

**BEFORE THE HEARINGS PANEL FOR
AUCKLAND COUNCIL**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of submissions to the Proposed Auckland Unitary Plan
by:

Baigent (#6127)

Smalley (#5699)

Goettler (Brookdale Ltd) (#5878)

Wolfgram (#6381)

Clearwater (Tripp Andrews) (#4882)

Chapman (COEL Ltd) (#5172 Vol. 2)

STATEMENT OF EVIDENCE OF NICK WILLIAMSON

for Baigent (#6127), *Smalley* (#5699), *Goettler* (Brookdale Ltd) (#5878),
Wolfgram (#6381), **Clearwater** (Tripp Andrews) (#4882), **Chapman** (COEL Ltd) (#5172 Vol. 2)

FIRST STATEMENT OF EVIDENCE TOPIC 057: Rural Activities & Controls (Subdivision)

Dated 28 May 2015

INTRODUCTION AND EXPERIENCE

1. My name is Nicholas Eyre Williamson and I am a Planning Consultant at *Melted Consulting*. I am an Associate Member of the New Zealand Planning Institute and a Former Member of the New Zealand Institute of Surveyors. I hold a Bachelor of Science Degree in Land Planning and Development and a Postgraduate Diploma of Science in Surveying, both from the University of Otago.
2. I have been employed in resource management positions in both local government and private practice since 1994. My experience in these positions has included strategy development and District Plan formulation, policy advice, and the preparation and administration of resource consents from both public and private perspectives. From 1997 until 2009 I worked extensively throughout the South Auckland region. While working for Manukau City Council (2000 - 2003) I was responsible for developing the Rural Southern Sector Agreement, which was to give effect to the Auckland Regional Growth Strategy. In 2004 – 2005 I prepared the s32 Report for Rural Plan Change 14 to the Franklin District Plan, and subsequently reported on the topics of Transferable Development Rights and Village Growth during the hearing phase of that Plan Change.
3. From February 2009 until May 2014, I held the position of Team Leader District Plan & Policy at Whangarei District Council, where I was responsible for overseeing all aspects of the plan making process. During my tenure, I led the development of the Rural Development Strategy for Whangarei District which included extensive consultation with all stakeholders in the rural sector.
4. I appear on behalf of the submitters **Baigent** (#6127), **Smalley** (#5699), **Goettler (Brookdale Ltd)** (#5878), **Wolfram** (#6381), **Clearwater (Tripp Andrews)** (#4882), **Chapman (COEL Ltd)** (#5172 Vol. 2) and have prepared this evidence in accordance with the Environment Court Consolidated Practice Note and agree to comply with the Expert Witnesses Code of Conduct. I confirm that the evidence I present is within my area of expertise and I am not aware of any material facts which might alter or detract from the opinions I express in respect of the appropriateness of planning mechanisms proposed by the Council.
5. I am largely speaking for submitters with interests in the southern areas of the region, although most of the conclusions I reach could equally apply to much of Auckland's rural areas.

STRUCTURE OF EVIDENCE

6. The technical evidence prepared on behalf of the submitters is split between this statement of evidence, and that of Peter Nicholls. My statement of evidence covers:

- The appropriateness of the regulatory methods proposed by the Council
- A spatial analysis of the existing rural land uses and settlement patterns with reference to a sample area in north Franklin
- The identification of suitable locations for rural production and lifestyle development in a sample area using a method of analysis that can be applied throughout the region

7. In his statement of evidence, Peter Nicholls will address:

- Practical examples of the fundamental shortcomings with the proposed methods
- The significant changes required for the methods to achieve the desired outcomes
- The required development yields required to achieve the PAUP objectives for rural growth
- The workability of the Transferable Development provisions
- The workability of the Significant Ecological Area provisions
- The workability of the Boundary Adjustment provisions
- An example of how the suggested Hamlet provisions¹ could effectively be applied

STATEMENT OF POSITION

8. The proposed rural subdivision regulatory methods are inappropriate, and appear to be based on a confused interpretation of 'rural production'.
9. The proposed methods, and in particular the subdivision rules and proposed zoning, will not achieve outcomes sought by the council through its planning documents.
10. New overlay areas should be introduced to create receiver areas for rural infill subdivision.
11. Consequential changes are necessary to the subdivision rules and objectives and policies for the rural areas of Auckland

PROBLEM DEFINITION

12. Declining rural production and increasing reverse sensitivity effects are the two most often listed significant issues facing rural Auckland:

The closer subdivision of sites in Auckland rural areas is a significant issue. Further fragmentation of sites in areas outside identified rural lifestyle areas will result in declining rural production, an increase in adverse reverse sensitivity effects, and reduced rural productivity.²

¹ With reference to the draft provisions prepared by Shane Hartley of *Terra Nova* for discussion purposes at the mediation for this Topic.

