IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of hearings regarding submissions to the proposed Thames Coromandel District Plan relating to biodiversity and subdivision.

STATEMENT OF PRIMARY EVIDENCE OF SHANE ALEXANDER HARTLEY ON BEHALF OF TASMAN BUILDINGS LIMITED

Dated 5 February 2015

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1 INTRODUCTION

1.1 My name is Shane Alexander Hartley. I have been a Director of Terra Nova Planning since establishing the consultancy in 2001. I hold the qualifications of Bachelor of Arts in Political Studies and History, and Bachelor of Town Planning. I am a Member of the NZ Planning Institute.

1.2 I was actively involved in policy and resource consent processes while employed by the Rodney District Council, holding from 1981 the various positions of Planner, Senior Planner, Planning Manager, and Forward Planning Manager, and as a consultant since 1999, have been involved in many Plan policy processes, and prepared and assessed numerous applications for development and subdivision proposals primarily in areas north of Auckland.

1.3 My professional experience has substantially been in the area of strategic and district plan land use. My extensive experience with statutory processes and documents includes the Auckland Regional Policy

Statement, Auckland Regional Growth Strategy, Waikato Regional Plan, and Manawatu-Wanganui One Plan; the Proposed Auckland Unitary Plan, District Structure Planning, District Plan resource management, including Plan preparation and processing, and land use and subdivision resource consent applications and private plan changes.

2 SCOPE

2.1 My evidence is in relation to a number of submissions to the Proposed Thames- Coromandel District Plan lodged by Tasman Buildings Ltd (ñTBLò) seeking amendments to the objectives and policies and other provisions within Section 6, 16, 29 and 38 of the Proposed District Plan (ñPDPò).[1]

2.2 In preparing my statement I have had particular regard to Ms Bridget Gilbertôs and Dr Keesingôs evidence for TBL.

3 CODE OF CONDUCT

3.1 I confirm that I have read the Environment Courtôs Code of Conduct for Expert Witnesses and 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 this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.

4 SUBMISSIONS

4.1 My statement addresses the primary and further submissions made by TBL to Sections 6, 16, 29 and 38 of the PDP.

4.2 The relevant TBL submissions are as below:

- Section 6 paragraphs 21 - 43
- Section 16 paragraphs 76 ï 99

[1] See Tasman Submission 421 pages 4-6, 13-17, 20 and 23-24 inclusive.

- Section 29 paragraphs 117 ï 120
- Section 38 paragraphs 128 - 137

5 SECTION 6: BIODIVERSITY

Section 6 Objective 1

5.1 TBLôs submission to Objective 1 seeks to remove the absolute protection requirement proposed in the objective as notified, and that the Objective should be amended to provide for remediation and mitigation of effects from subdivision, use and development on indigenous biodiversity

5.2 The Councilôs Hearing Report (HR) proposes an amended Objective which I consider is worded more appropriately so far as it goes. However, as this is the key biodiversity objective it is important that it is more expansive as to what it seeks to achieve, and in that respect the original reference to restoration and enhancement is important. This is consistent with RPS Policy 11.1 which seeks to *"Promote positive indigenous biodiversity outcomes to maintain or enhance the full range of ecosystem types to the extent necessary to achieve continued functioning of ecosystems, including through restoration of, indigenous biodiversity".*

5.3 An amended objective along these lines also provides the necessary focus for restoration and enhancement references in the following policies. In this regard, the objective should be extended to the same or similar as follows;

> The full range of the districts indigenous ecosystems and biodiversity is maintained in a healthy and functional state, and restored or enhanced where appropriate..

Section 6 Policies 1a to 1c 1

5.4 TBL seeks various changes to policies 1a to 1c relating to indigenous vegetation. The HR has comprehensively reworded and restructured these sections, with (i) proposed Policy 1aa focusing on *significant* indigenous vegetation and habitats of indigenous fauna, (ii) Policy 1a on *non-significant* indigenous vegetation and fauna, (iii) Policy 1c on *restoration and enhancement* of indigenous biodiversity in the rural area,

and (iv) Policy 1d on *reasonable use and enjoyment* of land where there are minor biodiversity effects.

