

**Before Waipa District Council**

**In the Matter**

of the Resource Management Act 1991 (**Act**)

**And**

**In the Matter**

of an application for subdivision resource consent by  
3Ms of Cambridge Ltd Partnership at  
1863,1865,1871,1881 Cambridge Road Cambridge.

**Hearing Reference**

Resource consent – SP/0179/20

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**Evidence of Russell David Baikie (Planning)**

**Dated 18 May 2021**

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## **Introduction**

1. My full name is Russell David Baikie. I am a planner and hold the qualification of Bachelor of Regional Planning obtained from Massey University and a Diploma in Management. I am a member of the New Zealand Planning Institute.
2. I have 35-years' experience as a planner and project manager. I was a senior principal planner at Harrison Grierson Consultants in Auckland for 20 years. I left that position in 2015 to help establish CivilPlan Consultants, a medium sized multi discipline company with a land development focus in South Auckland where I was a planner and director for 6 years until October 2020. I presently operate as a sole trader.
3. My experience has comprised working for public and private sector companies in New Zealand and London. My work experience has included a range of planning projects, including residential and industrial subdivision and landuse resource consenting, structure planning and rezoning applications, preparation of submissions and giving expert evidence on resource consent applications, and proposed policy statements, plans and plan changes. My particular experience has been in effecting large scale structure plan and rezoning projects in the Auckland Region creating new suburbs and towns (some examples include Belmont Pukekohe; Karaka Hingaia Papakura, Addison Takanini Papakura; Flat Bush Manukau; Pokeno Waikato District; Redhills Massey North, Auckland). This has often involved large scale subdivisions, crafting development agreements and collaborating with key stakeholders to effect timely comprehensive and quality environmental outcomes.
4. I was engaged by the submitter Xiaofeng (Felix) Jiang and Liping Yang of 1835 Cambridge Road to provide planning advice in regard to the effects of the above resource consent application and to prepare and present planning evidence at the hearing. The submitters have owned the land for nearly 5 years.
5. I record that I have read and agree to abide by the Environment Court's Code of Conduct for Expert Witnesses as specified in the Environment Court's Practice Note 2014. This evidence is within my area of expertise, except where I state that I rely upon the evidence of other expert witness as presented to this hearing. I have not omitted to consider any material facts

known to me that might alter or detract from the opinions expressed.

### **Scope of Evidence**

6. My evidence will address the following:
  - a. The application;
  - b. The policy framework and relevant planning provisions;
  - c. Section 104D Assessment
  - d. Section 104 Assessment
  - e. Part 2 RMA Assessment
  - f. Conclusion

### **Executive Summary**

7. The application is of a scale and significance that reasonable adherence to the structure plan should be possible and by doing so this would have less than a minor effect on adjacent landowners and ensure various WDP objectives and policies relating to integration and efficient servicing are met.
8. There are no compelling or extraordinary reasons evident for land not to be set aside to enable the key infrastructure that would serve the application site and the C2 structure plan area in accordance with the structure plan. That plan represents (spatially and in terms of anticipated outcomes), the expected arrangement for landuse and infrastructure to support the required integration and to ensure efficient and effective use and development of the land.
9. Council wants to purchase the land for the intended infrastructure corridor for the benefit of the public interest. That public interest is best served by respecting the obligations of the structure plan where the land is in single ownership and thereby less problematic to purchase and deliver the infrastructure, than by creating a blight or perceived obligation on adjacent landowners.
10. The consistent administration and integrity of the Plan and of Council's obligations for implementing its objectives and policies to achieve integrated

management demands reasonable adherence to the publicly approved structure plan. The structure plan was introduced through Plan Change 7, representing the requirements of the District Growth Strategy and public submissions.