13. These two issues are repeated throughout the s32 and planning report³, and despite the purported severity of the risk to Auckland's economy, no evidence is provided that substantiates any of the statements:

... fragmentation of sites in areas outside identified rural lifestyle areas **will result in declining rural production** ...

... legacy plan approaches are not working because they are allowing rural sites to be further fragmented, which is steadily **eroding both rural production and rural productivity**.

... capping the number of sites will provide the greatest opportunity of **retaining the natural productivity** of the remaining rural production land.

... "rural sprawl" ... almost always takes the land out of rural production and where the rural lifestyle site continues to be farmed, its **productivity is severely reduced**.

14. There is an enormous lack of clarity around the use and meaning of the term 'rural' throughout the planning documents. For the most part, Council seems to interpret 'rural' as meaning anything that is 'not urban'. The language used by the Council suggests that 'rural lifestyle' and 'rural production' are mutually exclusive. The phrase 'rural lifestyle' in some instances refers to a pattern or 'type' of development, while in other cases the Council refers to the areas that it has zoned for that purpose:

The Unitary Plan directs rural lifestyle subdivision and development into areas which have been strategically identified because the heavily fragmented pattern of existing sites, relatively lower soil productivity, and close proximity to existing urban settlements.⁴

15. It is incredibly important to have a clear and common understanding of what these terms mean in the context of the Unitary Plan, and in particular, how the regulatory methods should be framed to give effect to the ambitions of the Auckland Plan such as minimising the creation of additional sites in rural areas⁵.
16. The countryside living zones seem to fall outside what the Council considers to be 'rural areas' for the purpose of giving effect to the Auckland Plan. The PAUP's directive to encourage the transfer of rural titles into these countryside living areas would otherwise be contrary to the allocation of growth between rural and urban areas as described in higher order documents. The 'protection of rural areas' is given further context by reference to elite and prime land (LUC Class 1 to 3) and the proposal to limit the creation of additional sites in these areas specifically.
17. The interpretation of 'countryside living', and how those areas are identified subsequently, has a profound impact on the techniques employed in managing subdivision in rural areas. For instance, this

² 2.35 - Rural subdivision - section 32 evaluation for the Proposed Auckland Unitary Plan

³ <https://hearings.aupihp.govt.nz/online-services/new/files/OYvtI4sePF2FKCIQ73H1NiqrEm4gUi7S2XHoluVMsuOY>

⁴ 2.35 - Rural subdivision - section 32 evaluation for the Proposed Auckland Unitary Plan

⁵ Ibid.

description of the outcomes sought for rural areas (from the revised s32 report) seems to imply that there may be 'rural areas' not yet identified where additional sites are as acceptable as they are in the identified zones:

rewarding the amalgamation of rural sites by enabling additional sites to be created in identified Countryside Living zones and in rural areas where they won't compromise productivity especially of elite or prime land, and are large enough to ensure reverse sensitivity issues won't arise as a result of the subdivision.

18. The Plan seeks to encourage the transfer of development rights from rural sites into countryside living zones. The Plan suggests⁶ that there are 20,000 vacant rural sites that could be built on as of right. Yet, the Plan goes on to state that "productive farms are, almost without exception, comprised of multiple titles", before concluding that:

The sale of these sites to separate individual owners will result in loss of rural production and lower productivity of the land involved. ...

If the rights (to build houses) that are currently available under legacy district plans were exercised, a significant loss of productive land to rural lifestyle use, as well as an increase in adverse reverse sensitivity effects in relation to farming, would result.

