

BEFORE THE HEARING PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Proposed Plan Change 5 to the Operative Hamilton
City District Plan

**SUPPLEMENTARY STATEMENT OF EVIDENCE OF SAMUEL ELLIOTT FOSTER
(PLANNING – MDRS)**

Dated 22 September 2022

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INTRODUCTION

1. My full name is Samuel Elliott Foster.
2. My qualifications and experience are as set out in paragraph 2 of my primary statement of evidence dated 2 September (**primary evidence**).
3. I reconfirm that I have read and am familiar with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014 and I agree to comply with it.
4. I provide this rebuttal statement on behalf of Hamilton City Council (**HCC**) as proponent of Plan Change 5 (**PC5**).

PURPOSE AND SCOPE OF EVIDENCE

5. The purpose of this rebuttal statement of evidence is to respond to matters raised regarding the incorporation of Medium Density Residential Standards (**MDRS**). Specifically, the matters raised by:
 - a) Mr Jesse Gooding on behalf of the Director-General of Conservation (**DOC**);
 - b) Ms Rachel Dimery on behalf of Cordyline Holdings Limited;
 - c) Ms Susannah Tait on behalf of Kāinga Ora; and
 - d) Mr Andrew Collins on behalf of The Adare Company.

MATTERS RAISED IN SUBMITTER EVIDENCE

Mr Gooding – DOC

6. Mr Gooding notes in paragraph 5.22 of his evidence that I have set out the qualifying matters accommodated by PC5 and the method for accommodating them.
7. He comments in paragraph 5.23 that I appear to consider a 5m setback from the boundary of Significant Bat Habitat Areas (**SBHAs**) the only necessary qualifying matter. He states that the identification of SBHAs, buffers, setbacks and corridors as notified in PC5 has occurred for the express purpose of recognising and providing for section 6(c) of the Resource Management Act 1991 (**RMA**) and therefore asserts that the 5m setback is also a qualifying matter.
8. My primary evidence was limited to explaining the introduction of MDRS standards into Chapters 4A and 23A of PC5 via the Hamilton City Council Submission. It is not a full assessment of the relevant qualifying matters that relate to Peacocke Structure Plan Area.
9. The exercise that I went through was to consider the submissions by HCC and others, which sought changes to the plan provisions to align with the MDRS provisions, and how these could be incorporated into the PC5 residential and subdivision provisions to best align the plan change with the requirements of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021.
10. Included in the requirements of the MDRS are minimum setbacks of 1.5m from the transport boundary and 1m from side and rear boundaries. In considering the appropriateness of the 5m setback from SBHAs, I am reliant on the expert advice of Mr Kessels, and the need to establish a 5m setback from identified SBHAs, amongst a range of other responses, to meet the requirements of section 6(c) of the RMA. On this basis, it was

recommended to retain the 5m setback as notified as per paragraph 29 of my primary evidence.

11. In short, I do not disagree with Mr Gooding that there are a range of features within the provisions of PC5 that are necessary to meet the requirements of section 6(c), but which may (potentially) impact the ability of PC5 to meet the MDRS density requirement. These features are explained and justified in the technical evidence presented by HCC addressed by others and not within the scope of the statement I have prepared. I do not express any opinion on the spatial extent of what may amount to qualifying matters.

Ms Dimery – Cordyline Holdings Ltd

12. Ms Dimery in paragraph 34 of her evidence considers that there is no need for the 6m setback from the Waikato River and Gully Hazard Area.
13. Ms Dimery considers that management of hazards is adequately dealt with under section 106 of the RMA and therefore hazards can be managed through the subdivision process without a need for a setback provision.
14. The approach included within the Peacocke Structure Plan Area is consistent with that taken across the rest of the City. Development in the Waikato River and Gully Hazard Area is a Discretionary Activity. The 6m Setback from the Waikato River and Gully Hazard Area manages the construction of buildings and structures within proximity to this area on account of the risk associated with gully slopes and the planning framework provides for buildings to be built within this setback area as a Restricted Discretionary activity. There are existing Assessment Criteria within the operative plan provisions that apply. The Hazards and Safety assessment criteria, which are most relevant, are included below.