11. The NPS UD and District Plan are prescriptive in how land should be developed, and in what form. The level of deviation from the structure plan and consequential effects (reduction in open space; relocation of the neighbourhood centre; absence of land corridor for N-S stormwater and collector road, interrupted development aspirations and development layout restrictions for adjacent landowners) suggests the application serves only to satisfy the applicant's interests.
12. The refined alternative layout (3MS Refined Version) which now forms the proposal has a lesser effect on my client's land but still an adverse effect not prescribed in the structure plan. That results in loss of land, amenity and realisable development potential.
13. The potential effects (policy and environmental) are of significance in aggregate but I am unable to reach a decisive conclusion on the revised application as to whether it merits approval given uncertain compliance with the gateway tests of the Act.
14. Should approval be considered, a suitably worded consent notice should be imposed on the consent holder that provides for the potential purchase of the required N-S infrastructure corridor by the Council within 5 years from effective date of the consent.

#### **THE APPLICATION**

15. The original subdivision application or proposal is suitably described in the s42A report and I note a revised proposal has now been put forward as described in Mr Chrisp's evidence. There is no dispute as to the application status as Mr Chrisp has outlined.
16. It is observed that stage 2 of the subdivision has now been removed from the application and there is just one stage of subdivision. The dedicated land corridor to effect the network infrastructure required by the structure plan, although still not provided within the applicant's site, remains to be located

on other submitters land a little closer to the applicant's site western boundary.

17. Mr Chrisp attends that the route protection/provision to enable the planned network public infrastructure is the primary matter of significance. I agree in part but the subdivision does not suitably provide for other matters that the structure plan anticipates. This presents effects in regard to the Plan and environmental effects.
18. I have examined the evidence of Chrisp, McGafferry and Mackie. Mackie's evidence is contested by Mr Zhuang Urban Design for the submitter as to the significance of environmental effect consequentially arising from proposed positioning of the public network infrastructure outside the applicant's site.
19. There is acknowledgement that enhancing or creating a sense of place is an important objective, and one that the structure plan is seeking to achieve. I deduce this is why the neighbourhood centre is centrally located in close proximity to the intended N-S Collector Road to provide and optimise the focal point of the new emerging community; to create a focal point and some form of identity; and where a public transport connection should exist.
20. I observe from McGafferry that stormwater infrastructure required to service the development can be largely internalised with its own network (ie no reliance placed on the public network meaning the central N-S swale). I am however uncertain as to how the south western corner of the proposal is serviced when it appears from the layout plan that stormwater (which I presume includes Q100 event) will be managed by the proposed public swale on adjacent land. I expect that is a timing issue but there is a diminished level of certainty and presumption of procurement of land and construction to effect the subdivision.
21. The refined proposal removes a portion of the N-S central stormwater swale which is a proposed feature of the structure plan, (providing multiple benefits, an aesthetic and establishing a sense of place and character). This is replaced with a piped network linking the north swale with the south swale. Benefits (cost savings) are claimed by the applicant which should also increase yield. I note that the possible piping of the network is over 2 land parcels who were submitters opposing the application. Ultimately it is Council who decides what is required and where and in what form but on the face of it the suggested refined layout appears an opportunistic move to placate the

landowners and is an erosion of the vision and anticipated outcomes of the structure plan.

22. The nature and extent of effects (actual, potential and consequential) associated with the subdivision do not appear, in aggregate, to be minor. There is a bundle of effects from an environmental, and policy perspective which appear discounted in the application.
23. The subdivision is considered not consistent with the C2 structure plan and the ultimate repositioning of key infrastructure (the central north south stormwater corridor and main Collector Road) outside the site on third party land could not be construed as a “minor spatial departure”, as described in section 3.10 of the AEE. Also, in page 3 of the letter from Mitchell Daysh to Council dated 10 March, there appears indifference about the relevance and role of the north south key infrastructure implying that its repositioning and resulting landuse effects are inconsequential or not material from either a policy/rule or effects assessment. There is repeated denial and dismissing of the effects of the relocation of this required key structural element outside the application as not significant (but justified within a broader site context of other matters being compliant and thus generally in accordance with the structure plan).

