing intensive activities, directing sensitive

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<sup>2</sup> *Stirling v Christchurch City Council* (2011) 16 ELRNZ 798 (HC).

<sup>3</sup> Overview in Chapter 8 (Subdivision and Development)

activities away from incompatible activities through buffer distances and, particularly associated with noise, allowing sensitive activities in proximity to the established activity in certain circumstances, but only if they are appropriately acoustically insulated.

- 5.5 In my experience, it is generally a combination of these techniques rather than one individually that is used in district plans.
- 5.6 In this particular circumstance the operative District Plan primarily uses density controls to ensure that subdivision and development adjacent to existing industrial activities is designed and located to avoid, remedy or mitigate reverse sensitivity effects (see Policy 8.4.5).
- 5.7 Proposed Plan Change 85A and the Consequential Amendments to the Noise and Vibration Section introduce two further mechanisms in the form of a 500m setback for sensitive activities from the Strategic Rural Industry Environment (i.e. the Kauri Site) and a Noise Control Boundary (NCB), to address reverse sensitivity effects (see Appendix 1 for the location of the Kauri Site and the NCB). I note that the noise provisions associated with the NCB enables the Kauri Site to generate up to 55dB of noise between 7am and 10pm and 45dB of noise at night time at the actual NCB line.
- 5.8 The proposal site is entirely within the 500m setback and both new lots are inside the NCB. While sensitive activities are enabled within the NCB should they meet internal acoustic design standards, that does not negate the need to comply with the prescribed subdivision density in the District Plan (nor the 500m setback). The requirements associated with the NCB are about ensuring that sensitive activities that are otherwise permitted meet an internal acoustic design standard.
- 5.9 Both the operative District Plan and Plan Change 85 – 86A explicitly reference reverse sensitivity effects. In my opinion, given these explicit references it is clear that the density and proximity of dwellings is important in the recognition of activities that might be subject to reverse sensitivity, of which the Kauri Site is one, and that it is a significant factor in the consideration of this application.

#### **Reverse Sensitivity Effects**

- 5.10 A key concern for Fonterra in relation to the application is its potential for reverse sensitivity effects on the Kauri Site. Like other major industrial operators, in Fonterra's experience reverse sensitivity issues can, and do, occur regardless of compliance with consent conditions or plan performance standards. This is

because it is often the perception of effects, rather than actual effects, that leads to complaints from sensitive land uses.

- 5.11 If new residential activities are allowed to locate in close proximity to existing industrial operations, new residential users often have an expectation of an urban environment. As a result, complaints can arise due to the lawful effects of the existing operation. Residents may build or move to a dwelling within close proximity of an industrial site, which has a long history in the community, and start complaining about the effects associated with that site's operations (even if those effects are objectively minor). Often, as a result, there will be significant effects on the ability of the industrial operator to use and develop its site, including:
- (a) material increases in consenting costs and greater risk of consents being declined due to the introduction a new potential submitters;
  - (b) higher compliance costs to mitigate effects on new sensitive neighbours; and
  - (c) significant constraints on the ability to develop and expand operations in the future.
- 5.12 I am aware that Fonterra has experienced this at sites such as Pahiatua, Mosgiel and Edendale.
- 5.13 In my experience, people have varying expectations of amenity and compliance and are sensitive to effects to varying degrees. What one person deems a less than minor effect may be considered an adverse effect by another. Odour is a good example of where people have different judgements of what is objectionable or offensive.
- 5.14 In this case, as already noted, I accept that in itself the act of subdivision will have minimal effect, but it is the expectation of future dwellings that creates the potential for reverse sensitivity effects to arise. To some extent, it might be argued that that assessment i.e. the effect of future dwellings, is for another day, given they would also require consent. However, in my view, in situations like this it is clearly obvious what the final outcome is to be and therefore the consideration of reverse sensitivity is appropriate. In the context of the Kauri Site, there is particular concern about reverse sensitivity effects that could result from noise, odour, traffic or visual effects (including light spill).
- 5.15 Mr Hewson, however, concludes that the nature of activities in the existing environment and the minimal relative change proposed in comparison to that

existing environment is sufficient to overcome any reverse sensitivity effects. With respect, that is not addressing reverse sensitivity but rather suggesting that the existing environment is functioning adequately and that one or two additional sections/dwellings will not make a difference in this regard.

