SUBMISSION FROM THE MATAMATA-PIAKO DISTRICT COUNCIL PROPOSED NATIONAL POLICY STATEMENT FOR HIGHLY PRODUCTIVE LAND (NPS-HPL)

matamata piako district council

BACKGROUND

1 The MPDC appreciates the opportunity to prepare this brief submission.

2 The Matamata-Piako District Council (MPDC) will formally endorse this submission when the Council is sworn in for the new triennium in late October 2019. However, the key points presented in this submission have been discussed by the full Council at its monthly meeting on 25 September 2019 and support expressed for those matters outlined below.

QUALIFIED SUPPORT

3 The Council generally supports the proposed national guidance offered for the strategic approach proposed, to safeguard highly productive land. Such an approach is however, consistent with the Council's own approach as to reinforces this Council's operative district plan provisions that have been in place since 2005 and re-affirmed in 2013 on the review of the District Plan to conserve high quality soils for food production.

MATAMATA-PIAKO DISTRICT PROFILE

4 This District has extensive areas of Class 1-3 soils; these are defined in the Plan, and rural subdivision requires a minimum 40 hectare area to enable rural subdivision to occur on High Quality soils, and 20 hectares on General Quality Soils.

5 These issues are upper most when the Council is considering the expansion of the towns which as illustrated, can only occur with encroachment onto these Class 1, 2 and 3 soils.

6 The right for community determination of its urban settlements strategy and their managed expansion is strongly held baseline in the operative District Plan, and any weakening of this through 'directive' policy to the contrary in an NPS is not supported and therefore is considered un-necessary, by the Council.

7 Two attachments are presented to this submission, in explanation of this position. They are:

- Attachment 1 provides a high-level summary of the pertinent Plan provisions to reinforce our assessment.
- Attachment 2 provides a Soil Class Map for this District that shows at a strategic level the distribution of Class 1, 2 and 3 soils, and the three towns of Matamata, Morrinsville and Te Aroha. Those towns are sited amidst these highly productive soils that this proposed NPS seeks to 'conserve'.

RESPONSES TO THE QUESTIONS POSED

8 Some responses are provided to the questions posed in *Section 6 Next Steps – have your say*; in the Discussion document *"Valuing highly productive land"* August 2019, prepared jointly by the MFE and MPI. The referencing presented in Section 6 is used for cross referencing and is provided below in brackets e.g *[ ]*.

Do you agree that there is a problem? [3.5 An issue throughout New Zealand]

9 From this District's perspective the answer is 'no' for the reasons outlined above.
Would a clear national direction for the use of highly productive land be useful? [3.1 Problem statement]

10 Based on the commentary above, the Council sees only a marginal benefit from the proposed guidance offered from an NPS in relation to promoting sustainable management in Matamata-Piako District.

11 If the NPS is retained, then could those areas nationally that are under the most pressure from urban expansion be prioritised in much the same way that the NPS-UDC incorporates a population threshold above which the national directives 'come into play'. This is a more practical response than adopting a blanket response nationally. Further, there now is an increasing number of NPSs such as Highly Productive Lands, Freshwater and Urban Development where there may well be competing interests that will require reconciliation. This will result in added administrative complexity and challenges in policy formulation.

Is there an alternative? [4.5 – an NPS?]

12 An alternative approach supported by the Council is the further (re-) assessment of the merits of including this matter as a Matter of National Importance under section 6 of the Resource Management Act 1991 (RMA). This would have the immediate effect of 're-balancing' and therefore addressing the consideration of highly productive land as an integral part of resource management decision-making.

13 Irrespective of the outcome, there remains a statutory duty to determine the most appropriate management approach and the Council is not satisfied that in this case that assessment has been adequately carried out under section 32 RMA. A strengthened evidential baseline is required to assess the comparative merits of this option along with those options canvassed in *section 4 Options for solving the problem*, in the Discussion document.

Council has concerns over the practical implementation of this National Policy [5.6 Implementation].

14 It is paramount that whatever approach is adopted that there be practical, implementable, affordable and cost-effective methods of implementation of the policy across all regulatory authorities.

15 In this context, the Council's concerns are:

- The prospect for overlap and the blurring between national, regional and district council responsibilities when applying the provisions of an NPS;

- The prospect for the elevation of the management of highly productive land/soils solely to be a regional council responsibility over time.

In both these circumstances described above, responsibilities should not be duplicated. Further, a District Council should not lose direct accountability for the future form and function of its settlements and their amenities.

- The inevitable need for more technical resourcing (skilled staff and increased or additional budgets) to identify, map and monitor the use

of "highly productive land" across each district and in/for each region – in other words, who does what, why and when, and who pays?

In this respect, the District Council acknowledges that the current Land Use Classification Inventory is a useful tool generally, but for this Council's administration and implementation of its district plan rules, there is a duty placed on an applicant to have a site-specific soil assessment completed as part of the information to support a rural development proposal. Therefore, a mapping exercise must be robust enough to support resource consenting processes irrespective of whether 'implementation' is at a regional or district level.

Attachment 3 provides caselaw from 2011 where the Council's overall policy and regulatory approach has been endorsed by the Environment Court, to affirm that the current resource management approach is acceptable if not best practice. This obviously pre-dates the proposed NPS but is not less relevant from the Council's perspective.

- It is asserted that there will not be a 'no net loss' approach to the conservation of highly productive lands within regional and district frameworks, with reference to *section 5.2 Purpose of proposed National Policy Statement*, at page 33, of the Discussion document.

The Council questions whether this assumption is actually reflected in the draft policy and seeks this be clearly articulated. However, the Council does support the use of assessment criteria that promote the 'balanced' consideration of the future use/conservation of highly productive land in any decision-making framework.

