

**BEFORE WAITOMO DISTRICT COUNCIL  
HEARINGS PANEL**

**UNDER** the Resource Management Act 1991 (**RMA**)

**IN THE MATTER OF** Proposed Waitomo District Plan

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**Mischa Jacobine Davis**

**PRIMARY EVIDENCE ON BEHALF OF THE AUCKLAND/WAIKATO FISH AND GAME  
COUNCIL ("FISH & GAME")**

**SUBMITTER ID: 18**

**Hearing Tranche 1**

Dated: 09 July 2024

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## STATEMENT OF EVIDENCE OF MISCHA DAVIS

### Introduction

- 1 My full name is **Mischa Jacobine Davis**
- 2 I am employed as Resource Management Officer for Auckland/Waikato Fish and Game Council.
- 3 I have been in this role since October 2016 during which time I have been responsible for preparing and lodging submissions on resource consent applications, local government planning documents, draft legislation or other central government policy matters, then presenting those submissions and other evidence at hearings. I have further been involved in responding to queries on resource management issues, investigating non-compliance with resource consents, policies and plans, and assisting with regional planning and policy development.
- 4 I hold the qualifications of Bachelor of Laws, and Bachelor of Arts (Geography), both from the University of Auckland.

### Background

- 5 Fish and Game has sought changes in three areas regarding Hearing Tranche 1. They are:
  - a. Subdivision
  - b. Reverse sensitivity
  - c. Noise
  - d. Signs

### Subdivision

- 6 Fish and Game has a statutory obligation to maintain and enhance access to sports fisheries and game bird hunting areas. Public access to lakes, rivers and public spaces can be fragmented by the subdivision process if not carefully managed. The subdivision process itself however provides an opportunity to maintain public access and associated linkages.
- 7 Fish and Game sought that the Proposed Waitomo District Plan ("Proposed Plan") expand the provision for Benefits Lots to include the Awakino River catchment, due to its national importance as a trout fishery (submission points 18.20, 18.21).
- 8 In response to this relief the s42A Report states:

*"There is no particular objection to adding fencing of the Awakino catchment to the benefit lot provisions, however it is considered that more information is required. It would be useful to understand how national importance as a trout fishery is awarded and maintained, how large the Awakino catchment is and what its mapped area would be. This information will enable the Commissioners to better assess the request."*<sup>1</sup>

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<sup>1</sup> Paragraph 86, Section 42A Report Topic: Chapter 29 – Subdivision.

*“In terms of public access, it would be helpful to understand what this would entail. That is, how would the public access be provided, what legal mechanism would be used, would the access be in perpetuity, and are some access points more appropriate than others. In the interim, it is recommended that the submission points are rejected until more information can be shared.”<sup>2</sup>*

- 9 The evidence of Dr Daniel’s addressed the above points regarding the national importance of the Awakino trout fishery, it’s catchment and mapped area proposed to be captured by the Benefit Lot provisions. Dr Daniel’s evidence also touched on how public access can be provided for by the provisions. My evidence will cover the legal mechanisms used to enable public access in further detail.
- 10 Legal mechanisms used to create public access via Benefit Lots could include either access strips or covenants.
- 11 To ensure that esplanade reserves and strips, or any other reserve land, are capable of being used by the public the RMA makes provision for access strips.<sup>3</sup> An access strip is a type of easement registered against the title to the land which can be established at any time by agreement between the landowner and the territorial authority under s237B. Access strips are surveyed and fixed, however their ownership remains with the landowner. The creation of a strip, and restrictions and requirements relating to its public use are defined in Schedule 10 of the RMA. They are a cost-effective way of achieving access, with few liabilities, where access may not otherwise be available.
- 12 Covenants are legal agreements involving voluntary restrictions on property rights. Like access strips covenants are also registered against the title of the land meaning any new owner is automatically bound by the covenant agreement. There are two types of covenants that may be created to provide for public access – these are conservation covenants and open space covenants. From a public access perspective, a conservation covenant could not be created on the basis of public access alone, however it could be a condition included as a condition of the covenant.
- 13 Section 6(d) of the RMA recognises that the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers is a matter of national importance. I consider that the Waitomo District Council is required to make the most of every opportunity to enhance public access to and along waterbodies, including through subdivision rules and when subdivision results in the creation of allotments along waterbodies.
- 14 By including the option for Benefit Lots to be created along the Awakino catchment I consider that the Waitomo District Council will meet its obligations under both the RMA and the Waikato Regional Policy Statement (“WRPS”).
- 15 Method 12.4.1 of the WRPS requires district plans to provide for the enhancement of public access to and along wetlands, and lakes and rivers and their margins by:

*i. identifying areas where it is appropriate; or*

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<sup>2</sup> Paragraph 86, Section 42A Report Topic: Chapter 29 – Subdivision.

<sup>3</sup> RMA s237(B).

- ii. *establishing criteria to enable assessment through resource consent processes of when it would be appropriate; and*
- iii. *including provisions to ensure it occurs in appropriate circumstances and locations.*

16 The Waitomo Council would also be meeting its obligation under 12.4.2 of the WRPS to enhance public access, which provides:

*“Local authorities should enhance public access to and along the coastal marine area, wetlands, and lakes and rivers and their margins, including through negotiation of access arrangements with landowners/managers. In determining priorities, local authorities should consider whether:*

- a) suitable alternative access is already available;*
- b) the access would link other existing accessible areas;*
- c) the area to be accessed has particular cultural, amenity or other values; or*
- d) the access would improve the range of access opportunities, including allowing access to less mobile members of the community.*

*Explanation*

*Policy 12.4 recognises that maintaining and enhancing public access to and along the coastal marine area, lakes and rivers is a matter of national importance. Maintaining and enhancing access requires both identifying where new access is required, and ensuring that existing and future access is not lost as a direct result of development or, in the coastal environment, from development that constrains movement of dry beach areas landward as a result of erosion or sea level rise. This will be achieved through regional and district plans and other mechanisms such as direct negotiation or purchase.”*

17 I am pleased to see in the s42A Report rebuttal evidence in response to expert evidence that after consideration of Dr Daniel’s evidence that it has been agreed that the proposed amendments can be made. I am supportive of the proposed new provisions in full contained in Appendix 3 to that report. I am strongly supportive of the statement that these provisions can offer both significant environmental gain (through fencing and planting) and meet the intention of RMA section 7(h) the protection of the habitat of trout and salmon.<sup>4</sup>

**Reverse sensitivity**

18 The Waitomo District includes environments which enable people to engage in game bird hunting in a wilderness setting, with minimal restrictions. Recreational hunting however can become constrained by surrounding land use, and typically occurs when land use changes such as when urban and lifestyle development is introduced near areas of recreational significance to hunters, implicating the future of hunting in these areas.

19 Fish and Game support several provisions in the Proposed Plan that consider reverse sensitivity effects including SUB-011, SUB-P3.4, SUB-P10.3 and NOISE-03. However as noted in its submission these provisions are not sufficient to ensure hunting activities are protected.

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<sup>4</sup> Para 78, Section 42A Report - rebuttal evidence in response to expert evidence filed, C. O’Callaghan.

20 As such Fish and Game sought an amendment to SUB-Table 1: Activities Rules: SUB R1.1-1.20 & SUB-Table 2 (submission point 18.24) so that specific considerations needed to address conflict between rural-based activities (such as game bird hunting) and subdivision are addressed. As currently written in the Proposed Plan discretion is restricted to “reverse sensitivity effects”. This is a broad and general term for discretion that it is not possible to be confident that conflicts with game bird hunting activities will be considered.