5.16 As described by Mr Hartigan, Fonterra already experiences complaints throughout the country regarding its operations and while many of these can and are addressed it is impossible to mitigate all the effects associated with plant of the scale and operating hours of the Kauri Site. The best way is to ensure that sensitive activities within a reasonable distance of such plants are minimised or avoided.

5.17 Mr Hewson's solution is to impose a consent notice on the titles of the proposed allotments, restricting future owners from objecting to permitted or legally established activities on neighbouring sites. I am assuming here that he is referring more to a 'no complaints covenant', which have been used in certain circumstances. The difficulty I have with such an approach is that it does not actually address the effects. Further, the Environment Court in *Ngatarawa Development Trust Limited v Hastings District Council* stated that:<sup>4</sup>

*Such covenants do not avoid, remedy or mitigate the primary effects - nothing becomes quieter, less smelly or otherwise less unpleasant simply because a covenant exists. On their face, they might avoid or mitigate the secondary effect of the ensuing complaints upon the emitting activity. But all they really mean, is: If you complain, we don't have to listen, and there are issues about such covenants which have not, to our knowledge, been tested under battle conditions. We are not to be understood as agreeing that they are a panacea for reverse sensitivity issues.*

## 6. OBJECTIVES AND POLICIES

### Operative District Plan

6.1 In my view, the objectives and policies of the operative District Plan set out in Mr McAlley's s42A report are generally those of most relevance. I would also add that **Policy 8.4.1**, set out below, is of some relevance.

#### **Incompatible Land use Activities**

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<sup>4</sup> *Ngatarawa Development Trust Limited v Hastings District Council* EnvC Wellington W017/2008, 14 April 2008 at [27].



To design and locate subdivision and development so as to avoid, as far as practicable, conflicts between incompatible land use activities.

6.2 I also note that the overview in Chapter 6 (Built Form and Development) states:

*It is important to recognise the impacts that urban development can have on the viability of rural and urban based industries. There are high quality soils (a finite resource) close to the city centre of Whangarei and within areas identified for future growth and the subdivision of arable land lessens the likelihood of farms being economically viable, and can affect the overall rural character and amenity of these areas. Industrial growth assists with job creation and economic development, so there is a need to appropriately manage housing development on the peripheries of urban based industries due to the pressure that reverse sensitivity effects can have on those industries. Subdivision and development can also compromise the efficient extraction of significant mineral resources through the creation or exacerbation of reverse sensitivity effects.*

6.3 Further, the overview in Chapter 8 (Subdivision and Development) of the Plan states:

*Inappropriate subdivision and development, in any area, can result in increased conflict between activities and adverse effects on the amenity, heritage, landscape and other values of an area, diminished ecosystem functioning and increasing conflict between incompatible land uses, as well as placing additional strains upon services and infrastructure. In rural and coastal areas, it can result in adverse cumulative effects, such as ribbon development and loss of rural and open space character.*

6.4 I generally support Mr McAlley's conclusion with regard to the operative District Plan's objectives and policies. There are clearly in my view some provisions to which the proposal is contrary (Objective 6.3.2 and Policies 6.4.2 and 6.4.8, and Objective 8.3.2 and Policies 8.4.1 and 8.4.5) and others where there are varying degrees of inconsistency. Indeed, there is very little support in my opinion in the operative District Plan's policy framework for a subdivision development of this nature. In short, the proposed subdivision does not avoid sprawling or sporadic subdivision; is not adjacent to an existing settlement; and is not located so as to avoid conflict between incompatible uses.

#### **Plan Changes 85, 85A and 85B**

6.5 Plan Changes 85, 85A and 85B form part of the suite of plan changes which address the rural environment in the Whangarei District. I have addressed them

below in full on the basis that the decision versions have resulted in changes which were not available to Mr McAlley at the time of his s42A report and that Mr Hewson has not addressed them at all despite their relevance.