19. Aside from the oblique conclusion that reverse sensitivity is a function of parcel size (even though proximity is the conventionally accepted determinant), the Council argues that the sale of existing parcels or construction of dwellings thereon will result in a loss of rural production. 'Rural productivity' has also been interpreted in an unconventional way:

land productivity (measured by the value of inputs and outputs relative to the land value) will be low, and the property can accurately be described as a "hobby farm" or "rural lifestyle",

20. Land productivity is measured by the value of inputs and outputs relative to the land **size** (its yield in other words) – land value does not form part of the equation.⁷ It is yet further evidence that the Council does not have a clear understanding of what is presently occurring in rural areas, nor what needs to be done to achieve their stated objectives for rural production activities. On the one hand, the reporting planner⁸ suggests that:

... the use of methods such as transferable rural site subdivision is targeted, rather than applied in such a general way that it has the potential to undermine the purpose of a number of rural zones by fuelling sporadic and random rural lifestyle living.

21. Yet the revised s32 evaluation accompanying the planning report suggests that the Unitary Plan should adopt a strategy of:

⁶ Ibid page 6.

⁷ http://en.wikipedia.org/wiki/Agricultural_productivity

⁸ Para 1.10 Barry Mosley evidence.

... making minimal or no provision for additional sites in rural areas outside Countryside Living zones. It is considered there are already enough sites to meet the reasonable needs of rural and rural coastal areas in greater Auckland;

22. Making no provision for additional sites outside Countryside Living zones means that those who wish to live in other rural areas will need to purchase and build on one of the *“20,000 sites in rural areas do not have a house on them”*⁹. The presently proposed suite of subdivision controls incentivise the fragmentation and sale of vacant parcels that may presently make up a larger land holding. This in turn will result in the proliferation of additional dwellings throughout rural areas.
23. The Council’s strategy to prevent anything from occurring outside Countryside Living zones is totally at odds with their ambitions of maintaining the productive value of rural areas. Adopting a ‘bury your head in the sand’ approach to managing rural land will not address the issues. The rules do not encourage the amalgamation of parcels within productive farming units, but rather encourages building on vacant sites which the Council admits could occur as of right. The excessively large minimum lot size proposed for rural production zones serves only to enable parcels to be subdivided arbitrarily. The 10% limitation for boundary adjustments does nothing to encourage the consolidation of these multi-title properties. The zoning of highly fragmented areas as ‘rural production’ when by Council’s own definition, these properties are unable to be used productively due to their size and proximity to other lifestyle parcels and consequent reverse sensitivity effects.
24. When the physical characteristics of an area bear little resemblance to the outcomes sought through the district plan it can be described as *“dishonest zoning”*¹⁰. The practical result of this approach is a fundamental disconnect between the planning controls and the existing environmental context. Arbitrary and nonsensical consenting processes and decision making is often the result, particularly when the objectives and policies of the plan are very vague or general in their wording, and the activity status is non-complying. The resulting consent process could not be honestly described as efficient or effective.
25. The evidence of Peter Nicholls raises a number of fatal flaws to the practical implementation of the Plan. Positive environmental outcomes that have been achieved under the operative district plan provisions will no longer be possible under the proposed rules. In their present form many of the subdivision provisions are simply unworkable, and we have doubts as to whether any of them have been subject to scenario testing by the regulatory staff within the Council who will be tasked with implementing them.

⁹ 2.35 - Rural subdivision - section 32 evaluation for the Proposed Auckland Unitary Plan, page 6.

¹⁰ Blampied v Whangarei District Council

OUTCOMES SOUGHT

26. The proposed Auckland Unitary Plan seeks to protect production land, maintain rural character, and avoid reverse sensitivity effects that result from differing expectations between those living in lifestyle and rural production areas. The rural subdivision policies set out the techniques & methods proposed to achieve the Plan's objectives, and can be generally summarised as follows:

- Preserve a diversity of lot sizes
- Incentivise the amalgamation of fragmented land parcels
- Use boundary adjustment to restrict subdivision outside countryside living areas
- Rural subdivision does not foreclose access to versatile soils
- Provide for rural production activities
- Recognise elite & prime soils, and protect life supporting capacity
- Incentivise amalgamation of latent development capacity north of Pukekohe
- Avoid transfer of lots into rural areas
- Recognise that primary production activities exist in rural areas
- New lifestyle subdivision must address reserve sensitivity effects
- Restrict new lifestyle development in rural areas
- Identify receiver areas for lot transfers in villages & countryside living areas
- Control location of building sites to manage reverse sensitivity effects
- Restrict proliferation and dispersal of lifestyle subdivision outside identified areas
- Avoid the subdivision of subsidiary or workers dwellings in rural areas