21 The S42 Report however does not accept Fish and Game’s relief stating that:

*“This plan makes specific provision for subdivision of properties in proximity to sites where the identified features of an activity mean the effects cannot be fully internalised, or separation is required for health and safety reasons. An example of this is the provisions of SUB-R9 and R10. This plan is also clear that recreational hunting is permitted in the general rural zone.”<sup>5</sup>*

*“it is the resulting land use rather than the subdivision itself that is considered by this rule and the matters of discretion. This plan contains adequate provision to manage reverse sensitivity effects generated by land use in the general rural zone and the other zones where this is necessary to manage effects.”<sup>6</sup>*

22 Reverse sensitivity is not specific to noise and merely having recreational hunting recognised as a permitted activity in the general rural zone does not mean the effects that subdivision can have on game bird hunting will be considered as a matter of discretion in each resource consent application. Further, the examples provided (SUB-R9 and R10) are in regards to restricting subdivision within proximity to specific areas (e.g. sites of intensive indoor primary production) and again do not provide for consideration of the effects that the subdivision itself can have on these areas.

23 Recreational hunting can be affected in ways other than noise alone, such as amenity concerns regarding the construction and use of maimai or predation of avifauna by the introduction of domestic cats and dogs. Predators associated with human habitation can travel large distances and would not be confined to boundaries of zoning.

24 As such I consider the rules should be strengthened, as proposed in the relief sought by Fish and Game in submission point 18.24 to provide greater protection from conflict to game bird hunters in the Waitomo District.

## Noise

25 Noise is an intrinsic part of game bird hunting activities which involves the discharge of shotgun noise. This is not like other constant noises rather it is very brief in duration. Game bird hunting begins at 6:30am in the morning and concludes at 6:30pm at night for the length of the game bird hunting season.

26 Recreational hunting however can become constrained by surrounding land use, and typically occurs when land use changes such as when urban and lifestyle development is introduced

<sup>5</sup> Para 95 Section 42A Report Topic: Chapter 29 – Subdivision C. O’Callaghan.

<sup>6</sup> Para 96, Section 42A Report Topic: Chapter 29 – Subdivision C. O’Callaghan.

near areas of recreational significance to hunters, implicating the future of hunting in these areas. The most obvious example is when complaints are made regarding noise.

- 27 To avoid any issues regarding noise Fish and Game sought to have the emission of noise from hunting activities specified as a permitted activity in rule NOISE-R9 of the Proposed Plan (submission point 18.30). As noted in our submission there is a risk that permitted hunting activities at times fail to meet the current permitted activity thresholds for noise in NOISE-R1 (Chapter 37: Noise).
- 28 The s42A Report agrees that recreational hunting should be provided for but considers that the appropriate zones for that are the natural open space and general rural zone.<sup>7</sup> In order to accommodate the s42A Report proposes to include an exemption in these zones to make it clear that the noise provisions will not be applied to recreational hunting in specified parts of the district. I consider this a reasonable approach to take and support the exemption provision proposed in the s42A Report in paragraph 51.

### Signs

- 29 As highlighted in its submission Fish and Game erects interpretative signage at access points to sports fisheries and game bird hunting areas as part of its statutory role to maintain and enhance access to these areas. The construction, maintenance, use and removal of these signs is a fundamental aspect of managing game bird shooting and sports fish angling activities in New Zealand and are important functions of Fish and Game.
- 30 Fish and Game sought to amend SIGN-R1 – Official signs, to have the New Zealand Fish and Game Council included as an agency who may erect an official sign as a permitted activity (submission point 18.31).
- 31 The s42 Report accepts this relief stating that:

*“It is agreed that it is appropriate to include the New Zealand Fish and Game Council under the provisions of this rule. The organisation does need to post information which may not necessarily be captured by the encapsulating provision ‘legislative requirements’... There is no concern that the Fish and Game Council will cause effects as a result of their signage which is only informational.”<sup>8</sup>*

- 32 I therefore support the amendment proposed in the s42A Report to include Fish and Game in this the rule which permits official signage in full without recourse to any other rules in the plan. The amendment resolves the concern raised in our submission about which category Fish and Game signs would fall under.

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<sup>7</sup> Para 49, Section 41A Report Topic: District wide matters – Noise, Signs, Temporary Activities, Relocated Buildings & Lights C. O’Callaghan.

<sup>8</sup> Para 66-67, Section 41A Report Topic: District wide matters – Noise, Signs, Temporary Activities, Relocated Buildings & Lights C. O’Callaghan.