- 6.6 Fonterra submitted extensively on Plan Changes 85 – 86A and associated consequential amendments. In those submissions, Fonterra specifically addressed issues of reverse sensitivity at the objective, policy and rule level and opposed submissions seeking to reduce the rural subdivision standards.

Plan Change 85

- 6.7 PC85 provides the overarching provisions for the Rural Area. The description and explanations to PC85A state:

*Historical uncoordinated subdivision and development patterns in the Rural Area has resulted in adverse cumulative effects on resources such as biodiversity, historic heritage, landscape and productive land. This has led to constraints on the viability of some farming and horticultural operations. To address this, residential and commercial subdivision and development is expected to largely occur where and when it has been planned for, and not to create a scattered and ad hoc pattern of development where this would compromise the priorities for the Rural Area (as set out above).*

*This approach; the consolidation of development particularly residential and commercial, is consistent with the direction of the Whangarei District Growth Strategy Sustainable Futures 30/50 2009 (“Whangarei District Growth Strategy”). Careful management of competing land use is required to avoid any reverse sensitivity effects. (emphasis added)*

- 6.8 The objectives and policies of particular relevance are:

**Objective 4** - Provide for a range of appropriate land uses in the Rural Area, including rural production activities, residential, rural residential, rural lifestyle, commercial, industrial, and mineral extraction activities in appropriate areas.

**Objective 5** - Avoid, remedy or mitigate reverse sensitivity impacts, including on established rural production activities, strategic rural industries and network utilities.

**Objective 9** - Consolidate rural living subdivision and development in areas where rural production activities have already been compromised, or on less productive land without significant adverse effects on the environment.

**Policy 10** - To consider the extent to which proposed rural land use and subdivision activities in the Rural Area achieve the stated Expectations for the relevant Environment.

**Policy 11** - To manage the establishment and location of new activities in the Rural Area to avoid conflicts between incompatible land uses.

Plan Change 85A

6.9 Plan Change 85A establishes the Rural Countryside Environment (initially known as the Rural Production Environment). The description and explanations to PC85A state: “*Conflicting land use and reverse sensitivity effects must be carefully managed where the RCE interfaces with sensitive activities including habitable buildings in other Rural Environments and Living Environments, and with Business Environments*”. The Plan Change also acknowledges that “a history of ad hoc rural living subdivision and development has resulted in a scattered and ad hoc pattern of development across the Rural Area” and importantly, in my opinion, goes on to state:

*Areas for future urban growth, land use and subdivision development is spatially managed by the Rural (Urban Expansion) Environment to maintain options for the continued growth of the City. Where a rural number of rural living clusters have reached significant density and lifestyle character they have been identified as the Rural Living Environment to manage the actual and potential reverse sensitivity effects associated with rural living activities occurring in close proximity to rural production activities.*

*The RCE will not support an increased level of clustered rural living development.* Consistent with a consolidated pattern of development residential, rural residential and rural living activities are directed to identified rural villages, the Rural (Urban Expansion) Environment or the Rural Living Environment to protect the productivity, biodiversity and rural character of the RCE.

*Urban and rural residential types of development can erode the viability of rural productivity and can create reverse sensitivity impacts on productive uses through the visual effect of large scale buildings and ancillary structures, increased traffic generation, and loss of amenity including privacy, rural outlook, spaciousness, and quietness, particularly when a new incompatible activity is located near an existing activity, with resulting conflicts. (emphasis added)*

6.10 The objectives and policies of particular relevance are:

**Objective 4** - Avoid adverse effects on productive rural and land resources from ad hoc residential, subdivision and development in the RCE.

**Objective 5** - Minimise the fragmentation of rural land and promote allotment sizes that facilitate rural production activities other than to protect significant ecological and biodiversity values.