5.5 I generally support the revised Policy 1aa with its clearer focus on significant indigenous vegetation and fauna habitat, and recognition of opportunities for biodiversity offsetting in appropriate circumstances.

5.6 I have more difficulty with Policy 1a, which although at face value sets the bar lower for non-significant vegetation and fauna habitat, in reality appears to apply a very high level of protection, seeking to ñ*Retain the viability, integrity and sustainability*ò (a); ñ*Maintain, enhance or restore ecological corridors and connections*ò (d); and the requirement for offsets where significant residual adverse effects on non-significant indigenous vegetation and habitat outside the Coastal Environment cannot be avoided, remedied or mitigated.

5.7 Firstly, the policies create a level of protection for non-significant indigenous vegetation and habitats that is not dissimilar to the approach that is being taken for significant areas.

5.8 Secondly, it creates the potential for requiring offsets in many instances by applying what is a relatively subjective and uncertain concept of ñ*significant residual adverse effects*ò to resources that are not significant at the outset (i.e. before any impact) .

5.9 I refer to Dr Keesingôs evidence in this regard where he reaches similar conclusions, and outlines practical and administrative difficulties regarding sub policies (b) and(c),[2]. In this regard therefore, Policy 1a needs to reflect the likelihood of such areas having little or no ecological sustainable value (as Dr Keesing describes it) as they currently stand, but identifying the potential for such areas to be utilised as the basis for enhancement opportunities, as well as making an amenity landscape contribution as is described in Ms Gilbertôs evidence.[3]

[2] Paragraphs 27 to 32 of his evidence.
[3] Paragraph 64 of her evidence.

5.10 On this basis, I consider that this policy should either be substantially amended to remove the inherent ñavoidanceò thrust that Dr Keesing identifies, or alternatively, deleted altogether. This second option would not undermine the statutory requirements for protection of significant indigenous vegetation and habitats (as covered by Policy 1aa, and 1e, regarding the coastal environment)[4]; and nor does it prevent the protection and enhancement of lower grade vegetation and habitats as that can fall within the ambit of Policy 1c which focuses on restoration and enhancement of indigenous biodiversity in the Rural Area.

5.11 Importantly, Policy 1c recognises the potential importance of both significant and less significant biodiversity, including indigenous vegetation, habitats and ecosystems, with the latter potentially being incorporated within wider restorative and management approaches. This approach is also consistent with the potential for appreciable (and wider) environmental gains as part of a subdivision regime identified by Ms Gilbert.

5.12 In summary, I consider that Policy 1a should either be deleted or substantially modified to reduce the currently underlying ñavoidanceò imperative and to more appropriately seek an encouragement or incentive-based approach to such environments.

6 SECTION 16 SUBDIVISION

Section 16 Objective 1

6.1 TBL opposed **Objective 1** seeking that it be deleted or reframed to better reflect Part 2 RMA. I consider that the proposed amendments in the HR are an improvement in terms of better aligning the objective with Part 2, however I do not consider that it is necessary that subdivision should ñbenefit the Districtô

6.2 The Purpose of the Act is specifically about enabling people and communities to provide for their social, economic, and cultural well-being and for their health and safety, subject to the qualifications set out in the

[4] As gives effect to Policy 11 of NZCPS 2010.

balance of Section 5 (2), and guided by Sections 6 and 7. There is no need for anyone to ensure that subdivision benefits the District in any other more general way. Questions of general benefit would be inherently subjective, and contestable by any applicant. While this may seem a pedantic point, it is important to continue to recognise that the Act is fundamentally an enabling instrument, and does not require any higher order obligations than are set out in the statute.

6.3 I therefore propose that Objective 1 be reworded to say;

> Subdivision is located and designed to provide for the activities anticipated in the Zones while avoiding significant, and avoiding, minimising or remedying other adverse effects on the amenity values of the surrounding landscape.