## **THE POLICY FRAMEWORK and RELEVANT PLANNING PROVISIONS**

### ***Waipa District Plan (WDP)***

24. Section 1 of the WDP – Strategic Policy Framework lists several outcomes to support a planned and strategic approach to subdivision and development. Of note is Clause 1.1.33(c): “A consolidated urban form with new development being integrated with infrastructure provision...”; (f) – “Greater redevelopment in urban areas with increased density of development particularly in Deferred Zones....encouraging a reduction in car dependence and an increase in walking and cycling”; (i) “Development ... that is well connected through roading, cycling and walking links”.
25. The anticipated outcomes are reflected in various objectives and policies of which Objective 1.3.2 is relevant “To ensure that development and subdivision.....maximises the efficient use of zoned and serviced land and is

- coordinated with cost effective infrastructure provision”.
26. Policy 1.3.2.6 Coordination between subdivision and development and infrastructure expands on this requirement further.
  27. Those higher order objectives and policies (which reflect significant resource management issues for the District) are carried through to Objectives and Policies of Section 14, Section 15 and to Appendix 19 in this instance.
  28. Of note is that Appendix S1 of the WDP (Cambridge Residential Growth Cells (anticipated now to 2035) in which C2/C3 are linked, states that “.....Development **shall** be undertaken in **accordance** with the relevant structure plan contained within this District Plan”. In my opinion that is a directive statement and should not be interpreted other than as a specific expectation that development will conform with the structure plan and not necessarily generally accord with.
  29. I am cognisant of Rule 15.4.2.69 “that all development and subdivision within an area subject to an approved structure plan shall be designed in **general accordance** with the requirements of that structure plan.” That seems to imply some flexibility in how an area is designed and developed for subdivision purposes to ensure suitable outcomes. I would expect some possible variations of a minor nature such as tier 2 roads and some land use repositioning may be acceptable, but the absence of key network infrastructure material to the entire structure plan area, being absent within the application site but contemplated by the Plan is of greater significance.
  30. Section 15 Subdivision of the Plan is also explicit about integration of infrastructure with development and subdivision. I record Objective 15.3.15 “To achieve integrated development **within** structure plan areas” and Policy 15.3.15.1 “To enable development and subdivision within approved structure plan areas where the development and subdivision is integrated with the development and infrastructure requirements **specified** in an approved structure plan”.
  31. Objective 15.3.3 is relevant in particular policy 15.3.3.2(d) which states that development and subdivisions shall...”include infrastructure provision for both strategic infrastructure network and local infrastructure connections”.
  32. In my opinion the proposal materially diverges from these policies as the land (and works) for the anticipated public (strategic) infrastructure (notably the centrally located N-S stormwater and collector road) is not provided in the



location as specified. This may ultimately compromise the effective and timely delivery of the infrastructure by Council and its broader integration that would otherwise normally be provided as part of a subdivision. Integration of landuse and public infrastructure within the application site in its original intended location would ensure optimal landuse benefit (ie all stages of the structure plan area).

33. Chrisp notes that the application is purely one of subdivision, and there are no land use effects as no land use change is sought which would otherwise require a landuse consent (other than bulk earthworks already consented). I disagree. The noncomplying subdivision will have a consequential land use change or potential effect on other landowners by virtue of a different land use and infrastructure outcome/configuration that was otherwise anticipated by the structure plan. That is an adverse effect which is relevant. The applicant has in effect blighted adjacent landowners land and passed the “infrastructure burden” (opportunity lost) onto them.
34. Although the adjacent landowners don’t have the responsibility to provide the necessary infrastructure per se as this is Council’s mandate; it creates considerable uncertainty and anxiety for landowners and makes Council’s task much more problematic to effect the land sale and construction of the infrastructure which could otherwise be borne by 3Ms (through a developers agreement), with suitable compensation. It is always preferable to locate public infrastructure in as few as possible individual titles/sites so as to effect the timely purchase and development of that infrastructure.
35. The public consultation and submission process associated with Plan Change 7 together with Council best planning practice of applying structure plans ultimately derived and determined the optimal land uses for the relevant structure plan area including the likely location and form of key infrastructure and overall anticipated outcomes. That public process created a degree of clarity and expectation as to what could reasonably expect to happen and the form of that landuse or infrastructure within a set timeframe. The public have therefore placed some reliance on this public document and it is a legitimate expectation that reasonable adherence to it would follow.
36. Council has based its LTP on the anticipated development yield from the structure plan in regard to budgeted costs to effect the network

infrastructure and potential revenue projections from households /developers in regard to payment from development contributions.