Managing reverse sensitivity [3.4 Reverse sensitivity]

16 Reverse sensitivity matters are already dealt with, within the existing planning framework and the Council considers that the NPS offers little if any additional guidance on this matter.

17 Attachment 4 reflects this, and is a record of a relevant 'local' case summary. This is the same case referred to in *Section 7 References*, in the Discussion document. Again, this decision supports the Council's current planning approach to provide for Development Concept Plans as an appropriate and defensible measure to manage reverse sensitivity effects along with associated performance standards to manage potential effects.

Specific questions - Policy [5.4 The Proposed NPS]

18 The Council notes that in each case, the draft policies are directive. For example:

- Regional councils "must..." (policy 1.1);
- Territorial authorities "must..." (Policy 1.2);
- Local authorities "must..." (Policy 2);
- Urban expansion "must not...unless..." (Policy 3);
- Territorial authorities "must amend..." (Policy 4); and
- Territorial authorities "must recognise....and amend their district plans..." (Policy 5)

19 The implementation of these policies will be triggered at the time of subdivision (and title amalgamation) at the district planning level. The consenting authority powers must remain with the District Council.

20 In the case of Matamata-Piako, the evidence is that the current Plan provisions already deal adequately with such 'directives'.

SUMMARY

21 The Matamata-Piako District increasingly sees its future as a primary production hub for farming (dairying) and vegetable growing and as a processing hub for the central North Island. The implications to the District's future if the NPS-HPL comes into law therefore are being carefully scrutinised because the District's interests may not be best served by its introduction.

22 The objectives and policies of the proposed NPS are laudable but largely reflect the established provisions of the Operative District Plan for Matamata-Piako District. These proposed new policies will, if adopted, add a further level of regulatory intervention at the district planning level and un-intended consequences may result that overall, will add little to the focus for this District on promoting sustainable resource management.

23 The Council will continue to participate in the consideration of the merits of this proposed NPS, so it can advocate strongly for the communities of this district and for their economic, social and community wellbeing.

Don McLeod
Chief Executive Officer

10 October 2019

Submitter Contact Details:

Ms Ally Van Kuijk
District Planner

Matamata-Piako District Council
PO Box 266
Te Aroha 3342

Email: [redacted]
Phone

Attachments:

1: Matamata-Piako Operative District Plan: Current Framework for managing Highly Productive Land - An Overview
2: Matamata-Piako District Council: Soil Class Map 1:195,000
3: Caselaw: Angela Sanson v Matamata-Piako District Council [2011] NZEnv165
4: Caselaw: Winstone Aggregates & Ors v Matamata-Piako District Council [2004] 11 ELRNZ 48 (Case Summary)

ATTACHMENT 1

MATAMATA-PIAKO OPERATIVE DISTRICT PLAN:

CURRENT FRAMEWORK FOR MANAGING HIGHLY PRODUCTIVE LAND – AN OVERVIEW

Part A: Issues, objectives and policies

Section 2 Sustainable management strategy

1 Residential and rural-residential growth

O1	To avoid inappropriate residential and rural-residential growth in the rural environment so as to protect the use of the District's rural land resource for rural production.	P1	To direct and ensure consolidation of residential development within appropriate existing zone boundaries of all settlements subject to the availability of infrastructure services, contiguous growth and the constraints of the environment.
P3	To encourage and direct rural-residential development to establish in defined Rural-Residential zones, where the effects and servicing requirements of such development can be managed.		

2 Controlling activities

O3	To recognise that the rural environment is primarily a place for rural production activities while also providing for a variety of other activities, including rural lifestyle, intensive farming, rural based industry and significant infrastructure networks and sites, which are dependent on a rural location.	P3	Activities should not establish in rural areas unless they are able to be undertaken without constraining the lawful operation of existing activities.

Section 3.3.2 Land and development

1 Sustainable activities

O1	To maintain and enhance the District's land resource to enable activities that do not threaten the life supporting capacity of the soil and consequently water and ecosystems.	P1	To maintain and enhance the soil cover and soil values including: water holding capacity, soil structure and organic components necessary to support a diversity of vegetation.

O2	To manage all activities in a manner that maintains and enhances the District's high quality soils and to ensure that the productive capability of rural land is not compromised.	P4	Subdivision, use or development must minimise the coverage of good quality soils.
O3	To safeguard the life-supporting capacity of the District's high quality soils by preventing inappropriate further fragmentation of rural land titles.	P5	To limit fragmentation of rural land by limiting opportunities for residential or rural-residential subdivision in the Rural zone to conserve the land for the use of future generations.

Section 3.4.2 Subdivision

O1	To ensure that land subdivision results in allotments that are suitable for activities anticipated by the zone and that existing activities and resources in the vicinity of the site are not unreasonably compromised.	P1	To ensure that each allotment has suitable natural and physical characteristics including infrastructure services for the activities anticipated by the zoning or resource consent.

P2	To provide for limited rural lifestyle subdivision in the rural environment that does not reduce or restrict the ability of the rural land resource to be used primarily for rural production activities.

P3	To provide for the amalgamation of land parcels and adjustments of boundaries where this would encourage primary production to occur.

P4	To avoid subdivision around legally established activities in the rural environment that can lead to reverse sensitivity effects.

P5	To provide for boundary relocations where they result in more efficient and effective rural lots and uses.