Section 16 Policies 1a and 1e

6.4 **Policy 1a** was opposed by TBL seeking deletion or amendment as prescribed in submission[5]. The HR proposes the deletion of this policy on the grounds that it is duplicated by an overlay. I agree with this deletion; or if it is retained, the amendment proposed by Ms Gilbert so that the policy states;

> Subdivision shall not significantly adversely affect the character and amenity of the surrounding built and natural environment (including Historic Heritage Areas and sites with a Historic Heritage Item). Adverse character and amenity effects shall be appropriately managed through subdivision design and integration of the proposal with the surrounding built and natural environment.

6.5 **Policy 1e** was similarly opposed by TBL seeking deletion or its amendment to require the maintenance of a sense of spaciousness as prescribed in submission[6]. The HR proposes to replace the word ñretainò by ñmaintainò which is more consistent with Part 2 of the Act, but otherwise proposes no change.

6.6 Ms Gilbert proposes in her evidence that instead of seeking to retain ñopen space characterò, which would be ñé *at odds with biodiversity objectives … that promote native restoration as part of rural subdivision*ò, it is better to seek to retain a ñé *sense of spaciousness of rural areas*.ò[7]. I agree with the reasoning she sets out in support of this argument, noting

[5] Paragraph 81 of the TBL submission.
[6] Paragraph 84 of the TBL submission.
[7] Paragraphs 20 and 21 of her evidence.

also her recommendation that the definition of órural characterôrequires a consequential amendment to be consistent.

6.7 Ms Gilbertôs comments in this regard need to also be considered in the context of her later discussion of minimum and average lot areas in the Rural Zone. The clustering of dwellings and smaller site sizes than the 20 ha the HR proposes the rule should be, will in some circumstances be more likely to achieve a sense of spaciousness (or even ñopen space characterò were those words to be retained) than a number of 20 ha sites, with scattered dwellings and farm and other accessory buildings, for example.

6.8 <u>The amended policy would therefore state;</u>

> Subdivision in the Rural zone shall retain the ~~open space character~~ <u>sense of spaciousness</u> of the Rural Area.

Section 16 Objective 5

6.9 The TBL submission seeks the deletion of words relating to the landform continuing to dominate the environment. Such an amendment is supported by Ms Gilbert on the basis that the existing landform may not already dominate the environment and it is therefore ñé *impossible for any subdivision to fulfil this part of the objective*[8]. I agree and adopt both the HR and Ms Gilbertôs proposed amended wording.

Section 16 Policy 5b

6.10 The submission from TBL sought amended wording of this policy to avoid the absolute approach to building platforms and roads not breaking the natural skyline; and the addition of wording to recognise such could be filtered or screened by vegetation or landform, and would have less landscape impact on a lower less prominent building platform or site.

6.11 The HR proposes an amended policy that partly response to this concern by limiting the consideration for headlands and ridgelines to those located in the Coastal Environment. While I support this modification to the extent it goes, I consider that the main concern of the policy currently enforcing a lower building platform and road location than one which may in fact be

[8] Paragraph 30 of her evidence.

located on the skyline (but have less overall visual or environmental) impact is still not appropriately addressed.

6.12 In her evidence, Ms Gilbert observes that while ñ*On the face of it, this policy makes good sense from landscape perspective*ò[9], but then describes how the physical characteristics of the Coromandel landscape make it extremely difficult to avoid building on skylines, headlands and ridgelines, and that in some cases this ñ*may also represent the most sympathetic response to the specific site conditions and in particular, the natural character values of the area*ò[10].

6.13 I agree with the alternatives proposed wording for this policy which is;

> Subdivision design shall respond to the natural landform by ensuring building platforms and road configuration sits within the siteôs topography, does not break the natural skyline, and in the Coastal Environment is located away from headlines and ridgelines that are visually prominent from public places unless locating below the ridgeline would cause significant:
> - geotechnical or erosion issues,
> - limitations on the usability of or access to the building platform, or
> - adverse landscape or natural character effects,
>
> and the alternative location avoids significant landscape or natural character effects.

Section 16 Policy 5c

6.14 TBLôs submission seeks the inclusion of the words ñ*practicable and*ò in the policy in reference to access to new lots following the natural contour of the land. Ms Gilbert agrees with the intent of the policy in principle but expresses concern that in some cases while it is still appropriate to follow the contour, the very steep nature of the topography may mean that it is not buildable or practical to do so[11].