37. It appears therefore that financial considerations (land compensation value) between 3MS and the Council have not been able to be agreed (to provide the key infrastructure) and Council seem reluctant although entitled to designate for the infrastructure corridor. This is a most unfortunate situation and clearly has created frustration as the land is in one ownership and enables comprehensive and effective provision of that infrastructure to be constructed by 3MS, potentially through a Developers Agreement; without creating consequential adverse effects on landowners to the west of the site. That seemed the basis of the earlier application whereby land within stage 2 of the subdivision was potentially left in abeyance for that infrastructure.
38. Revisiting that option and possibly reverting to the earlier proposal would be beneficial to all stakeholders. Should consent be considered I would recommend a suitably worded consent notice apply to the land corridor on the application site enabling Council to advance a land purchase within a reasonable timeframe.
39. This is an inward-looking subdivision/development with insufficient regard or consideration to the consequential effects on other landowners and its contribution to broader structure plan outcomes (eg positioning of neighbourhood centre) therefore enabling achievement of the expected outcomes of the structure plan for all stakeholders and future residents. In my opinion the proposal has not been designed in general accordance with the key structural elements of the structure plan under Rule 15.4.2.69. I therefore consider the design is inconsistent with the structure plan and relevant objectives and policies referred to above.
40. There is an importance placed on structure plans by Council as a method to implement the policies of the Plan. In my opinion the proposal is antagonistic and potentially contrary to the objectives and policies of the Plan in not suitably addressing the key requirements of accommodating enabling infrastructure expected within a subdivision and therefore potentially affecting landuse efficiency and integration within adjacent parts of the structure plan area.
41. The level of prescription of the S19 structure plan (in narrative and plan) suggests an appropriate reliance on the progressive implementation of at

least the key infrastructure and key land uses envisaged. There is a legitimate expectation by the public that the subdivision/development, of which key infrastructure location will be manifested will be consistent with the Plan's anticipated outcomes.

42. It is therefore queried whether Council's duties or functions under Section 31(a) of RMA to implement objectives, policies and methods to achieve integrated management of the effects of the use and development of land associated with the natural and physical resources of the District will be suitably achieved by the granting of this subdivision.
  
43. **Proposed Plan Change 13**
44. The submitter has made a further submission to this plan change supporting the deferred zone being uplifted and replaced by the residential zone (option 4) for the C2 Growth Cell, rather than by Council resolution.
45. To support Government policy (such as the NPS 2020– Urban Development); in advancing land for development purposes, there is an underlying expectation created by the Plan Change that extensive live rezoning of the pre 2035 growth cells is justified and will enable the prompt subdivision and development of this land. This is predicated on the inclusion of comprehensive approved structure plans within the WDP.
46. It is an expectation that subsequent development enabled by the rezoning would comply with subdivision policies and provisions of the Plan as noted above in my evidence. The degree of compliance is a matter of fact and degree depending on consent status and the level of effects generated. I do note in the NZFS submission that they have suitably recognised the importance and benefits of structure plans and stakeholder inputs to such plans to inform and derive the essential elements of how the structure plan is expected to be implemented in a more planned and coherent manner.
47. It would seem disingenuous to seek public inputs to a structure plan as part of a statutory process to derive the essence of what is anticipated, where and in what manner (outcomes), for those anticipated outcomes to be engineered out through a subsequent consent process. Unfortunately, I have observed such processes elsewhere resulting in outcomes at odds with the expectant outcomes of the structure plan vision, and the diminishing of the point of

difference (ie its essence or planned character) for that neighbourhood. This can make the structure planning preparation and approval process somewhat farcical when subsequent consents can remove or diminish value.

48. It is noted that 3MS provided pre notification feedback on the proposed plan change supporting Option 4. That justification was premised on the basis that “for the pre-2035 growth cells with structure plans already in place, developers would be able to develop in a manner **consistent** with the existing structure plan(s).”