**Policy 1** - To protect rural productive land, rural character and amenity and to encourage consolidation of activities within Whangarei City by

...

d. Requiring larger allotments sizes to retain productive rural options

**Policy 3** - Avoiding reverse sensitivity effects by preventing sensitive activities within close proximity to Quarrying Resource Areas, Strategic Rural Industries, intensive livestock farming or other rural production activities that are lawfully established. (emphasis added)

**Policy 8** - To avoid the subdivision of land into allotments less than 20ha unless it is demonstrated that all of the following are achieved:

- a. It is not for the primary purpose of creating a rural residential or rural lifestyle allotment.
- b. The subdivision of rural land and associated buildings does not inhibit or restrict the productive potential or reasonably anticipated productive potential of rural production activities.
- c. The size, shape and arrangement of allotments is a practical size for rural productive activities and does not restrict the range of options for the use of production land.
- d. The viability of the existing rural production activity is not compromised and the existing rural production activity can continue to operate efficiently at the subdivided scale.
- e. The subdivision and subsequent development will not result in significant adverse effects on the operation and viability of any adjoining rural production activity.
- f. The subdivision and subsequent development will not require connection to the District's reticulated sewer or an extension or upgrading of any service or road, except where it is in the

*economic interest of the District and will not compromise the efficient functioning of the District's infrastructure network.*

#### Plan Change 85B

- 6.11 Plan Change 85B establishes the Strategic Rural Industry Environment, for which there are three locations, including the Kauri Site. The objective of particular relevance is:

**Objective 4** - *Maintain rural amenity and avoid reverse sensitivity effects associated with in the vicinity of Strategic Rural Industries.*

#### Conclusions on PC85, PC85A and PC85B

- 6.12 In my opinion, the decisions version of Plan Change's 85, 85A and 85B have taken a very strong stance against subdivision and subsequent residential development of the type proposed here. It is clearly more directive than the Operative Plan provisions and there is no doubt in my view that, given the strong wording of these provisions, the proposal is overall contrary to their intent.
- 6.13 In respect of the rules associated with PC85A the standard 4ha subdivision at a discretionary level has been removed. While some discretion below 20ha is provided for, it is essentially around existing lawfully established residential units and requires a balance lot of 80ha or an environmental benefit lot. In other words, the Plan Change is seeking in my view to consolidate the 20ha rural subdivision threshold.

### **7. PRECEDENT AND PLAN INTEGRITY**

- 7.1 In this situation I consider there is significant potential for adverse effects (reverse sensitivity) given the proximity of the proposed subdivision to the Kauri Site and that the proposal is contrary to and inconsistent with a number of objectives and policies. This alone is in my opinion sufficient for the application to be declined. Nevertheless, I consider it is also important in this case to consider issues of precedent and plan integrity.
- 7.2 In my opinion, the issue of precedent and plan integrity is often misunderstood and it is often argued, as it has been in this application, in response to such issues that each application has to be assessed on its merits. In short, however, the fact that a proposal may have minimal adverse effects and is not contrary to the objectives and policies does not equate to there being no risk of a precedent created or the integrity of the plan being affected.