Part B: Rules

6 Subdivision Rules

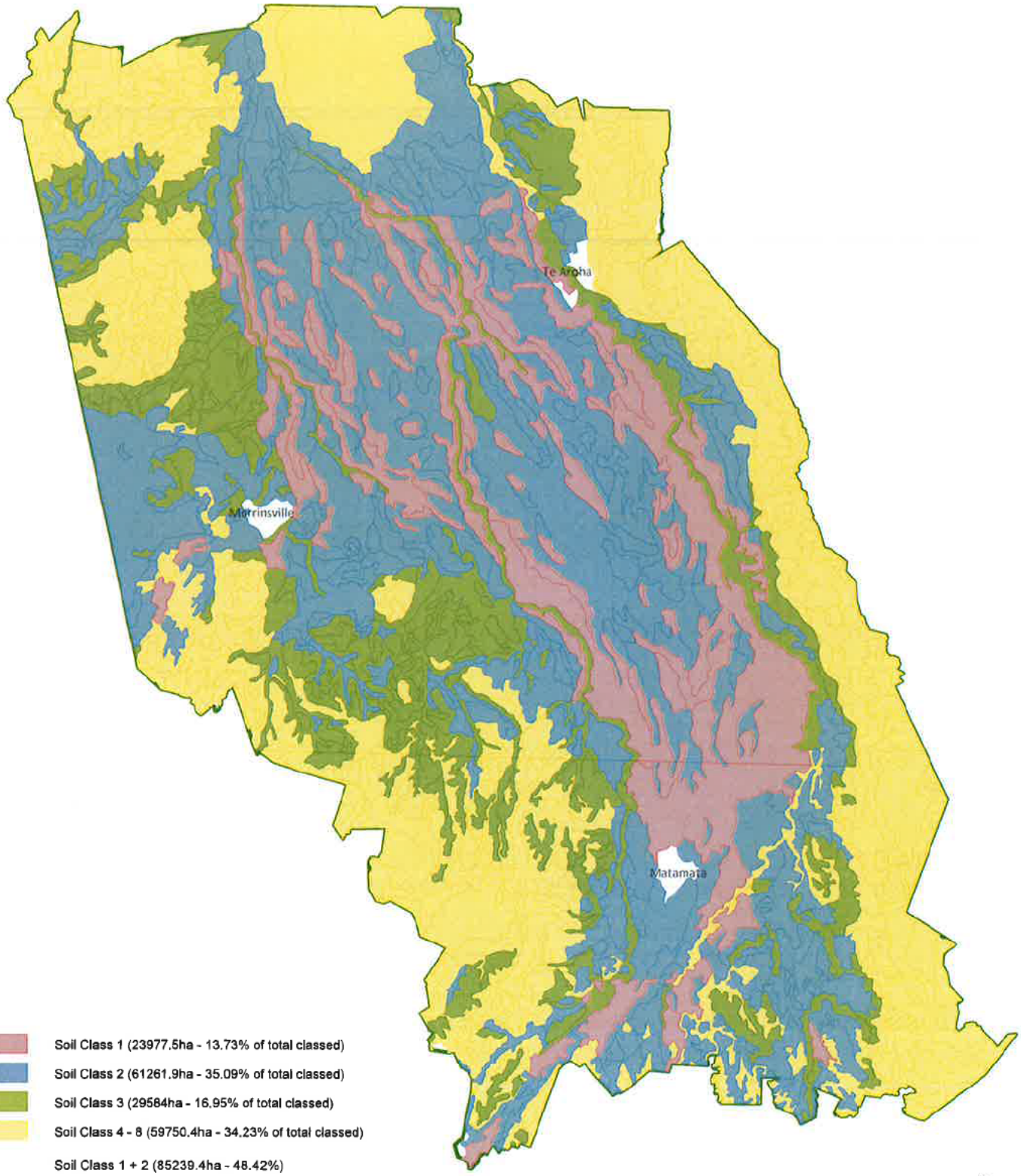
4	**Rural Subdivision on High Quality Soils**	Activity Status	
(a)	Rural lot. Minimum lot size 40ha.	C	
(b)	Small Rural Lot. One Small Rural Lot per title in existence at 4 December 2013 or per title created after 4 December 2013 where an entitlement to apply for subdivision of a Small Rural Lot as a controlled activity has been recorded in a consent notice registered against that title under Rule 1.1.1(ix) with a proposed lot size between 8ha and 40ha and subject to a balance lot area of 20ha or more.	C	
(c)	One Rural Lifestyle Lot per title in existence at November 1996 or per title created as a result of a Small Rural lot subdivision after November 1996 where an entitlement to apply for subdivision of a Rural Lifestyle Lot as a restricted discretionary activity has been recorded in a consent notice registered against that title under Rule 1.1.1(ix) with a proposed lot size of between 2500m² and 10,000m² and subject to a balance area of 40ha or more.	RD	

5	**Rural Subdivision on General Quality Soils**	Activity Status	
(a)	Rural lot. Minimum lot size 20ha.	C	
(b)	Small Rural Lot. One Small Rural Lot per title in existence at 4 December 2013 or per title created after 4 December 2013 where an entitlement to apply for subdivision of a Small Rural Lot as a controlled activity has been recorded in a consent notice registered against that title under Rule 1.1.1(ix) with a proposed lot size between 8ha and 20ha and subject to a balance lot area of 20ha or more.	C	
(c)	One Rural Lifestyle Lot per title in existence at 4 December 2013 or per title created as a result of a Small Rural lot subdivision after 4 December 2013 where an entitlement to apply for subdivision of a Rural Lifestyle Lot as a restricted discretionary activity has been recorded in a consent notice registered against that title under Rule 1.1.1(ix) with a proposed lot size between 5000m² and 2ha and subject to a balance area of 8ha or more.	RD	

Definitions -Section 15

"General quality soils" means land not classified as "high quality soils" as defined in this Plan.