27. After hearing evidence on the RPS Topic 11 (Rural Subdivision) the Auckland Unitary Plan Independent Hearings Panel issued their interim guidance to assist with the consideration of subsequent topics, including one. The Panel's interim guidance was as follows:

1. Subdivision in rural zones should be provided for to a greater extent. It may be discouraged or constrained, but it should not be effectively prevented. There should be no requirement to use existing rural sites rather than create new ones.
2. The productive potential of elite land should not be undermined.
3. Subdivision should provide resilience to effects of natural hazards.
4. Provision for rural subdivision should enable protection, rehabilitation or enhancement of significant indigenous biodiversity through subdivision in appropriate locations, subject to evidence that it will produce significant environmental benefits, and with cost-effective monitoring.
5. Provision for subdivision for rural lifestyle purposes should be enabled subject to constraints on location, scale and density which:

- a. Avoid areas that would undermine the integrity of the RUB or compromise the expansion of identified towns and villages;
- b. Protect areas of identified significant biodiversity values;
- c. Avoid elite land;
- d. Avoid areas that would constrain the operation of existing mineral extraction activities or areas containing mineral resources identified in the plan for future extraction;
- e. Maintain or enhance landscape, rural character and amenity values;
- f. Avoid the potential for reverse sensitivity effects that could hinder the continued operation or growth of existing rural activities, or the establishment of new rural activities; and
- g. Safeguard the operation, maintenance, upgrading or development of existing or planned infrastructure.

28. It is my view that the outcomes sought by the District Plan, combined with the direction provided by the Hearings Panel, provide a solid and practicable basis for managing the rural areas of Auckland. However, the regulatory methods, in terms of zone descriptions, zone locations, and rules proposed by the Council will not in my opinion achieve the desired outcomes.

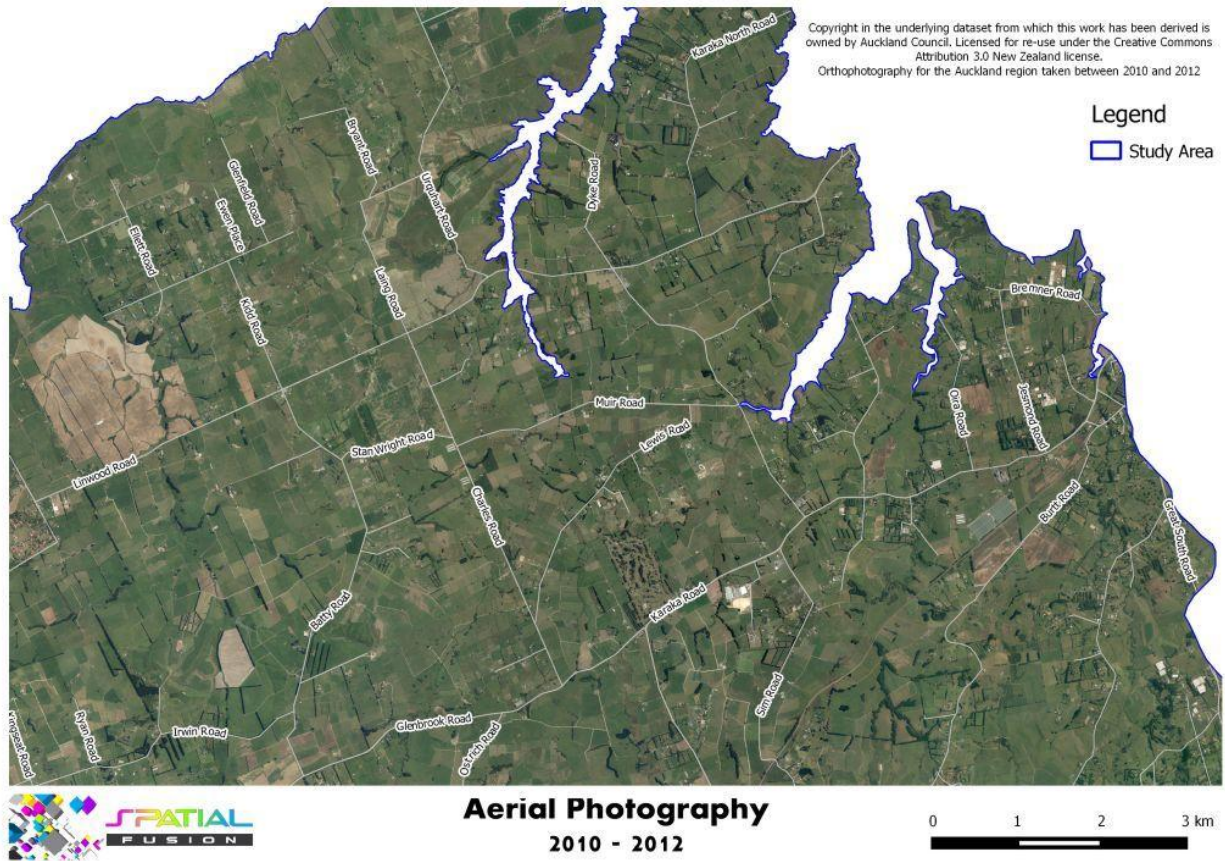
29. We therefore offer an alternative subdivision framework that gives effect to the objectives and policies of the plan, and has due regard to the directions given by the Hearings Panel. The key features of the our suggested approach are:

- Identify those areas of the region that are presently used for primary production, taking into account the existing land uses and ownership structure. Within those areas, subdivision to create additional allotments in situ is discouraged.
- Identify those areas of the region that are presently used for lifestyle purposes, taking into account the existing amenity and patterns of build development. 'Rural Infill' development is provided for as a controlled activity within the existing built perimeter of the area as an incentive for title transfer into these areas.
- Environmental benefit subdivision is provided for by way of title transfer or in situ. For the title transfer option, land use consent must first be obtained to secure the additional right to build by way of protection of enhancement of Significant Ecological Areas. This ensures that in both scenarios, the 'seller' of the Transferable Development Right assumes responsibility for compliance with any ongoing maintenance and monitoring conditions.

- There is no limitation on the extent of change in parcel sizes as a result of boundary adjustments. The only requirement is that no additional building sites are created as a consequence of the boundary adjustment.
 - The only requirement for Transferable Development Right subdivisions is that the new development right must be located within a Rural Infill Receiving Area. By their nature, these areas have been accepted as already established and suitable for rural lifestyle development, notwithstanding the land use capability (LUC) classification.
- 30.** The proposed Rural Infill Lifestyle Areas are promoted as an ‘overlay’ area for a number of reasons. Firstly, their boundaries are defined by the existing build development pattern, and not the land parcel boundaries. Many of the Plan’s buffer areas, overlays, and noise contours are similarly defined by physical or natural features. Because these areas are defined by their character and amenity, and are a method of managing reverse sensitivity, it is suggested that they are defined by reference to setbacks from the existing structures comprising sensitive (residential) activities. In all respects other than for subdivision, such as development standards and consent requirements for land use activities, the existing suite of zones may continue to apply.
- 31.** To provide a superior level of assessment to a higher degree of precision than any of the work undertaken by the Council to date, we have identified suitable Rural Infill Lifestyle Areas for the north Franklin area. In sharing the methodology we employed in this sample area, it is our expectation that the Council should be required to complete the same assessment for the remainder of the Region so that the Hearings Panel may consider the application of this technique elsewhere.