6.15 On the other hand, the HR takes the position that as the policy already includes the words ñ*where appropriate*ò and ñshouldò rather than ñshallò the amendment is sought would weaken the policy to the point it to have little weight[12].

[9] Paragraph 33 of her evidence.
[10] Paragraph 37 of her evidence.
[11] Paragraph 44 of her evidence.
[12] Paragraph 33 Section 42 A Hearing Report: Section 16 ï Subdivision.

6.16 Having regard to both positions, I consider that the first instance, the addition of the words sought does not weaken the policy as the HR suggests, and is unlikely to lead to any accesses not following the contours where it would have been possible to do so. The introduction of reference to ñpracticableò simply ensures that the term ñappropriateò is not interpreted too narrowly. On the other hand, as the definition of this term is ñ*Suitable or proper in the circumstances*ò[13] the additional wording may not add significantly to the provision.

6.17 On this basis, I do not consider that either option is significantly better or worse than the other.

Section 16 Objective 6 and Policy 6a

6.18 The TBL submission sought amendment of both Objective 6 and Policy 6a. The HR proposes the deletion of both on the basis that they duplicate biodiversity policy in Section 6. I agree with this reasoning.

Section 16 Objective 7 and Policy 7c

6.19 The submission from TBL on Objective 7 seeks the deletion of the words ñ*and enhances water quantity*ò in relation to subdivision. The HR report agrees that the objective requires a clearer focus on what is being sought and proposes that the objective reads ñ*Subdivision <u>design</u> maintains water quality ~~and enhances water quantity~~ in wetlands, waterways and groundwater*ò

6.20 <u>I support these changes to Objective 7.</u>

6.21 In regard to the submission on Policy 7c, the HR report responds to TBLôs requested wording and agrees that similar changes should be made to the policy as proposed to be made for the objective. However, I consider that it is more realistic, having regard to the high (and likely unobtainable) bar such a policy would otherwise set, for the policy to seek to ñ*avoid more than minor adverse effects*ò on water quality than to ñ*not adversely affect*ò as both the original and proposed HR wording proposes.

[13] http://www.oxforddictionaries.com/definition/english/appropriate.

6.22 The policy would then read;

> Subdivision design shall ~~protect water bodies, the natural flow of water and~~ ensure that stormwater ~~does not~~ has no more than minor adverse~~ly affect~~ effects on water quality or the capacity of existing natural systems.

Section 16 Objective 8 and Policies 8a to 8e.

6.23 TBL seeks the deletion or rewording of Objective 8 and amendment of Policies 8 a to 8e, the latter seeking the addition of reference to Esplanade strips, and seeks to clarify that Esplanade reserves or strips for subdivision may only be required for allotments less than 4 ha, with compensation required in any other case.

6.24 The HR proposes a rewording of Objective 8 by now focusing on conservation values, recreational use of, and public access to or along the Districtôs water bodies, and removing what is arguably an almost unobtainable requirement to maintain and enhance natural character and ecological functioning.

6.25 I support this wording change for Objective 8.

6.26 The HRôs proposed changes to policies 8a to 8e have significantly improved them in a manner that largely gives effect to the requested changes sought by TBL (assuming reserves or strips would be taken on lots above 4ha).

6.27 I support the wording changes for policy is 8a to 8e as proposed.

6.28 TBL opposed Policy 11b for the reason that it essentially creates a ñ*purpose based test*ò which is not consistent with the RMA. The HR agrees, noting that *"It reverses the presumption of the rest of the policies that subdivision can occur as long as certain environmental outcomes are achieved*ò [14]

[14] Paragraph 53 Section 42 A Hearing Report: Section 16 ï Subdivision.

6.29 I agree with this analysis, noting also that such a policy cuts across the wider and more detailed policy regime applied elsewhere through the Plan, essentially applying a ñprohibitionò on subdivision in the Rural Area that does not meet one of the four tests - three of which at least are of such subjective and general nature as to be arguably unobtainable (bullet points 1, 2 and 4).

6.30 In regard to achieving ecological restoration or enhancement, the policies in Biodiversity Section 6 address subdivision for those purposes in considerably more detail and are most appropriately located there.