"High quality soils" means land classified as Class I, II and/or III of the New Zealand Land Inventory Worksheets



Soil Class 1 (23977.5ha - 13.73% of total classed)

Soil Class 2 (61261.9ha - 35.09% of total classed)

Soil Class 3 (29584ha - 16.95% of total classed)

Soil Class 4 - 8 (59750.4ha - 34.23% of total classed)

Soil Class 1 + 2 (85239.4ha - 48.42%)

Soil Class 1 + 2 + 3 (114823.4ha - 65.37%)

N W E S

This data is provided as at September 2019 [pursuant to the Local Government Official Information and Meetings Act 1987]. While every effort has been made to ensure accuracy of the data, MPDC cannot guarantee its accuracy or suitability for any specific purpose. MPDC is not responsible for the misuse or misinterpretation of the data supplied. Under no circumstances shall MPDC be liable for any actions taken or omissions made from reliance on any information contained herein from whatever source nor shall the MPDC be liable for any other consequences from any such reliance. Copyright © 2019 Matamata-Piako District Council. Cadastral information derived from Land Information NZ Crown copyright reserved.

Soil Class Map

Matamata-Piako District - Total Soil Class area = 174573.8ha

0 2500 5000 7500 10000 12500 15000 17500 20000

Meters

Scale (when printed on A3)

1:195,000

Date: 20/09/2019

Authored: *A Naea (MPDC)*

Projection: *NZTM 2000*

matamata piako district council

BEFORE THE ENVIRONMENT COURT

Decision No: [2011] NZEnvC 165
ENV-2010-AKL-000129

IN THE MATTER of an appeal under s120 of the Resource Management Act 1991

BETWEEN ANGELA SANSON
Appellant

AND THE MATAMATA-PIAKO DISTRICT COUNCIL
Respondent

Court: Principal Environment Judge C J Thompson
Environment Commissioner D Bunting
Environment Commissioner W R Howie
Hearing: at Hamilton 1 - 2 June 2011. Site visit 2 June 2011
Counsel: R D Clark for Angela Sanson
P M Lang for the Matamata-Piako District Council

DECISION ON APPEAL

Decision issued: 17 JUN 2011

The appeal is declined and the decision of the Council is confirmed

Costs are reserved

Introduction

[1] In a decision given on 17 March 2010 the Matamata-Piako District Council declined an application by Ms Angela Sanson for a resource consent to enable the subdivision of a property of some 13.56ha at 374B Kuranui Road, Morrinsville, into four small rural-residential lots, one larger rural-residential lot, and a rural balance lot of some 7.77ha. This is an appeal against that decision.

[2] What is now proposed is a modified subdivision of four lots of between 5507m^2 and 8050m^2 with a balance lot of 10.089ha. The revised layout is intended to move the smaller lots away from what is described as the working rural environment to the south and to contain it closer to existing rural-residential developments along Kuranui Road. The intention is also to leave a larger balance lot containing better quality soils on which some production activity could be undertaken. No party suggested that the modified proposal is so different from the original that the applicant should have to begin again.

The site and its context

[3] Ms Anna Griffin, the applicant's consultant planner, describes the site as triangular, with a c250m frontage to Kuranui Road, narrowing to a point some 878m to the south. It was subdivided from a larger farm block many years ago. There is no existing dwelling, but there is a small, derelict, milking shed and associated farm sheds. The existing vegetation is pasture, with well-established hedgerows and a variety of specimen trees scattered throughout the property. The property is located some 2km southwest of Morrinsville, and is presently used for grazing. The surrounding topography is gently rolling land with a ridge transecting the property east-west and rising some 20-30m above Kuranui Road. The ridge rises and extends towards Mt Misery to the east.

[4] To the north the area has lifestyle properties, with what are described as scattered rural activities to the west. To the south the land use is dominated by pastoral farming.

[5] In November 2007 the owner of the immediately adjoining property to the east (348B Kuranui Road) was given a resource consent to subdivide it into five rural-residential lots ranging in size from 0.6ha to 3.8ha, with a balance lot of 12.5ha, and a new access road.

Notably, given the matters in issue in this appeal, we are informed that this subdivision was given resource consent as a *discretionary* activity under Rule 6.1.1(3)(b) – a minimum lot size of 5000m^2 on Class IV to VIII (ie lower quality) soils. This is known as the *Dingle Road* subdivision, and we shall return to discuss its significance later.

[6] Mr Brad Coombs is Ms Sanson's consultant landscape architect. He reviewed the sizes of lots along the approximately 6km length of Kuranui Road. There are 20 parcels of less than 1ha; 26 between 1ha and 5ha; 18 between 5ha and 10ha, and 24 (including the subject site) of more than 10ha. He describes the smaller lots as being ... *reasonably evenly dispersed* ... along the road. We shall return to that general topic.

Zoning and planning status

[7] The site is zoned *Rural* under the operative Matamata-Piako District Plan, and it is common ground that the application is to be assessed as a *non-complying* activity in terms of Rule 2.1(5) of that Plan. It therefore must be able to pass either of the s104D threshold tests; ie that its adverse effects on the environment are not more than minor, or that it is not contrary to the objectives and policies of the District Plan, before it can be considered under s104 and Part 2 of the RMA. This may also be a convenient point to mention Rule 1.4.11 of the District Plan. It contains a criterion for assessing (among other activities) subdivision applications:

> (i) Discretionary or non-complying activity resource consent applications on Class I, II and III soils within the Rural Zone must show that the good quality soil is not degraded, compromised or lost from the land resource. This rule applies to a title where 90% of the soils are Class I, II or III. ...

The undisputed evidence of Mr David Miller, a farm management consultant engaged by the Council, indicates that ... *at least 93%* ... of this property comprises high quality (ie Classes I, II and III) soils.