- 7.3 I acknowledge that "precedent" is not an adverse effect on the environment. However, the High Court's decision in *Stirling* held that "*precedent reflects a concern that the granting of consent may have planning significance beyond the immediate vicinity of the land concerned*", and that "*plan integrity is more likely to affect the public confidence in the plan*".<sup>5</sup> These are matters that can be taken into account under section 104(1)(c) of the Act, with the appropriate weight to be given to them being dependent on the circumstances of the particular application.
- 7.4 In the forefront of the precedent/plan integrity issue over many years has been non-complying rural subdivision applications where often the physical effects of a proposal are less than minor and it is not contrary to the objectives and policies. In this context, Environment Court cases have addressed the matter on a number of occasions. In *Tait v Hurunui District Council*,<sup>6</sup> which involved both rural subdivision and land use for a dwelling below the rule thresholds, the Court accepted that the effects of the proposal were no more than minor and that there was a degree of discomfort with a number of significant objectives and policies but it was not contrary to them. The case for the proposal essentially failed on the basis that it could not establish any unusual qualities that might distinguish it from other applications and therefore it would establish a precedent which others might rely upon and thus impact upon the integrity of the District Plan.<sup>7</sup>
- 7.5 The question, therefore is whether this proposal is sufficiently unique or unusual so as to adequately distinguish it from other rural subdivision proposals, such that a precedent is not created and the integrity of the District Plan is not undermined.
- 7.6 In my opinion, any uniqueness in this instance is confined simply to the size of surrounding lots. I accept, as suggested by Mr Hewson, that many of these lots are already well below the 20ha threshold, although few are at the level proposed here.
- 7.7 As I understand the background to the 20ha standard (which stems from the Plan Change 85D Rural Living Environment, Section 32 Evaluation Report), the Proposed District Plan had provided for subdivision down to 1ha as a controlled activity that was later altered by variation to 4ha. These subdivision rules then lead to the fragmentation of rural land and a proliferation of small lots scattered throughout the rural area. A Plan Change was then initiated and subsequently appealed to the Environment Court. The Court imposed rules setting a holding

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<sup>5</sup> *Stirling v Christchurch City Council* (2011) 16 ELRNZ 798 (HC) at [90].

<sup>6</sup> *Tait v Hurunui District Council* EnvC Christchurch C106/2008, 29 September 2008 at [18] and [27].

<sup>7</sup> *Tait v Hurunui District Council* EnvC Christchurch C106/2008, 29 September 2008 at [6]-[7].

pattern via a blanket 20ha minimum lot size until the Council was able to promote a plan change (PCs 85 – 86B) to deal more appropriately with rural subdivision. The report notes that the 20ha rule has been an effective halt to the fragmentation of rural land to an extent.

- 7.8 It is also noticeable that unlike other areas in the wider vicinity, the general location of the area around the subject site was not considered for rezoning as a Rural Living Environment ("RLE"). This area obviously did not meet the criteria established to determine the RLE's, which included potential reverse sensitivity effects. Further, I am not aware of any submission by Mr Luiten or others in the vicinity seeking to have this area rezoned RLE.
- 7.9 While I accept therefore that a cluster of small lots has previously been used to show a degree of uniqueness, this has tended to be more in situations where the lots are of very similar size and are limited to a relatively confined area. The problem I foresee here is that a grant of consent for this subdivision has a reasonable potential of opening the way for a series of similar applications in this locality all seeking to be treated in the same way. That is, it will set a precedent and in doing so undermine the strong stance provided by both the operative District Plan and Plan Change 85A, thus impacting on the integrity of these plans.
- 7.10 The operative District Plan and PC85A essentially draw a line in the sand in terms of rural subdivision and associated dwelling development. That line, while initially set at 20ha, allows discretion down to 4ha in the operative Plan only. Beyond that, it is my view that applications would need to show some exceptional circumstances or uniqueness about the site or surrounding area to warrant a grant of consent and I do not consider this has been shown here.
- 7.11 In my view, going beyond that line in this instance would seriously undermine the integrity of the District Plan and establish a precedent whereby it will be difficult for the Council to decline further non-complying applications of this nature.

## **8. CONCLUSION**

- 8.1 In my opinion, this proposal has the potential to create reverse sensitivity effects on the Kauri Site and is contrary to a range of objectives and policies which seek to avoid subdivision to this level and in this type of location. In itself I consider this is sufficient to warrant the application being declined in terms of the threshold test of s104D (noting that the definition of effects in the RMA includes potential or future effects).

- 8.2 Notwithstanding the above, I consider, as part of the s104(1) assessment, the proposal also has the real potential to establish a precedent, which would be difficult to avoid should similar applications be forthcoming, with the inevitable outcome being that the integrity of the key planning documents would be impacted and confidence in them lost. Given the strong policy stance taken against this form of development, which stemmed from previous concerns as to its effects this would be a poor planning outcome.
- 8.3 For the foregoing reasons, I consider that subdivision consent should be declined in this instance.



Appendix 1: Noise Control Boundary