6.31 I support the HRôs recommended deletion of Policy 11b.

7 SECTION 29: BIODIVERSITY OVERLAY

Section 29: Rule 3

7.1 The TBL submission seeks the amendment of section 29 Rule 3 to provide for the clearance of indigenous vegetation associated with pasture management on existing farms as a permitted activity; and in the absence of that, amendments to Rules 3.2 and 3.4. The HR has made some improvements to permitted activity Rule 3.1 (now renumbered 2), including the introduction of a ñcut-offò date before which domestic gardens, pasture horticulture is classified as ñexistingñ for the purpose of the rule.

7.2 I support the proposed amendments.

7.3 In situations where restricted discretionary consent is required under Rule 3.2 for the clearance of vegetation in the Rural Area, discretion is restricted to the matters set out in Table 2 of Section 29. Dr Keesing makes a number of observations about the matters set out in this Table, and I consider that a number of amendments should be made that address the issues he has identified.

7.4 For example, to remove any uncertainty as to the relationship of ñSetsò 1, 2 and 3 as he has identified[15], restructuring of the Table is needed to

[15] Paragraph 34.

identify ñGeneralò and ñSpecificò matters and assessment criteria (i.e. to make it clear that those in Set 1 are applicable to both 2 and 3 (as it appears to be the intent). Other more discreet additions and deletions would also appear to be necessary based on Dr Keesingôs evidence, including potential deletion of Set 3.

8 SECTION 38 SUBDIVISION

Section 38 Rule 8

8.1 TBL has further submitted in support of submissions seeking to incorporate conservation lot provisions that are not limited to identified priority areas, in a similar way as the Operative District Plan does.[16] At present, Rule 8 provides (as a restricted discretionary activity) for subdivision for indigenous ecosystem restoration or enhancement and protection identified in Figure 1 Priority Areas. These areas are not only spatially identified, but have specified minimum areas to be set aside for the prescribed purpose. In regard to TBL, only Waimate Island is identified, and the minimum priority area required is 14 ha.

8.2 Rule 8 does have a discretionary activity rule that provides for subdivision of conservation lots in the Rural Zone where the minimum priority area to be set aside is not met; and the HR proposes that the discretionary activities be extended by including (i) the requirement for the lot to be subdivided containing a priority area identified in Figure 1, and (ii) the provision of an esplanade reserve or strip where the allotment is larger than 4 ha.

8.3 In respect to this rule, the HR states that ñ*There is still an opportunity for applicants to apply for a conservation lot outside of the identified priority areas, or where one or more of the other standards are not met, and the merits of that application would be assessed on a case by case basis in accordance with the relevant objectives and policies of the plan, and with reference to biodiversity benefits accruing from the proposed conservation lot*ò[17].

[16] Including submission 256.7.
[17] Paragraph 42 of the section 42 A Hearing Report.

8.4 The problem with this approach is that there is a relative lack of certainty, transparency and a potential for a lack of consistency in the quality of individual and cumulative ecological outcomes. As a discretionary activity also, any application is exposed to the full range of objectives and policies in the Plan, which may have the effect of preventing ecologically meritorious proposals for reasons that are not applicable to restricted discretionary proposals.

8.5 These are major shortcomings, particularly as there are apparently serious issues with the identification of priority biodiversity areas. Dr Keesingôs examines some of the shortcomings of the mapping process, which includes his summation that many of the priority areas;

> é *rely on desktop studies of aerials and databases, and not necessarily on actual ecological fieldwork assessment. Consequently the identification of priority biodiversity areas in the plan is as yet unverified and, from my knowledge of the Whanganui Island (Tasman's land) not yet sufficiently accurate*.[18].

8.6 Dr Keesing adds that *"Clearly there will be other potential SNAs that could benefit from enhancement, through conservation and environmental lot opportunities, than those mapped in Figure 1 (Section 38). Conversely, some of the mapped SNA areas should not be considered SNA"*[19].

