BEFORE THE WHANGAREI DISTRICT COUNCIL HEARINGS COMMITTEE

In the Matter	of the Resource Management Act 1991
And	
In the Matter	of Proposed Plan Change 85 (Whangarei District Plan).

STATEMENT ON BEHALF OF REYBURN AND BRYANT 1999 LTD

Dated this 5 July 2017

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Background

1. The original Reyburn and Bryant submission covered a range of matters being:

   - The provisions to apply to commercial and industrial activities in the Proposed Rural Production Environment (RPE).
   - The absence of an in-situ environmental benefit subdivision rule in the proposed RPE.
   - The default to non-complying activity status for RUEE subdivisions designed under the Living 1 Environment subdivision rules where it infringes one or more of the Living 1 subdivision rules.
   - The 4ha minimum lot size for boundary adjustment subdivision.

2. This statement will cover the last three bullet points only.

The absence of an in-situ environmental benefit subdivision rule in the proposed RPE

3. The R&B submission requested that in-situ environmental benefit subdivision rules be included in the RPE and the RLE, where bush and wetland is to be protected, and the feature(s) meet specified significance criteria, and/or where significant environmental enhancement works are proposed and those works meet specified criteria.

4. The reasons for this request were:

   - The absence of any environmental benefit subdivision provisions does not give effect to the Regional Policy Statement for Northland, particularly Objective 3.15, Policy 4.7.1, or Method 4.7.4.
   - The absence of any subdivision incentives for the protection and enhancement of bush and wetland areas does not achieve sustainable management in accordance with Part 2 of the RMA.

5. The section 42A report recommends that there be no environmental benefit subdivision rules in either the RPE or the RLE. The reasons for

this recommendation are set out in paragraphs 215 and 216 of the Part 7 Section 42A report. Specifically, the officer considers that "an environmental benefit rule would be more effective when used in conjunction with a Resource Area, the logic being that the method would be evaluated with the Biodiversity and Significant Natural Area (resource area) plan change (draft PC127)".

6. This logic is (for all intents and purposes) the same logic employed by Auckland Council when deciding against including in-situ bush and wetland protection subdivision provisions in the Unitary Plan except where the feature is already mapped as a Significant Natural Area (now the subject of an appeal to the Environment Court). The problem with this approach is that it assumes that the identification of significant natural features is a perfect process, and that no significant natural features will be inadvertently missed during the plan process. However, the reality is that some significant natural features that comply with the significant feature criteria will be missed. They were missed in Auckland, they were missed during the formulation of the RPS for Northland, and they will inevitably be missed again in PC127.

7. In our view, if a feature complies with the predetermined criteria for a significant natural area, it should then qualify for an environmental benefit subdivision regardless of whether it has been previously identified and shown on a District Plan map. There is no rational argument to the contrary.

8. We accept that there are issues with the existing environmental benefit Rule 73.3.3 in the Operative District Plan. However, those issues can be easily rectified by adopting a rule similar rule to that recommended by the hearings panel for the Auckland Unitary Plan. This rule is as follows:

> (A17) In-situ subdivision creating additional sites through protection of indigenous vegetation or wetland not identified in the Significant Ecological Areas Overlay but meeting the Significant Ecological Area factors identified in Policy B7.2.2(1) and complying with Standard E39.6.4.4.

9. The proposed standards in E39.6.4.4 are **attached** in Annexure 1 of this evidence. This suite of rules provides more certainty than the draft

rule provided in Attachment 1 of the Part 7 Section 42A report. Specifically, there is a quantitative allocation of lot entitlements based on the area of bush/wetland being protected. Conversely, the draft rule in Attachment 1 of Part 7 of the Section 42A report makes no allowance for the size of the feature being protected. Under this regime, a person protecting say 2 ha of bush is entitled to create one lot, as is the person who protects 100 ha of bush. This is not an equitable situation. Adopting a regime based in the suite of provisions **attached** in Annexure 1 will rectify this.

10. Environmental benefit subdivisions result in a number of positive effects beyond the obvious formal protection in perpetuity achieved through the imposition of a covenant. Specifically, bush and wetland areas are required to be fenced to exclude stock, along with a requirement for ongoing pest and weed control.

