

BEFORE THE INDEPENDENT COMMISSIONER

IN THE MATTER of the Resource Management
Act 1991

AND

IN THE MATTER of the Proposed Plan Changes
85, 85A-D, 86A & B by
Whangarei District Council

AND Submission 382 – Cato Bolam
Consultants Ltd

**STATEMENT OF PRIMARY EVIDENCE OF
KIM NATHAN**

**ON BEHALF OF
CATO BOLAM CONSULTANTS LTD (SUBMITTER 382)**

22 JUNE 2017

1. SUMMARY

- 1.1 This is planning evidence on Topic - Proposed Plan Changes 85, 85A-D, 86A & B by Whangarei District Council on behalf of Cato Bolam Consultants Ltd and in respect to submission 382.
- 1.2 My evidence supports the submission that seeks that Environmental Benefit provisions be included in the proposed rural subdivision rules. Further, allowing transferable title rights i.e. enable the transfer of development rights resulting from the environmental benefit provisions from areas inappropriate for further development (e.g. Rural Production Environment) to more appropriate areas (e.g. Rural Living Environment and/or Rural Urban Expansion Environment) within the Whangarei district.
- 1.3 The proposed protection of natural features in exchange for further development rights in appropriate areas is consistent with the objectives and policies of the proposed Rural Plan Changes and gives effect to the Regional Policy Statement (“RPS”).

2. INTRODUCTION

- 2.1 My full name is Kim Nathan. I am a Senior Resource Planner with Cato Bolam Consultants Ltd. I hold a Bachelors Degree in Resource and Environmental Planning (with Honours) from Massey University in Palmerston. I have fifteen years planning and resource management experience in both public and private sector roles. I am a full member of the New Zealand Planning Institute.
- 2.2 I have been engaged to provide resource management and planning advice in respect to this submission 382 on Topic - Proposed Plan Changes 85, 85A-D, 86A & B by Whangarei District Council.
- 2.3 I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note and that I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that my evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.

2.4 I note that in preparing my evidence I have also read the provisions of the Proposed Plan Changes, the relevant further submissions and Council Planners s42A reports.

3. SUBMISSION ON THE PLAN CHANGES

3.1 Submission 382 seeks that the proposed subdivision rules be amended to include environmental benefit provisions i.e. the permanent physical and legal protection of natural features e.g. indigenous habitats, stands of indigenous vegetation and wetlands in exchange for additional development rights.

3.2 Environmental benefit provisions encourage the protection of natural features, providing positive effects in the form of significant benefits for terrestrial fauna and flora in the wider area, improve environmental quality through revegetation, fencing, weed and pest control and as a result maintain the quality and character of an area.

3.3 The trade-off of development rights enables the positive benefits of permanent protection of significant environmental values in a manner which does not compromise the underlying character and amenity of the rural landscape.

3.4 The plan changes limit subdivision opportunities within the proposed Rural Production Environment in order to retain the productive use of rural land. This is appropriate in highly productive areas; however, we must ensure that agricultural and horticultural activities do not extend at the expense of significant ecological environments/features. For example, the drainage of wetlands and/or bush clearance to increase the available grazing area and economic production of a block of land.

3.5 The focus of the proposed Rural Production Environment zone is “economic production”, therefore incentives/economic means must be provided to protect such significant ecological areas from being cleared in order for land owners to increase their amount of ‘productive’ land.

3.6 The value of land titles created through environmental protection may be limited in remote Rural Production land areas, however it has been shown by current markets in North Auckland that transferrable titles are viably traded and considered an economic use for marginal/unproductive land when transferred to more urban fringe areas.