8.7 Furthermore, the categorisation of any proposal where more than two conservation lots are proposed as a non-complying activity seems counter-productive to the intent of the key biodiversity objectives and policies, and is not well supported by objectives and policies relating to other matters such as reverse sensitivity, amenity, natural character, and high-class soils. This in essence smacks of an ñallocationò rule, having no clear relationship to the lot size of the parent lot the two lots are derived from.

[18] Paragraph 12 of his evidence.
[19] Paragraph 19 of his evidence.

8.8 The avoidance of adverse effects on such identified values can typically be addressed by more focused standards and assessment criteria, including for example specific location and density rules in the coastal environment, including the application of transferable title or development rights (TDRs) which I discuss in the following paragraphs.

8.9 Furthermore, as any subdivision proposal for three or more conservation lots would be expected to propose areas for conservation or enhancement generally in accordance with the minimum areas identified in Table 1, the number of lots that might be proposed is relatively self-limiting. Overall, I consider that a discretionary activity status is appropriate for the consideration of the wider effects that are potentially created by increased numbers of rural residential lots created (on the basis of conservation and enhancement proposals), but otherwise retaining restricted discretionary status for conservation lots, including those not involving priority areas.

8.10 It is appropriate to retain a non-complying activity status for the remaining a) and d).

8.11 EDS has sought the replacement of conservation lot provisions with transferable development right provisions. I am very familiar with the design and operation of such provisions, having been closely involved in their introduction in operation in Rodney District since the mid-1990s. In my opinion these are a very effective instrument for achieving important biodiversity objectives by diverting - where appropriate - subdivision away from the areas of biodiversity that are being sought to be protected and or enhanced.

8.12 The key to TDRs is to ensure that there are sufficient and appropriately located receiving areas for the sites that are created. A tailored rule regime can ensure that TDRs are only applied in circumstances where it is highly desirable that sites are not created where they would have more than minor adverse effects on the biodiversity restoration and enhancement areas they are founded on.

8.13 The use of TDRs might, for example, be an option to address the relatively unusual situation with Whanganui Island comprising a large

number of allotments that derive from its historic status as a site for Coromandel township, but which do not formally qualify for individual titles under RMA as they stand. The title areas could be rationalised though a TDR technique, as one option of giving effect to TBLs submission otherwise to rezone that land rural residential, or permit subdivision as of right. [20]

8.14 I emphasise that more generally, the transfer of sites will not be necessary, and sites can, with proper design and layout, be located within the parent site. However, in these cases it is also important that specified minimum site areas are not so large as to unnecessarily fragment larger pastoral holdings to the extent that they become economically unviable (or at least; more unviable than they currently are), or create sites of a size that are essentially unmanageable for typical rural residential owners.

8.15 In my experience, specifying unnecessary large minimum site sizes can result in unintended consequences, including the scattering of built development around the landscape, and poorly maintained farmland. The focused placement of smaller sites with sensitive building platform locations and appropriate landscaping and similar enhancement results in significantly better outcomes than the alternative, as explained by Ms Gilbertôs evidence on this issue. In this respect, a minimum site area of 8000 m² to 1 ha as suggested in the TBL submission is appropriate, with the average density governing the overall number of sites within the original parent site.

8.16 I note that the HR gives as a reason for not incorporating TDRs that *"… its effectiveness is reliant upon the Council's ability to manage and monitor implementation. At this stage the Council does not have systems or resources available to do this …"*[21]. I am uncertain as to what these limitations on systems and resources might be. The TDR instrument does not require the ñdonorò site to be monitored any more than were the proposed conservation lots located within it.

[20] Paragraphs 16 (a) and 138(d) of TBLôs submissions.
[21] Paragraph 61 of Section 42 Hearing Report: Section 38-Subdivision.

8.17 The key requirement of Council is to ensure that the biodiversity areas are protected and managed on an ongoing basis which is necessary wherever the resultant subdivisional lots are located. In such case, it is entirely appropriate for any subdivision consent on this basis to include monitoring fees to cover the costs of such actions.