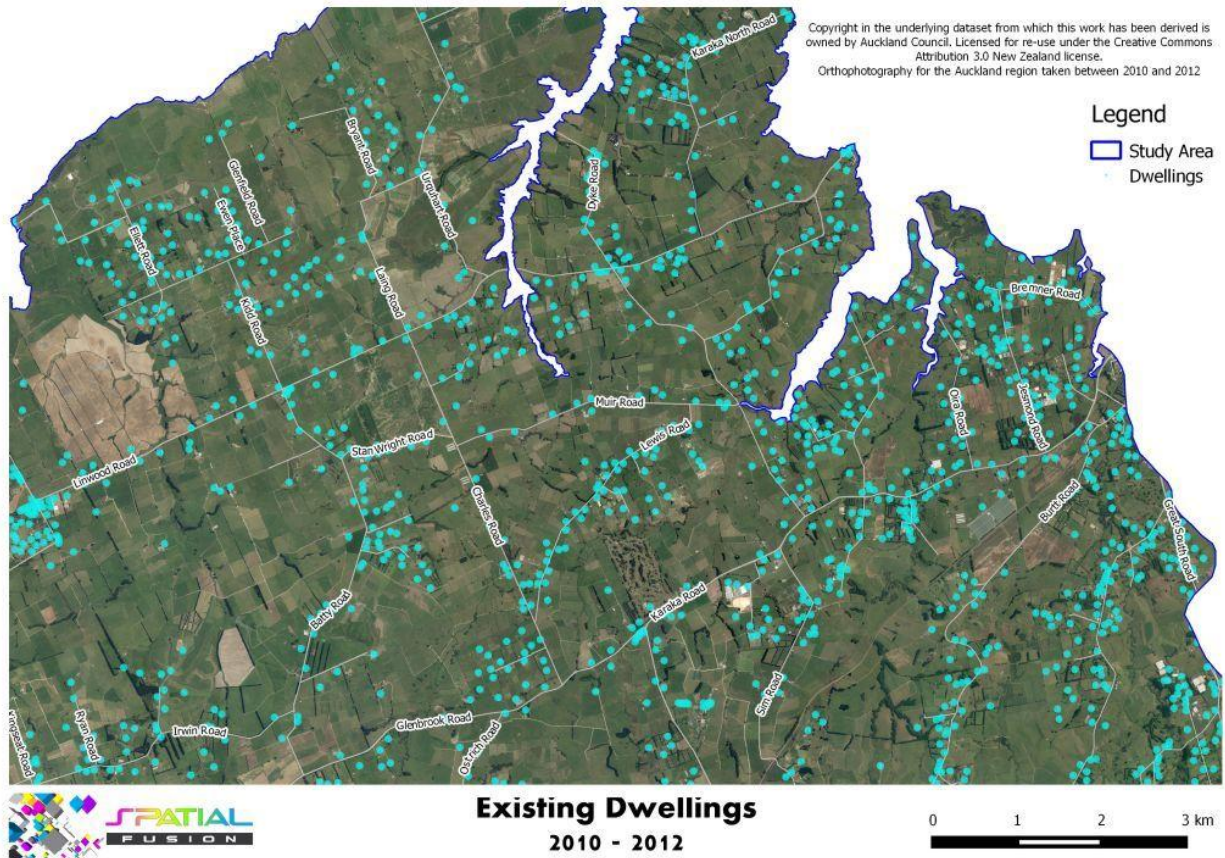
METHODOLOGY

32. Base information used to determine the existing land development pattern for the sample area in north Franklin was the aerial imagery from Auckland Council¹¹, which was taken between 2010 & 2012 to an accuracy of 0.5m:

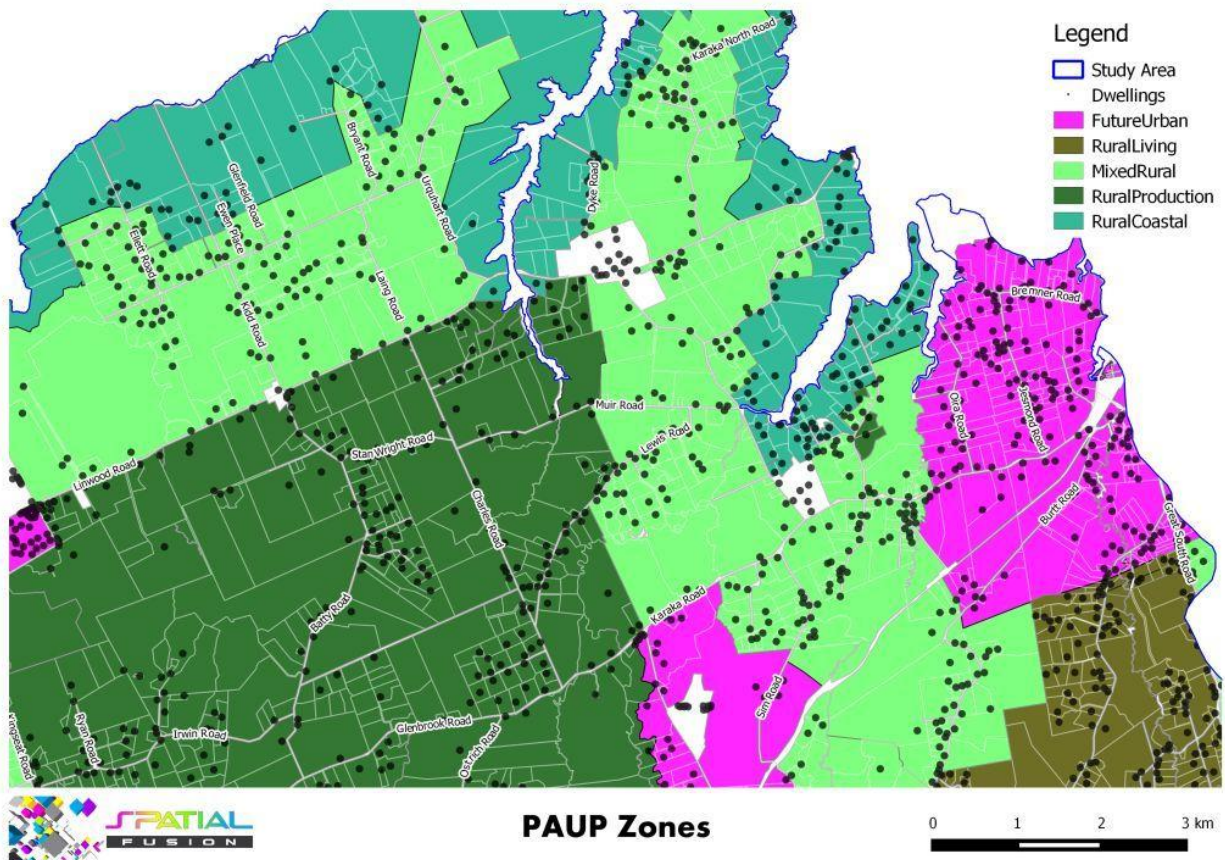


¹¹ <https://data.linz.govt.nz/layer/1769-auckland-05m-rural-aerial-photos-2010-2012/>

33. The locations of existing dwellings can be digitized from the aerial photography, and validated by reference to electoral roles and data held by electricity providers. This information shows the spatial distribution of dwellings throughout the study area:



34. The zoning from the Proposed Auckland Unitary Plan follows cadastral boundaries, and many of the proposed boundary locations appear to have been derived from legacy plans. There is generally an absence of any direct correlation between the proposed zones and the existing parcel sizes and dwelling patterns:



-
- Versatile Soil on Land >20ha Title Size**
- Legend**
- Dwellings
 - Cropland (LCDB4)
 - River 20m Setback
- Soil LUC**
- 1w 1
 - 2e 1
 - 2e 2
 - 2e 4
 - 2e 5
 - 2s 3
 - 2s 3+3w 2
 - 2s 4
 - 2w 1
 - 2w 2
 - 2w 3
 - 3e 2
 - 3e 3
 - 3e 4
 - 3e 5

CONCLUSION

50. The outcomes sought by the Unitary Plan provide a sound direction to the management of Auckland's rural areas. The objectives and policies are in keeping with that direction, and if properly implemented, good resource management outcomes will result. But therein lays the problem – the methods are poorly conceived.
51. Clear and unambiguous regulatory methods do not need to be simplistic and broad brush. My evidence shows that sophisticated analysis of readily available information can be carried out methodically to provide location specific controls. Given the significance the Council has placed on the protection of productive rural land the quality and precision of analysis undertaken by the Council has in my opinion been woeful. Given the technology, data, and resources available to the Council, I suggest that is even inexcusable.
52. In their present form many of the subdivision provisions are simply unworkable, and the evidence of Peter Nicholls sets out a number of flaws that are fatal to the practical implementation of the Plan. Having due regard to the directions given by the Hearings Panel, we have outlined an alternative subdivision framework that gives effect to the objectives and policies of the plan. It will take some further work by all parties for the framework to be built into a complete suite of provisions, but unless time is taken to do this, we request that the operative provisions remain in place.

A handwritten signature in blue ink, appearing to read 'NE Williamson', with a long, sweeping horizontal line extending to the right.

NE WILLIAMSON

28 May 2015