- 3.7 I consider that transferable title rights could be introduced to provide a mechanism whereby development rights gained through environmental benefits attributed to a rural property can then be on-sold/transferred between people and properties and developed in identified specific land areas i.e. Rural Urban Expansion Environment, or Rural Living Environments, that are considered more appropriate for a variety of allotment sizes and living opportunities.
- 3.8 The creation of these titles can be achieved through the standard subdivision consent process on the 'parent' rural site. Such subdivision consents can be simplified so that no physical works for access and servicing of buildings sites is required and the title allocation can be placed on title as a consent notice. The applicant or landowner can then at a later date provide written confirmation to the Council that they wish to remove one (or more) of the title(s) from this consent for use as transferrable title(s). The purchaser of the transferable title(s) being located within appropriate Environments can then apply to the Council for subdivision consent utilising the transferred title, enabling development over and above the density requirements of that zone (say to a minimum lot size of 4000m²).
- 3.9 Submission 382 also seeks that transferrable titles mechanisms be provided for as part of the proposed rural plan changes and the ability to utilise them considered as a discretionary activity.
- 3.10 The environmental benefit and transferrable title provisions sought by submission 382 are consistent with the following relevant objectives from the proposed rural plan changes:
- RA.1.2.3 *'Avoid cumulative impacts in the Rural Area resulting from un-consolidated residential, rural, residential and rural living subdivision and development.'*
- RA1.2.5 *'Protect the range of amenity values and characteristics in the Rural Area.'*
- RA1.2.6 *'Consolidate rural living subdivision and development in areas where productive rural land uses have already been compromised, or on less productive land without significant adverse effects on the environment.'*
- RPE1.2.2 *'Recognise and maintain and where appropriate protect the rural character of the RPE, acknowledging that character is formed through a combination of values such as ecology values, openness, topography and heritage.'*
- RPE1.2.5 *'Minimise fragmentation of rural land and promote allotment sizes that facilitate productive rural land use.'*

RLE1.2.4 *'Rural living options are provided which promote opportunities to pursue space-intensive hobbies, self-sufficiency, hobby farming or home occupations, compatible with rural production activities and the sustainable function of ecosystems.'*

RLE1.2.5 *'Consolidate rural living development in appropriate locations where rural production activities are already compromised, and adverse effects can be avoided.'*

RUEE1.2.3 *'Subdivision and development within the RUEE avoids hazards areas and protects heritage and natural features such as landforms, watercourses and indigenous vegetation.'*

- 3.11 The plan change objectives and submissions support subdivision and development which protects natural features and indigenous vegetation and the proposed environmental benefits and as submitted the introduction of transferable title rights would provide a mechanism for development rights gained through the environmental benefit provisions to be transferred to certain zones/area throughout the district so as to ensure that rural living subdivision and development is consolidated within areas where productive rural land uses have already been compromised.
- 3.12 The Rural environment is characterised by minimal subdivision and development, large and small areas of bush, scrub, and wetlands which sustain the district's native plant and animal biodiversity, rural character and associated amenity values. The inclusion of environmental benefit provisions will achieve the objectives and policies which seek to manage, protect and enhance rural character, high amenity values and biodiversity values by limiting rural subdivision and development to subdivision which results in the protection of significant vegetation, wetlands and wildlife habitats, or enhancement planting, which can offset some of the adverse effects of subdivision on the environment and landscape values.
- 3.13 The Regional Policy Statement for Northland considers that safeguarding and enhancing the ecological integrity of indigenous ecosystems is vital for the diversity and abundance of indigenous species.
- 3.14 The RPS seeks to at least maintain the extent and diversity of indigenous ecosystems and habitats in the region. This is to be achieved through a combination of protection and enhancement activities and processes. Noting that key regulation should include

incentives to encourage subdivision, use and development involving restoration and protection of ecosystems and indigenous biodiversity.

- 3.15 Objective 3.4 of the RPS (2016) seeks to '*Safeguard Northland's ecological integrity by:*
- a) Protecting areas of significant indigenous vegetation and significant habitats of indigenous fauna;*
 - b) Maintaining the extent and diversity of indigenous ecosystems and habitats in the region; and*
 - c) Where practicable, enhancing indigenous ecosystems and habitats, particularly where this contributes to the reduction in the overall threat status of regionally and nationally threatened species.*
- 3.16 Submission 382 seeks to give effect to the Regional Policy Statement in direct accordance with Objective 3.4 above through providing subdivision incentives in exchange for the protection of indigenous habitats and ecosystems throughout the Northland region.
- 3.17 The purpose of the RMA (section 5) is to promote the sustainable management of natural and physical resources. This means managing the use of natural and physical resources in a way that enables people and communities to provide for their social, cultural and economic well-being while sustaining those resources for future generations, protecting the life supporting capacity of ecosystems, and avoiding, remedying or mitigating adverse effects on the environment.
- 3.18 Section 6 of the Act sets out a number of matters of national importance which need to be recognised and provided for, and includes among other things and in no order of priority, the protection of outstanding natural features and landscapes, the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna, and the protection of historic heritage.
- 3.19 I consider that Environmental benefit provisions promote the sustainable management of natural and physical resources that enables people and communities to provide for their social, cultural and economic well-being while sustaining those resources for future generations, ensuring the enhancement and ongoing protection indigenous habitats, including stands of indigenous vegetation and providing security for the future and adding ecological value and wildlife habitat to the area while also

improving water quality and overall meeting the relevant provisions of Part 2 of the RMA.