8.18 In regard to the ñreceivingò locations for TDR lots, and in part depending on where these areas are defined, there should be no ongoing requirement for monitoring. These are simply new rural residential lots, located where the effects are able to be better managed as part of the subdivision consent process, with no additional ongoing considerations in terms of their effects on biodiversity or other natural values. For example, such lots may by rule and policy direction, be located in receiving areas focused around existing urban settlements, or rural valleys where perhaps biodiversity values are very low and previous subdivision has largely compromised any significant pastoral farming character.

8.19 In this regard, it would be appropriate to include as one of the options for achieving conservation, restoration and enhancement, rules providing for the transfer of development rights for sites created under both Rule 8 (Subdivision creating one or more conservation lots, including any lots approved by way of discretionary or non-complying applications) and Rule 9 (Subdivision creating one or more additional lots).

8.20 <u>In conclusion, I consider that the following amendments to the rules in Section 38.8 should be made:</u>

(i) Subdivision identified in the HR as a discretionary activity in Rule 8.3 in relation to (b) (c) and (f) should be a <u>restricted discretionary activity</u>;

(ii) Subdivision identified in the HR as a non-complying activity in rule 8.3 in relation to (e) should be a <u>discretionary activity</u>.

(iii) Subdivision identified in the HR as a non-complying activity in rule 8.3 in relation to (a) and (d) should remain as a <u>non-complying activity</u>. The current reference to ñup to twoò in this rule should be

deleted whether or not my recommendation in (ii) above is accepted.

Section 38 Rule 9

8.21 TBL seeks that Rule 9 be amended to provide for subdivision in the Rural Zone that meets the standards in Tables 2 and 3 as restricted discretionary activities (rather than discretionary activities as they currently stand). The standards in Tables 2 and 3 are extensive and precise in their requirements; with those in Table 2 specifying a minimum average lot area for the relevant zone[22] and Table 3 specifying servicing and access standards.

8.22 The key provisions for assessing a proposed subdivision application are those in Table 5 which sets out õRestricted Discretionary Activity Mattersö, including assessment criteria. These criteria are comprehensive (applying to subdivision in all zones), and generally address the range of actual and potential effects that should be considered for rural subdivision at 20 ha <u>average</u> site sizes.

8.23 On the basis that the maximum density of rural subdivision is specified, the most significant considerations for subdivision in rural areas (aside from the fundamental engineering and water quality matters) will generally be to do with landscape and visual effects, and effects on areas of biodiversity. In this respect, Section 6 of the Table includes consideration of subdivision design, and layout, and specifically refers to the subdivision design principles in Appendix 4.2. Section 11 addresses ecosystem restoration and enhancement.

8.24 In this respect, I consider that a restricted discretionary status is appropriate under Rule 9.

Section 38 Rule 10

8.25 Finally, in regard to TBLös further submission in support of submission 1055, which seeks to make Rule 10 applicable to other zones than just the Rural Lifestyle Zone, I consider Dr Keesingös statements in regard to

[22] The HR suggests that this rule could be amended "*to remove the minimum 'average' and just have a minimum lot size of 20 ha*" (paragraph 71 HR Section 38 ï Subdivision).This is opposed by Ms Gilbert and I support her reasoning .

this request[23] to be important in achieving a comprehensive approach to extending biodiversity areas and linkages throughout the District.

8.26 To some extent the proposed changes I have suggested to Rule 8 may address some of TBLôs concerns, to the extent that Rule 8 would similarly provide for sites to be subdivided on the basis of biodiversity protection, restoration and enhancement. The discretionary activity status I have suggested for several of the subdivision options would then become the same as that applying to subdivision under Rule 10 in the Rural Lifestyle Zone.

8.27 However, I note that there are some reasonably significant differences in the rules, including the ability to create up to four ñenvironmental benefit lotsò compared to the two lots initially provided for under Rule 8 (although my suggested changes would also allow an increase in the number of lots as a discretionary activity).

8.28 In this respect, it occurs that there already are similarities (and there would be more if my proposed changes to Rule 8 are accepted) between the biodiversity requirements of both rules. This indicates the potential for much of the two rules to be amalgamated into one, thus simplifying the biodiversity protection, restoration and enhancement process, as well as the District Plan itself.

Shane Hartley

5 February 2015

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[23] Paragraphs 20 to 22 of his evidence.