The parties' positions

[8] Ms Sanson bought the property in 2007 as an investment proposition and did so with the belief, if not the certainty, that it would be subdivisible because the available maps showed the property's soils to be predominantly Class IV. Only later, post-purchase, did she discover from a report commissioned by her before lodging the application (but not

disclosed by her to the Council at that time) that the soils were predominantly Classes IIe, IIw or IIIe, with only a very small area of Class IVe towards the southern end of the property. (The annotations *e* and *w* refer to physical limitations: e = erosion, w = wetness). This meant that, in terms of the District Plan, the property's soils were *high quality* and that in turn lead to the Council's decision to decline the application.

[9] While accepting that factual situation, Ms Sanson's position is that the property is not, in any event, a viable stand-alone productive unit; that the modified proposal leaves the bulk of the better soils available for some pastoral or agricultural use; it concentrates the residential uses closer to the existing line of rural-residential properties on Kuranui Road; that the extent of rural-residential uses already in place or consented on Kuranui Road means that the so-called precedent concern is baseless, and that in all other respects the subdivision will provide attractive and pleasant living opportunities without imposing adverse effects on its surrounding environment.

[10] The Council, notwithstanding the modified proposal, maintains its opposition for the same reasons that lead it to decline the original application as a *non-complying* activity; ie that it will impose adverse effects on the environment and that it is so incompatible with the provisions of the District Plan that to allow it to proceed would undermine the integrity of that Plan.

[11] It is common ground that the proposal can meet all engineering and servicing requirements relating to wastewater and stormwater management and disposal, and road access. Power and telephone services are available.

Affected party consents

[12] The owners/occupiers of five surrounding properties gave written consent to the original, rather than the current, proposal. While it might be reasonable to assume that those consents would enure for the benefit of the current version, strictly we cannot say that any effects on surrounding properties are to be put aside in terms of s104(3). This will not be influential in coming to the end result. The Council's decision notes that the

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application was publicly notified, and that 17 neighbouring owners or occupiers were specifically notified. There were no opposing submitters.

The principal issue

[13] The real issue between the parties is whether allowing this application would be so contrary to the relevant objectives, policies and other provisions of the District Plan that it would harm its integrity and effectiveness as an instrument enabling the Council to avoid, rather than to remedy or mitigate, the adverse effects identified in the Plan. We will return to this specific topic of Plan integrity in discussing s104(1)(c) issues.

[14] The chronology of events in dealing with this application and the Dingle Road subdivision are of some relevance, and it is convenient to set out some of that now. The original Sanson application was made in 2007. Over the course of 2008 and into 2009 the Council made two s92 requests for further information. In response to the first of these, the site-specific report about soils types was provided, meaning that the application was thence forward considered as *non-complying*. An amended application was lodged in September 2009. That was the application considered by the Council in February 2010, and the subject of the 17 March 2010 decision.

[15] The Dingle Road subdivision was approved in November 2007. Mr Marius Rademeyer, now a consultant planner but previously a member of the Council's planning staff, told us that Dingle Road proposal was one of the first two applications made to the Council in reliance on the *lower quality soils* rule and located on land of easy contour. Previous lower quality soils applications had involved steeper hill country. We understand that Dingle Road was processed on the basis of the large scale soil maps which showed, as they did with the Sanson land, the soils to be of low quality and thus not affected by Rule 1.4.11 of the District Plan. We understand that it was in December 2007, after Dingle Road was approved, that the Council's officers came to believe that the large scale maps were unreliable, and began to consistently require site-specific reports.

Section 104D – adverse effects no more than minor?

[16] In the overall scheme of things, the removal from potential production of the c2.6ha of land to be occupied by the building sites and curtilages, even if they are high quality soils may, arguably, not be significant in national, regional or even local terms if considered as an isolated instance. That was certainly the view of Mr John Dawson, the farm consultant called by Ms Sanson.

[17] Taking the whole property, Mr Dawson considers about 9ha to be *cropable*. The most likely crop would be maize, for silage to be sold to local dairy farmers as supplementary feed. A reasonable expectation would be the annual production of about 180 tonnes of silage from the 9ha, with a likely income of up to $27,000 plus GST. In addition the other 4ha could be used to raise 16 heifers, giving a maximum possible income of c$32,000. In terms of overall production, Mr Dawson considers that amount of silage (or its dry matter equivalent) to be within seasonal variability for a 126ha dairy farm – ie approximately 10% of its pasture production.

[18] The two other possible agricultural uses identified by Mr Dawson are the grazing of about 52 heifers, yielding a gross income of $20,280 plus GST; or the fattening of about 40 beef cattle, giving a gross income of c$16,000 plus GST.

[19] Mr Dawson does not believe that the loss of the 2.6ha represented by the lots on which houses would be built will significantly affect those production figures. He was not persuaded by the suggestion that looking at only one year's lost production was not appropriate and that it is rather more appropriate to consider that lost production as stretching into the indefinite future.

[20] But the Council is concerned about the cumulative effect of the removal of such pieces of land from production within its rohe. A *cumulative effect*, it is to be recalled, is part of the definition of *effect* in s3 of the Act:

> ... any cumulative effect which arises over time or in combination with other effects—
>
> regardless of the scale, intensity, duration, or frequency of the effect ...

So it must be accurate to say that even an effect which in isolation might be insignificant can, in combination with other individually insignificant effects, become part of an overall effect which is significant and, therefore, more than minor.

[21] The Council also takes the position that the Plan provisions about protecting good quality soils are not to be confused with issues about whether this piece of land is a presently viable stand-alone productive unit. The argument is that such soils are to be protected for their own sake, and preserved for the use of future generations for whom there may be crops or productive uses not known or available now.

[22] Dealing with issues of possible adverse effects on rural amenity, it is the appellant's position that the surrounding environment along Kuranui Road has largely lost its purely rural characteristics and has become, arguably, rural-residential in its ambience. Some emphasis was laid on the fact that, as already noted, along the length of the road there are 20 lots of less than 1ha, 26 between 1 and 5ha, and 18 of between 5 and 10ha, with the biggest single lot being some 54.4ha. To that extent, so the argument went, this proposal will not look out of place or introduce small lots into an area where none presently exist.