11. While we note the reporting officer's reservations about environmental benefit subdivisions resulting in the fragmentation of rural production land, in our view the effects of this are completely overstated, and most certainly do not outweigh the positive ecological and natural character benefits of formal natural feature protection and enhancement. In our experience working in the Auckland, Whangarei, and Kaipara Districts, there has not been a rampant proliferation of environmental benefit subdivisions. Where these subdivisions have taken place, they are usually small scale, and in my experience, typically have a net positive effect on the environment.

12. In our view, the identified problems with Rule 73.3.3 are not a valid reason to omit environmental benefit subdivision from the RPE. Furthermore, there is nothing to be gained by waiting for PC127 before introducing environmental benefit subdivision rules, especially where adequate assessment criteria are already available in the operative District Plan. The appropriate time to introduce the rule is now, while the entire suite of RPE provisions are being considered. The ongoing rolling review of the District Plan adopted by the WDC has had enough of an effect on the overall coherence of the District Plan without further

amendments to the rural subdivision provisions via additional plan changes.

The default to non-complying activity status for RUEE subdivisions designed under the Living 1 Environment subdivision rules where it infringes one or more of the Living 1 subdivision rules

13. We generally support the amended subdivision provisions in RUEE.3 proposed by the reporting officer. However, it is unclear how the activity status of a subdivision advanced under RUEE.3.1.1 will be, or is supposed to be, determined. On one hand, RUE.3.1.1(a) states that a subdivision will be considered under the objectives, policies and rules for the Living 1 Environment (implying that it will take on the activity status under these provisions). However, 3.1.1(b), working in combination with RUEE.3.4 states that "subdivision pursuant to RUEE.3.1.1 shall be considered a restricted discretionary activity" with discretion restricted to transport matters. When considering an RDA, discretion is restricted to the specified matters. Assuming that the intention was for the overall activity status to be determined by the Living 1 Environment rules, and that RUE.3.1.1 is an additional rule to be considered, this could do with being made clear. We suggest the following amendment:

RUEE.3.4 Restricted Discretionary Activities

Transport Network

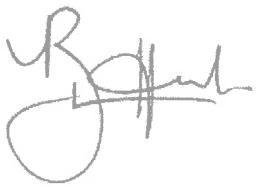
1. In addition to the activity status(s) applicable under the Living 1 Environment Rules, all s~~S~~ubdivision pursuant to RUEE.3.1.1 shall also be considered a restricted discretionary activity~~.~~

The 4ha minimum lot size for boundary adjustment subdivision (sub ref. point 309/12).

14. The R&B submission requested *inter alia* that the minimum lot size in RPE.3.3(2) (b) be reduced to 4,000 m² to enable more of the residual land to be held in a large lot, therefore increasing the potential for productive rural land use. The reporting officer has recommended that this submission point be accepted, and I therefore support the proposed amendments to RPE.3.3(2).

Brett Hood

5 July 2017



ANNEX. 1

E39.6.4.4. In-situ subdivision creating additional sites through protection of indigenous vegetation or wetland identified in the Significant Ecological Areas Overlay; and in-situ subdivision creating additional sites through protection of indigenous vegetation or wetland not identified in the Significant Ecological Areas Overlay meeting the Significant Ecological Area factors identified in Policy B7.2.2(1)

Refer to Appendix 15 Subdivision information and process for further information in relation to in-situ subdivisions.

(1) The indigenous vegetation or wetland to be protected must either be:

(a) identified in the Significant Ecological Areas Overlay; or

(b) must be assessed by a suitably qualified and experienced person (e.g. for example, ecologist) who must determine that it meets one or more of the Significant Ecological Areas factors identified in Policy B7.2.2(1) and detailed in the factors and sub-factors listed in Schedule 3 Significant Ecological Areas – Terrestrial Schedule. A report by that person must be prepared and must be submitted to support the application.

(2) The maximum number of sites created from the protection of an indigenous vegetation or wetland must comply with Table E39.6.4.4.1 and Table E39.6.4.4.2.