- 3.20 To qualify for such an Environmental Benefit certain requirements should be met i.e. the proposed permanent protection (via a recognised legal instrument) of natural feature(s) which have been identified as worthy of protection by a recognised expert e.g. an ecologist via a supportive report submitted as part of a consent application, which could then refer back to Schedule 17D of the Operative District Plan with respect to the criteria for ranking ecological features in relation to environmental benefits, or something similar.
- 3.21 There should be a minimum area protected in order to qualify for an environmental benefit' as per Schedule 17D of the current environmental benefit provisions (e.g. 2ha, which is considered to be the minimum size at which edge effects are minimised and microclimates are created, thus increasing species diversity and reducing the chance of weed invasion). This minimum area should be smaller for wetland areas i.e. 5000m², as smaller wetlands are important as habitat, for plant diversity, the mitigation of flooding and retaining water quality; and there could be a scale providing the opportunity for more additional allotments in relation to the greater area of natural feature protected.
- 3.22 Animal and plant pest management plans should also be required to be submitted with any such applications to ensure the long-term sustainability of these areas.

4. RESPONSE TO COUNCIL EVIDENCE

- 4.1 The Council does not support the inclusion of Environmental Benefit lot provisions in the rural plan changes. It is the Council's opinion that the current environmental benefit rule (Rule 73.3.2) is complex, inefficient and on-going maintenance and enforcement of the rule is challenging due to a lack of resourcing.
- 4.2 Further, the Council does not support the inclusion of transferable rights as it is believed that they are overly complicated and would result in fragmentation and potentially compromise the productive potential of the land.

- 4.3 The Council considers that while there are benefits of a method for environmental benefit subdivision, such methods would be more effective when utilised in conjunction with a Biodiversity and Significant Natural Resource Area which will be explored further in Draft Plan Change 127 (PC127).
- 4.4 The Council has provided the Commissioners three alternative options to choose from, if they are of mind to approve such provisions; either status quo (retain the current environmental benefit provisions), no provision for environmental benefit lots or revised provisions for environmental benefit lots in the Rural Production Environment (RPE).
- 4.5 I consider that the existing environmental benefit rule is no more complex than those included in other District Plans throughout the country that I have worked with; and I don't believe that these important provisions should be discounted because of lack of internal council processes or inadequate resourcing.
- 4.6 In my experience, the establishment and management of transferrable rights are not overly complicated and this submission seeks to provide for them only in certain areas i.e. Rural Urban Expansion Environments and Rural Living Environments to ensure that there is no further fragmentation of rural land compromising productive potential.
- 4.7 My concern with providing Environmental Benefit lot provisions solely in Resource Areas as part of PC127, is that the initial mapping of Resource Areas may not capture all significant natural areas worthy of protection. Through the inclusion of environmental benefit provisions, each application can be assessed on its merits by appropriately qualified specialist(s). Furthermore, it will allow for the economic use of marginal land through re-vegetation as opposed to clearance.
- 4.8 I support both the retention of the existing Environmental Benefit lot provisions (Option 1) and the proposed revised Environmental Benefit lot provisions put forward by Council (Option 3) in the 42A report. However, I also consider further revised provisions for environmental lots are also appropriate and have include an example in **ATTACHMENT A** of my statement of evidence.

5. RESPONSE TO FURTHER SUBMISSIONS

- 5.1 Department of Conservation (DOC) supports submission 382 in part, noting that there can be benefits to natural values from the use of environmental benefit provisions and

transferable development rights, however DOC considers that such provisions should be carefully designed to ensure that there is a net conservation gain.