F – Hazards and Safety	
F1	<i>The extent to which the size, location and design of the proposed building, infrastructure, structures, stored goods and materials, fences or walls:</i>
a.	<i>Affects the scale, location and orientation of any overland flow path.</i>
b.	<i>Provides for sufficient permeability:</i> <i>i. So as not to obstruct any overland flow, and</i> <i>ii. To mitigate the likelihood of debris becoming trapped.</i>
c.	<i>Has sufficient height clearance to mitigate the risk of being affected by inundation.</i>
d.	<i>Has the structural integrity to withstand inundation.</i>
F2	<i>The extent to which an appropriate building platform can be provided free from any identified hazard area.</i>
F3	<i>The extent to which the applicant has demonstrated, through the use of an engineering design report:</i>
<u>a.</u>	<i>That the risk of ground failure can be reduced to avoid the effects on the safety of occupiers and neighbours.</i>
<u>b.</u>	<i>That any structure will perform safely under hazard conditions for the life of the structure.</i>
<u>c.</u>	<i>That any work to be carried out maintains the stability of the river bank or gully and does not increase the risk of ground instability on the subject site or adjacent sites.</i>
F4	<i>The extent to which a flood risk assessment report submitted, with the proposal, contains recommended refinements to the extent of any Flood Hazard Area as a result of additional flood hazard modelling or site specific topographical analysis.</i>

15. The structure of the PC5 provisions and the changes introduced through the MDRS provisions further the opportunity for land use development to occur prior to subdivision. Without a provision in place to manage risk

associated with buildings and structures in relation to proximity to the gullies for land use, there is a risk that development could occur prior to subdivision and therefore not take section 106 into consideration; consequently not providing sufficient consideration of the risks associated with natural hazards.

16. Importantly, the setback requirement does not stop development from occurring, rather it allows it to be considered where it can be shown that development mitigates and manages the associated risks. I therefore recommend that the 6m setback requirement from the Waikato River and Gully Hazard area is retained.

Ms Suzanna Tait – Kainga Ora

17. Ms Susannah Tait addresses MDRS requirements from paragraph 60 of her evidence. I note her general support for the inclusion of these provisions, with the exception of two provisions she does not support:
 - a) **MRZ-PREC1-PSP:R39.2** which relates to the setback of the upper floor of buildings over 12m; and
 - b) **MRZ-PREC1-PSP:R47** which relates to the setback between buildings on the same site.
18. The purpose of rule MRZ-PREC1-PSP:R39.2 is to manage the street interface of taller buildings, setting these back from the street to reduce building dominance and shading of the street corridor, providing amenity to the streetscape and maintaining a human scale. This enables an outcome where the first three-four storeys define the street edge, with the fourth or fifth storey setback from the front building line. This outcome enables density to be established and deliver a positive design outcome. I therefore recommend that the provision is retained.

19. The purpose of rule MRZ-PREC1-PSP:R47 is to manage the separation between buildings and provide for sufficient space for access between buildings. The setback distance is the equivalent of the side yard setback requirements for two detached buildings under the MDRS requirements i.e. $1\text{m} + 1\text{m} = 2\text{m}$. This establishes a land-use layout on site that can then be subdivided in a manner that complies with the setback requirements and provide sufficient space for a fence to be erected whilst maintaining room for access and maintenance purposes. It is my opinion that the rule maintains a level of development efficiency consistent with the intentions of the MDRS.

CONCLUSION

20. I have reviewed the responses specific to the introduction of MDRS from the evidence statements of:
- a) Mr Jesse Gooding on behalf of the Director-General of Conservation;
 - b) Ms Rachel Dimery on behalf of Cordyline Holdings Limited; and
 - c) Ms Susannah Tait on behalf of Kāinga Ora;
21. After considering these statements, I have no changes to recommend in response to matters raised relating to the incorporation of the MDRS requirements into the provisions of PC5.

Samuel Elliott Foster

22 September 2022