Table E39.6.4.4.1 Maximum number of new rural residential sites to be created from the protection of indigenous vegetation either identified in the Significant Ecological Areas Overlay or meeting the Significant Ecological Area factors identified in Policy B7.2.2(1)

Areas of indigenous vegetation or wetland to be protected	Maximum number of rural residential sites that may be created
Minimum of 2.0ha	1
2.0001ha – 11.9999ha	2
12.0ha- 21.9999ha	3
22.0ha – 31.9999ha	4
32.0ha – 41.9999ha	5
42.0ha – 51.9999ha	6
52.0ha – 61.9999ha	7
62.0ha – 71.9999ha	8
72.0ha – 81.9999ha	9
82.0ha – 91.9999ha	10
92.0ha – 101.9999ha	11
102.0ha – 111.9999ha	12

Table E39.6.4.4.2 Maximum number of new sites to be created from the protection of wetland either identified in the Significant Ecological Areas Overlay or meeting the Significant Ecological Area factors identified in Policy B7.2.2(1)

Area of wetland to be protected	Maximum number of rural residential sites that may be created
Minimum 5,000m^2	1
5,001m^2 – 1.9999ha	2
2.001ha – 3.9999ha	3
4.001ha – 7.9999ha	4
8.0ha – 11.9999ha	5
12.0ha – 15.9999ha	6
16.0ha – 19.9999ha	7
20.0ha – 24.9999ha	8
25.0ha or more	9 plus one additional site for each 5ha of wetland above 30ha

(3) A 20 metre buffer is to be applied to the perimeter of the indigenous vegetation or wetland and included as part of the protected area.

(4) The additional sites must be created on the same site as the indigenous vegetation or wetland subject to protection.

Note: Standard E39.6.4.6 provides a separate subdivision option to enable the transfer of additional lots created via Standard E39.6.4.4.

(5) The additional sites must have a minimum site size of 1 hectare and a maximum site size of 2 hectares.

(6) Any indigenous vegetation or wetlands proposed to be legally protected in accordance with Appendix 15 Subdivision information and process must be identified on the subdivision scheme plan.

(7) Areas of indigenous vegetation or wetland to be legally protected as part of the proposed subdivision must not already be subject to legal protection.

(8) Areas of indigenous vegetation or wetland to be legally protected as part of the proposed subdivision must not have been used to support another transferable rural site subdivision or subdivision under this Plan or a previous district plan.

(9) The subdivision resource consent must be made subject to a condition requiring the subdivision plan creating the sites to be deposited after, and not before, the protective covenant has been registered against the title of the site containing the covenanted indigenous vegetation or wetland.

(10) All applications must include all of the following:

(a) a plan that specifies the protection measures proposed to ensure the indigenous vegetation or wetland and buffer area remain protected in perpetuity. Refer to legal protection mechanism to protect indigenous vegetation, wetland or revegetated planting as set out in Appendix 15 Subdivision information and process for further information;

(b) the planting plan for restorative planting must follow the specifications as set out in Appendix 15 Subdivision information and process that specifies any restoration measures proposed to be carried out within or adjacent to the indigenous vegetation or wetland proposed to be protected; and

(c) the plans required in E39.6.4.4(10)(a) and (b) must be prepared by a suitably qualified and experienced person.

(11) Indigenous vegetation or wetland to be protected must be made subject to a legal protection mechanism meeting all of the following:

(a) protection of all the indigenous vegetation or wetland and wetland buffer existing on the site at the time the application is made, even if this means protecting vegetation or a wetland larger than the minimum qualifying area; and

(b) consistent with the legal protection mechanism to protect indigenous vegetation, wetland or revegetated planting as set out in Appendix 15 Subdivision information and process.

(12) All applications must include a management plan that includes all of the following matters, which must be implemented prior to the Council issuing a section 224(c) certificate:

(a) the establishment of secure stock exclusion;

(b) the maintenance of plantings, which must occur until the plantings have reached a sufficient maturity to be self-sustaining, and have been in the ground for at least three years for wetlands, or have reached 80 per cent canopy closure for other ecosystem types. The survival rate must ensure a minimum 90 per cent of the original density and species;

(c) the maintenance of plantings must include the ongoing replacement of plants that do not survive;

(d) the maintenance of plantings must ensure that all invasive plant pests are eradicated from the planting site both at the time of planting and on an ongoing basis to ensure adequate growth; and

(e) the maintenance of plantings must ensure animal and plant pest control occurs.