- 5.2 The existing environmental benefit rule (73.3.2) being Option 1 and Option 3 of the alternative provisions presented by Council, being the revised environmental benefit provision; include certain criteria that need to be met in order for an environmental benefit to be gained and a supporting report from a suitably qualified and/or experienced expert is also required to ensure that there will be net conservation gain.
- 5.3 Federated Farmers New Zealand (FFNZ) supports submission 382 in part, particularly transferable rights as a concept, noting that their effectiveness and appropriateness would depend on how they are incorporated into the plan changes.
- 5.4 I believe that transferable rights should only be provided for in exchange for environmental benefits attributed to a rural property, which can then be on-sold/transferred between people and properties and developed in identified areas/zones which are considered appropriate for further development.

6. CONCLUSION

- 6.1 For the reasons explained in my evidence and in submission 382, I consider it is appropriate to include environmental benefit provisions into the proposed rural subdivision rules.
- 6.2 In my opinion the proposed inclusion of environmental benefit provisions into the proposed rural subdivision rules is appropriate for the following reasons:
- Will enable appropriate and limited subdivision opportunities in the rural area, in ways that will not result in a loss of rural production, reverse sensitivity, rural character and amenity effects;
 - Will enable the economic use of marginal production land and unproductive areas within the Rural Production Environment;
 - Achieve the Whangarei District Council's strategic direction for rural areas and not threaten the rural production focus of rural areas by allowing the proliferation of rural-residential lots.

- Appropriately provide incentives to focus rural 'lifestyle' living in appropriate areas and provide limited opportunities for further development in exchange for environmental benefits (indigenous vegetation and wetland protection and restoration).
- The proposed change is consistent with the provisions of the RPS, the objectives and policies of the propose Rural Plan Changes.

6.3 Overall, I consider that the proposed RPE subdivision rules should be amended to include environmental benefit lot provisions, enabling the permanent physical and legal protection of significant natural areas in exchange for additional development. The trade-off of development rights enables the positive benefits of permanent protection of significant environmental values in a manner which does not compromise the underlying character and amenity of the rural landscape.

6.4 Further, I consider that the proposed RLE, RUEE and RPE rules should be amended to include allowance for subdivision by way of transferable title.

6.5 I have included a further example of revised provisions for environmental lots which I also believe are appropriate (**ATTACHMENT A**) for further consideration by the Commissioners.

Kim Nathan

22 June 2017

ATTACHMENT A

The follow provisions are also put forward as alternatives to those in the Whangarei District Plan and Option 3 (Alternative Environmental Benefit Lot Subdivision Provisions) included in Attachment 1 of the 42A report prepared by Council.

Add the following to RPE.1.3 Policies:

XX To safeguard ecological integrity within the RPE by considering sites with significant natural features

for environmental benefit subdivision if the features:

- a. are assessed to be acceptable quality by a qualified and experienced ecologist;*
- b. are predominantly indigenous vegetation;*
- c. are a threatened or rare habitat type or contain indigenous or endemic taxa that are threatened or are rare in Northland;*
- d. contribute to ecological connectivity within the District; and*
- e. are either*
 - i. indigenous vegetation with a minimum size of 2ha and minimum width of 50m; or*
 - ii. located in a LENZ Acutely or Chronically Threatened Environment; or*
 - iii. an intact and functioning indigenous wetland with a minimum size of 5000m²; or*

XX To minimise fragmentation of the RPE by allowing a maximum of 1 additional allotment for the purposes of environmental benefit only if all of the significant natural features on the site are to be protected as part of the subdivision. Any additional allotments created through the environmental benefit provisions are to be transferred to either Rural Urban Expansion Environments and Rural Living Environments.

Add the following to RPE.3.4 Discretionary Activities:

XX Subdivision where environmental benefit lot(s) of at least 4000m² minimum net site area are proposed and all of the following criteria are met:

- a. An existing feature (or features) of high ecological value is present.*
- b. The feature(s) are unprotected at the time of application.*
- c. Protection is to be provided in perpetuity on the relevant certificate of title.*
- d. Every feature within the site is to be protected.*
- e. The full extent of the features located within the site are to be protected.*
- f. Granting the environmental benefit lot will not significantly interfere with or impede the feature(s).*
- g. No more than four Environmental Benefit Lots can be created per site in perpetuity as per Tables 3.4.1 and 3.4.2 below.*
- h. Any balance lot created shall be a minimum net site area of 4,000m²*

Table 3.4.1 - Maximum number of new rural residential sites to be created from the protection of indigenous vegetation