[23] Countering that, the Council's witnesses point out that, counting the lots in the Dingle Road subdivision, granting this application would create a cluster of 11 houses within a confined area – and that certainly would introduce a semi-urban element where none presently exists. Ms Bridget Gilbert, the Council's consultant landscape architect, described the present development of Kuranui Road as being a scattering of lots that read as non-productive among a working productive landscape. She describes the outcome of the Dingle Road development and this application, if granted, as creating a *rural hamlet* of 10 or more houses visible in a relatively confined area.

Conclusion on adverse effects

[24] Having now seen the area for ourselves, we agree with Ms Gilbert's opinion. A development of the scale proposed, when added to Dingle Road would fundamentally change the nature of the landscape there, and would have a much more than minor effect on the receiving environment.

[25] In terms of taking land out of productive use, we would have to agree that losing 10, or even 13ha, taken as a single instance, is unlikely to have a significant direct adverse effect, locally, regionally or nationally. But the cumulative effect of the loss of even that much cannot be ignored, especially when such an outcome conflicts with the relevant Plan provisions, to which we now turn.

Section 104D – contrary to the objectives and policies of the District Plan?

[26] As background, the District Plan at 2.3.1 and 3.3.1, sets out the significant resource management issues:

> Consolidation within existing urban boundaries is required to retain the finite rural land resource, to ensure the life supporting capacity of those soils is not compromised and to provide for the efficient use and development of existing resources.
>
> The future use of high quality soils ... is in danger of being compromised.
>
> Urban encroachment and various activities such as subdivision, use and development in the rural areas can easily compromise the future use of the good quality lands by the placement of hardstand and structures over the ground in a manner that makes future use of the soil difficult to achieve.
>
> There is a finite resource of good quality soils and the coverage or occupation of it by structures and impermeable surfaces and other uses of land ... may compromise the sustainability of the resource.

[27] Against that very clear background, Objective 2 at section 3.3.2 of the District Plan is particularly relevant and equally clear. It provides:

> To manage all activities in a manner that maintains and enhances the District's good quality soils and to ensure that the productive capability of rural land is not compromised.

The matching Policies are:

> Policy 1 – Subdivision, use or development must minimise the coverage of good quality soils.
>
> Policy 2 – To limit fragmentation of titles and the establishment of houses on high quality soils so as to conserve the land for the use of future generations.

The outcome sought from these provisions, and the matching Rule 1.4.11, is:

> A reduction in the number of building permits granted for dwellings on the high quality soils areas where there is no connection with an agricultural operation.

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[28] Putting all of that together, no great analysis of the provisions is required. It is hard to imagine that any given proposal could more clearly conflict with, or in the words of s104D ... *be contrary to* ... the objectives and policies of this Plan. There is no avoiding the stark fact that this proposal would compromise the productive capacity of some good quality soils; it would allow the coverage of such soils, and it would directly be responsible for fragmenting titles and establishing houses on such soils. The outcome would be exactly the opposite of what the Plan says is sought.

Conclusion on s104D thresholds

[29] In our view, this proposal would certainly have more than a minor effect on its receiving environment in terms of rural amenity and landscape, and arguably as part of a cumulative adverse effect on the productive capacity of the District's higher quality soils.

[30] It is also plainly contrary to the relevant objectives and policies of the District Plan. For those reasons the proposal would fail both of the s104D threshold tests, and cannot be considered further.

[31] We are reluctant to leave the issue there however, because that may be seen as a rather narrow and legalistic basis of resolving a practical issue. So we shall review the position as we see it, if the proposal was to be considered under s104 and Part 2.

Section 104(1)(a) – effects on the environment

[32] The positive effects claimed for the proposal are that it would provide attractive and pleasant semi-rural living possibilities, and thus help those who chose to live there to provide for their wellbeing. That may be so, so far as it goes, and we shall return to s5 shortly. Factually, there seems not be an unsatisfied demand for such residential opportunities in the area. The collateral argument was that, particularly in its modified form, the proposal leaves the majority of the site available for some form of agriculture. Again, that is true, so far as it goes. But the argument does not address the cumulative effect issue, or the head-on clash with the clear provisions of the Plan.

[33] We have set out our views on the adverse effects of the proposal, and need not repeat them.

Section 104(1)(b) – planning documents

[34] No regulations, national policy statements or environmental standards were drawn to our attention as being of relevance to the issues. Mr Rademeyer did point out provisions of the operative and proposed Waikato Regional Policy Statements. Without reciting them in full, we agree that provisions such as Issue 1.4 (d); Objective 3.25 *High Class Soils*; Policy 14.2 *High Class Soils*, and Method 14.2.1 *Manage the form and location of development*, all point very clearly to the importance of sustaining the productive capacity of good quality soils and of the avoidance of inappropriate subdivision and development on such soils.

Conclusion on planning documents

[35] At paras [26] to [28] we have discussed the relevant District Plan provisions, and we need not repeat that here. As one would expect, they give effect to the higher level policies of the Regional documents. For the reasons we have set out earlier, our clear view is that this proposal is in conflict with the terms of the planning documents, and can find no support in them.

Section 104(1)(c) – other relevant matters – plan integrity

[36] It is of course the case that each proposition has to be considered on its own merits, and we need to be conscious of the views expressed in cases such as *Dye v Auckland RC* [2001] NZRMA 513 that there is no true concept of *precedent* in this area of the law. Cases such as *Rodney DC* v *Gould* [2006] NZRMA 217 also make it clear that it is not necessary for a site being considered for a *non-complying* activity to be truly *unique* before Plan integrity ceases to be a potentially important factor. Nevertheless, as the Judgment goes on to say, a decision-maker in such an application would look to see whether there might be factors which take the particular proposal outside the generality of cases.