#### **SECTION 104D ASSESSMENT**

49. In earlier paragraphs of my evidence, I reviewed the applicable objectives and policies I consider pertinent. The fact that it’s a residential subdivision in the deferred zone but is consistent with Residential objectives of the Plan, is not at issue. Any subdivision and development will meet that objective. What I believe is more pertinent is the degree of fit with relevant subdivision objectives and policies that relates to the proposal and the context (structure plan) that the application sits within.
50. In my opinion the proposal challenges Section 15 of the Plan in regard to the absence of setting aside land for public infrastructure and the design of the subdivision to optimise and enable that infrastructure for local and public benefit. In my view that is the pertinent matter and theme that pervades the application – the subdivision largely provides for its own infrastructure, and the onus of responsibility is sheeted to adjacent landowners/submitters, for example land for N-S infrastructure corridor.
51. I would conclude that the proposal therefore is contrary to several objectives and policies of the Plan (ie sections 1 and 15 in particular) and several anticipated outcomes of the S19 structure plan (eg connectivity). The argument contended by the applicant that there are compensating elements to qualify meeting the “generally in accordance” requirement of Rule 15.4.2.69 for the structure plan mask the importance of accommodating strategic infrastructure within the subdivision design.

52. The flow on effect of the subdivision not accommodating expected network infrastructure are the consequential effects on submitters properties, earlier referred to. Those potential effects are significant and not ones the landowners contemplated as part of the approval of plan change 7.
53. In my opinion the potential externalities created by the absence of compliance with the structure plan (and supporting subdivision policies) by 3MS seriously questions compliance with this section of the Act. There are no apparent extenuating or special circumstances evident or presented that would suggest the integrity of the Plan will be upheld and the public's confidence in its consistent administration will be maintained in consenting this proposal.

#### **SECTION 104 ASSESSMENT**

54. The applicant claims there are positive effects associated with the subdivision (eg new dwelling sites). Those claimed positive effects also extend to potentially less infrastructure required by the applicant's refined version proposal (and therefore reduced cost to Council) by the placement of the applicant's obligations of the envisaged public infrastructure corridor on other people's land. That claim also exists in terms of a "better" outcome for transport integration with C3, notwithstanding that the original N-S transport route indicated in the structure plan suitably works.
55. What is not apparent is what noticeable positive effects exist to offset and compensate for the adverse effects on the environment; namely in this case land blighted by the intended key public infrastructure provision on the submitters land. What benefit or positive outcome do they get out of it?
56. My client's land is presently unencumbered and can be fully realised for development under the current structure plan. As provided in Mr Zhuang's evidence, he can achieve roughly an 80% net development area, and so makes for very efficient land use optimisation. Based on the notifiable applicant's proposal where intended infrastructure is somewhat scattered, the effects are profound resulting in only a 37% net development area. The applicant's latest refined proposal/suggestion for off-site infrastructure still creates an adverse effect with some loss of land, access restrictions and amenity effects

associated with land being “set aside” for the roundabout splay. The net development area is 76 %.

57. Other submitters land such as Mr and Mrs Brough becomes basically uneconomic for development and Council would be expected to purchase the entire block; somewhat under sufferance I expect given their own aspirations for the land.
58. Both parties (neighbours) are clearly significantly adversely affected in varying ways becoming a few of the sacrificial landowners for future public infrastructure that was contemplated on the applicant’s site. I observe no apparent or sufficient positive effects arising from the 3MS proposal to suitably offset and compensate the submitters. The applicant has thereby created an unnecessary externality for his own private benefit.