Areas of indigenous vegetation to be protected	Maximum number of rural residential sites that may be created for Transferable Rural Site Subdivision	Maximum number of rural residential sites that may be created for in-situ subdivision
2 – 9.9999ha	1	1
10 – 20ha	2	1
More than 20ha	3	1

Table 3.4.2 - Maximum number of new rural residential sites to be created from the protection of wetland

Areas of wetland to be protected	Maximum number of rural residential sites that may be created for Transferable Rural Site Subdivision	Maximum number of rural residential sites that may be created for in-situ subdivision
Minimum 5,000m ²	1	1
More than 1ha	2	1

XX Any application made under rule RPE 3.4.X must be accompanied by a report from a qualified ecologist which includes an assessment against, and be in accordance with, the “Criteria for Ranking Significance of Areas of Indigenous Vegetation and Habitat in Relation to the Schedule 17D and addresses (as a minimum):

- a. Size and extent of the features.
- b. The ecological quality of the feature(s), including but not limited to:
 - i. Function
 - ii. Structure
 - iii. Integrity
 - iv. Long term viability
- c. The underlying physical characteristics of the feature(s), including but not limited to:
 - v. Soil type
 - vi. Topography
 - vii. Aspect
 - viii. LENZ classification
 - ix. PNAP classification
- d. The effects of the potential development on the feature(s), including but not limited to:
 - x. Building platforms
 - xi. Access
 - xii. Earthworks

xiii. Services:

- 1. Storm-water*
 - 2. Reticulated sewer or septic tanks*
 - 3. Reticulated freshwater or water tanks*
 - 4. Telecommunications networks*
 - 5. Energy (electricity and or gas) networks*
- e. The potential effects of pets on the feature(s).*
- f. The potential effects of farmed animals on the feature(s).*
- g. A five-year management plan for the feature(s) including but not limited to:*
- i. Weed control*
 - ii. Pest animal control*
 - iii. Pest organism control*
 - iv. Re-vegetation and restoration opportunities*
 - v. Fencing plan*

XX Any application made to utilise transferable title right(s) shall meet the following requirements¹:

- a. Every title used to gain an eligible Transferable Title Right shall be either an existing title or a site on a plan of subdivision for which consent has been given, provided that:*
 - i. Where both titles and sites on a plan of subdivision as described above exist, then only the sites are eligible; and*
 - ii. There is no household unit or valid consent to erect a household unit on the title or site.*
 - iii. Where the property has a subdivision approval which affects only part of the property then those titles that are not affected by that subdivision approval are also eligible.*
- b. The title nominated for transfer must be a title to a site that:*
 - i. Is located within the Rural Production Environment.*
 - ii. Is no larger than 20ha in area.*
 - iii. Is capable of being developed with a dwelling in accordance with the relevant performance standards.*
- c. The Title Right may be utilised in a subdivision of land in a RUEE or RLE only.*
- d. The process by which Transferable Title Rights may be utilised is as follows:*
 - i. The Title Right(s) eligible for transfer must be nominated on a plan of subdivision which shows all the existing titles and any sites that have not proceeded to the issue of titles but for which there is a valid resource consent.*
 - ii. The Plan shall show all areas to be covenanted or protected in order to allow the creation of the site/s that are proposed to be transferred.*
 - iii. For every title or approved site nominated for transfer there shall be a reduction by one in the number of titles or sites on the plan of subdivision. The reduction shall be achieved by a requirement that the titles or sites are redefined as a single site or rescinded in such a way that new titles could not be issued in terms of the Resource Management Act 1991.*

¹ Based on Rule 7.14.12.3 Transferable Title Right Transfer of the Rodney District Plan

A consent notice shall also be placed on the remaining title/s from where the titles for transfer are being used stating that the land has utilised subdivision entitlements in respect of specific rules.

- iv. It shall be a condition of approval of the plan of subdivision which is utilising the transferred title that the plan may not be deposited until after the plan of subdivision described at (i), (ii) and (iii) above has been deposited.*
- v. For each eligible transferred title utilised by the subdivider of land in the RUEE and RLE Zones the plan of subdivision may show one or two additional sites above the maximum number that would normally be allowed as a controlled activity.*

Note: The RUEE and RLE Rules, Objectives and Policies would also require updating to reflect the ability to transfer title rights as a discretionary activity.