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

[37] Factors which were advanced as distinguishing this application from others, real or potential were, first that the actual effects of taking this piece of land, even all of it, out of productive use or potential would not be significant. As we have said, so far as it goes, that is true. But there is little or nothing to distinguish this piece of land from any other in the District of 10 – 20ha in area, on easier contour and having good quality soils. Taking any other such block out of productive use might be equally insignificant, viewed in isolation. It is the insidious and cumulative creep of such subdivision and use that the Plan seeks to guard against – it is drafted to sound a clear warning against that very activity.

[38] Secondly, the suggestion was that the area along Kuranui Road has already been so compromised by subdivision, and particularly by the neighbouring Dingle Road development, that the Plan has effectively been bypassed and that attempts to enforce it now are illusory. We do not agree with that proposition either. As discussed in paras [23] and [24] we agree with Ms Gilbert that the land along both sides of Kuranui Road does not presently read as a rural-residential in character. Certainly it may have more dwellings visible than would a farming scene well away from a town, but there is enough open ground, and farming structures such as yard, barns and the like, between them to make the ambience undoubtedly rural.

[39] Insofar as Dingle Road is concerned it would seem to be likely that had the true position about soil quality and the reliability of the maps then in use, been realised at the time, that and the contemporary application at Dodds Road would have run into the same obstacles as this application. What is done is done and cannot be unravelled now, but one ill-informed decision does not justify another when the true position is known.

[40] Although we have dealt with Plan integrity separately, we emphasise that we do not see it as a discrete topic. It exists only because the proposal, as we have discussed, irreconcilably conflicts with the provisions of the Plan relating to the high quality soil resource of the District. If it did not do so, the integrity of the Plan would not be in question. In that regard we refer to the decisions in *McKenna v Hastings District Council* (W16/08) and CIV 2008-441-253, High Court Napier, 15 January 2009, Potter J)

Part 2 RMA

[41] There are no issues of particular concern to Maori under s8 or s6(e), nor are there other matters deemed to be of *national importance* under s6.

[42] The factors listed in s7 are those to which decision-makers are to have *particular regard*. Those of relevance here are:

(aa) The ethic of stewardship:

(b) The efficient use and development of natural and physical resources:

(c) The maintenance and enhancement of amenity values: ...

(f) Maintenance and enhancement of the quality of the environment:

(g) Any finite characteristics of natural and physical resources: ...

The ethic of stewardship recognises that this generation is but a custodian of the earth's resources and that it behoves us to be conscious of, as s5 expresses it: ...

(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems

(c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

And that is the very theme that the District Plan picks up in its provisions about avoiding inappropriate development on good quality soils. It would not be an efficient use of a resource to use it for housing when the land is in capable of a higher and better use.

[43] We have discussed at some length the effect that the proposal would have on the amenity values and the quality of the receiving environment. Those effects cannot be avoided or remedied, nor adequately mitigated. That discussion need not be repeated here.

[44] Soils of good quality, although Matamata-Piako is blessed with more of them than any other part of the country as a proportion of its area, are still a finite resource. The planning documents recognise that and are clearly and powerfully expressed.

[45] All of that leads to an overall assessment under s5 – the purpose of the Act – defined as:

> (2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while — ...

We have a clear view that this proposal cannot meet the purpose of the Act. In a very limited sense of enabling Ms Sanson to realise on her investment, and the provision of some further opportunity for rural-residential living, it may provide for economic and social wellbeing. But it cannot meet any of the three provisos of s5(2): - see para [42].

Section 290A – the Council's decision.

[46] Section 290A requires the Court to *have regard to* the Council's decision. That does not create a presumption that the decision is correct but requires genuine attention to be given to it and, implicitly at least, it calls for an explanation if we should disagree with it. The Council considered that it should not take account of cumulative effects – in the sense of effects other than those of the proposal itself – in coming to a view that the proposal could pass the first s104D threshold test, and that its effects on rural amenity values would not be more than minor. In those respects we reach different conclusions for the reasons given, but they do not affect the overall result.

Result

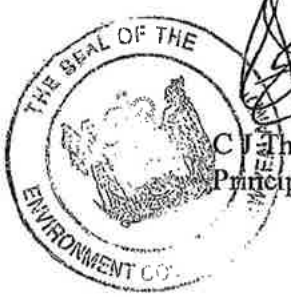
[47] The appeal is declined and the decision of the Council is confirmed.

Costs

[48] Costs are reserved. Any application should be lodged within 15 working days of the issuing of this decision, and any response lodged with a further 10 working days.

Dated at Wellington this 17th day of June 2011

For the Court



C J Thompson
Principal Environment Judge

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Document (1)

1. *Winstone Aggregates & Ors v Matamata-Piako District Council (2004) 11 ELRNZ 48*
Client/Matter: -None-
Search Terms: case-name("winstone aggregates v matamata-piako district council")
Search Type: Natural Language
Narrowed by:

Content Type	Narrowed by
NZ Cases	-None-

Winstone Aggregates & Ors v Matamata-Piako District Council (2004) 11 ELRNZ 48

Linxplus (NZ)

Case Name: Winstone Aggregates & Ors v Matamata-Piako District Council

Judge(s): Judge CJ Thompson, RM Dunlop & BR Gollop

Court Name: Environment Court, Wellington

File Number: W 55-04

Judgment Date: 18 June 2004

Reported: (2004) 11 ELRNZ 48

Case Summary:

ENVIRONMENTAL LAW - reverse sensitivity - emitting activities of industries - Council proposal for buffer zones around industrial or intensive farm sites - proposed buffer sites encroaching onto surrounding properties - importance of industry to local and national interests - rights of local landowners - 'no complaints' covenants - compensation - s32 and s104(1) Resource Management Act 1991 - the District Council sought to amend Proposed Plan with site specific Development Concept Plans - issues to be considered i) buffer zones - local opposition to the buffer zone solution are 1) it is unreasonable, unfair and contrary to common law for the consequences of one person's generated effects to be visited upon another person, particularly without compensation - 2) in many cases the buffers and attendants controls are unnecessary because many surrounding owners have been living in close proximity to the industries and sites for years without conflict or complaint - ii) Proposed Waikato Regional Plan - considered by specific issue - A) Winstone Aggregates : Motumaoho Quarry - primary issue is noise - Winstones has modified their plans - buffers no longer required - they will place two Quarry Noise Boundaries and the next stage of development of the quarry takes the working face away from the residential properties on Harbottle Road - B) Fonterra: Waitoa Plant - Fonterra seeks that any new housing and subdivision within the buffer zone should have discretionary status - noise considered the primary issue with odour as secondary concern - C) Fonterra: Morrinsville - there has been a virtual complete absence of complaints other than the nuisance type - significant modification reducing effects has taken place recently - D) existing poultry farm buffers - odour is significant issue however situation has much improved - most farms are small and it is inevitable that there will be some odour emitted at times - there is a need to recognise the industry is of considerable economic and social local and regional significance - parties have agreed that any affected activity should require a discretionary or restricted discretionary consent - E) new litter poultry farms - compliance with proposed rules is applicable - increased costs are accepted as being an environmental good neighbour are expected - F) other intensive farming - proposals uncontroversial - District Council needs to ascertain which matters it needs to regulate - G) Inghams processing plant - odour is central issue - no evidence to support application for buffer zone

HELD: this case is to be dealt with as the law existed before amendments to the Act which were effective from 1 August 2003 - i) general principle is that where agreement could be reached with individual operators the emitted effects are to be avoided, remedied or mitigated by the emitter, to the greatest degree reasonably possible - it is recognised that having done all that is reasonably achievable, total internalisation of effects within the site boundary will not be feasible in all cases and it is not requirement in the Resource Management Act 1991 that it must be achieved - the right to use land is not totally unfettered and that fetters are not accompanied by a right to compensation - ii) the law in its current state would pose difficulty with imposing no- complaints covenants - the requirement to agree to such a covenant would be almost inevitably unlawful - iii) Court Directions, subject to

drafting issues are as follows: A) Winstones Aggregates - to be controlled by Development Concept Plan with the Quarry Noise Boundaries - B) Fonterra: Waitoa Plant - to be controlled by a Development Concept Plant but without 500m Buffer outside its boundaries - 300m existing buffer around Wastewater Plant to remain - C) Fonterra: Morrinsville Plant - to be controlled by a Development Concept Plan but without 500m buffer outsides its boundaries - D) existing litter poultry farms - to be dealt with as contained in draft Orders but without the 250m buffer zone - E) new litter poultry farms - to be dealt with as contained in draft Orders without buffer zone beyond boundaries unless approved under Rule 1.4.15(iii) - F) other intensive farms - to be dealt with as proposed under redrafted Rule 1.4.15 with buffer zones - G) Inghams processing plant - to be controlled by Development Concept Plan without 500m buffer outside its boundaries

References to Legislation:
Resource Management Act 1991 *s2*, *s3*, *s9*, *s16*, *s17*, *s20A*, *s23*(1), *s30*, *s31*, *s32*, *s32*(1)(a), *s32*(1)(c), *s32*(3), *s32*(4), *s32*(5), *s74*(1), *s85*, *s108*, *s109*, *Schedule 1* *cl14*, *cl15*

References to Cases:
Auckland Regional Council v Auckland City Council *[1997] NZRMA 205*, (1997) 3 ELRNZ 54
Catchpole v Rangitikei District Council (EnvC, Wellington, W 35-03, 23 May 2003, Judge CJ Thompson)
Christchurch International Airport Ltd v Christchurch City Council *[1997] 1 NZLR 573*, *[1997] NZRMA 145*, (1996) 3 ELRNZ 96
Gargiulo v Christchurch City Council (EnvC, Christchurch, C 137-00, 17 August 2000, Judge JR Jackson)
Hill v Matamata-Piako District Council (EnvC, Auckland, A 65-99, 8 June 1999, Judge RG Whiting)
Independent News Ltd v Manukau City Council (2003) 10 ELRNZ 16
Kirkland v Dunedin City Council *[2001] NZRMA 97*, (2001) 7 ELRNZ 44
Newbury District Council v Secretary of State for the Environment *[1981] AC 578*, *[1980] 2 WLR 379*, *[1980] 1 All ER 731*, (1980) 40 P&CR 148
Ngati Kahu v Tauranga District Council *[1994] NZRMA 481*(1994) 1B ELRNZ 297
Nugent Consultants Ltd v Auckland City Council *[1996] NZRMA 481*
PH Van Den Brink (Karaka) Ltd v Franklin District Council *[1999] NZRMA 552*
Ports of Auckland Ltd v Auckland City Council *[1999] 1 NZLR 601*, *[1998] NZRMA 481*, (1999) 5 ELRNZ 90
Sugrue v Selwyn District Council (EnvC, Christchurch, C 43-04, 7 April 2004, Judge JA Smith)
Te Aroha Air Quality Protection Appeal Group v Waikato Regional Council (No 2) *(1993) 2 NZRMA 574*
Wellington International Airport Ltd v Wellington City Council (EnvC, Wellington, W 102-97, 19 November 1997, Judge Kenderdine)
Winstone Aggregates Ltd v Parakura District Council (EnvC, Auckland, A 49-02, 26 February 2002, Judge RG Whiting)

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