#### **National Policy Statement Urban Development 2020**

59. It is noted that decision makers must consider the benefits of urban development that is consistent with well functioning urban environments that enables all people to provide for their well being. The NPS also seeks to provide land for development purposes, of a density and form that maximises the use of the land and that decisions on development are integrated with infrastructure and funding decisions.
60. In this respect I have identified Objective 6, Policies 3d, 6, and 10 relevant in regard to the proposal.
61. Objective 6 seeks that decisions on urban development is integrated with infrastructure planning and funding decisions. Council’s LTP possesses a budget for such infrastructure in the C2/C3 growth cells, modelled on effecting structure plan requirements.
62. Policy 3d seeks that building height and density of urban form should be greater where there will be a level of accessibility by existing or planned active or public transport to a range of commercial activities and community services. The applicant’s proposed relocation of its commercial centre eastwards diminishes the potential to optimise the nodal function of the centre or overlay with the planned transport route centred on the N-S Collector Road.

63. Policy 10(b) seeks that Councils engage with providers of development infrastructure (in effect placing obligations largely on itself, although there are other infrastructure and service providers who have an interest) to achieve integrated land use and infrastructure planning.
64. The NPS does therefore require more prescriptive and integrated planning of land and infrastructure in a timely way.
65. In my opinion there are aspects of the applicant's proposal which may suggest a degree of inconsistency with certain objectives and policies.

## **PART 2 RMA ASSESSMENT**

66. In achieving the purposes of the Act, the consent authority shall have particular regard to a variety of Other Matters as outlined in Section 6. Of particular note and query is Section 7(b) "the efficient use and development of natural and physical resources."
67. The applicant is proposing a form of subdivision which in itself is a more efficient use of the land than its present use. But is it the most efficient use given the obligations of the Plan and NPS?
68. The subdivision is of a form which is somewhat reliant or self sufficient in providing for its own infrastructure servicing (particularly stormwater). The networks that are established are paid for by the applicant but the asset is ultimately vested in Council, creating an ongoing operational cost. The self servicing may produce an initial cost saving to Council but the provision of a broader network remains an obligation of Council (and all ratepayers) to service all landowners.
69. Optimisation of landuse in a planned and coherent manner is a key objective of the Plan and NPS. Repositioning or the non provision of key economic or social infrastructure (eg the neighbourhood centre, sports fields) within the application site inconsistent with the structure plan questions the efficiency of the landuse, particularly when combined with other forms of infrastructure like roading (and public transport provision). Are synergistic benefits being lost or compromised by a development that has insufficient regard to its context?

70. The consequential effects is that other people's land becomes compromised with a layout that is fractured and reduces yield and amenity. The applicant may suggest that the yield loss is a quid pro quo when looked from a macro perspective (in that 3MS land can be fully and efficiently developed), but the adverse effect/opportunity lost is still present.
71. In terms of Section 5, sustainable management; I consider that the well being of adjacent landowners is potentially and unduly compromised by the proposal. There is no mitigation of the consequential adverse effects on adjacent landowners and their development aspirations. The broader outcomes envisaged by the structure plan are also diminished; eg with the loss of central stormwater N-S swale performing a functional and aesthetic feature of the structure plan area; relocation of the neighbourhood centre that does not optimise its functional role and potential relationship with a multi modal transport connection and optimising density around such facility.
72. Accordingly, I don't consider the proposal will suitably or appropriately manage the development of the land while enabling people and the community to provide for their well being. There is no necessity for adjacent landowners to be adversely affected and there is no mitigation of the potential effects on them. The structure plan should prevail.

## **CONCLUSION**

73. The application is of significant scale and will produce multiple benefits. Because of its scale and positioning, the opportunity exists to knit the subdivision into the planned urban fabric anticipated by the structure plan to achieve comprehensive planning outcomes for the benefit of all stakeholders. This is a requirement of the subdivision provisions of the Plan. The applicant has (due to apparent difficulties with Council and preparedness to agree a value), created effects on the environment and which challenges Plan policy. Integration of landuse and provision for development infrastructure within and between sites is a consistent theme at various levels – the Plan, RPS, NPS and RMA. This proposal creates unnecessary effects and outcomes that should not necessarily arise that are more than a minor nature.



74. The application should be declined or as a minimum a condition (consent notice) placed on the consent to provide suitable opportunity for Council to purchase the required land for the public infrastructure corridor within a reasonable timeframe.

Russell David Baikie

Date: 18 May 2021

