

**BEFORE THE ENVIRONMENT COURT**

**UNDER** The Resource Management Act 1991

**IN THE  
MATTER** of an appeal pursuant to Clause 14(1)  
of the First Schedule to the Act

**AND IN THE  
MATTER** of Decisions on the Proposed Waikato  
District Plan

**BETWEEN** **Bettley-Stamef Partnership**

**Appellant**

**AND** **WAIKATO DISTRICT COUNCIL**

**Respondent**

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST  
DECISIONS ON PROPOSED WAIKATO DISTRICT PLAN**

**To** The Registrar  
Environment Court  
PO Box 7142  
AUCKLAND

1. **BETTLEY-STAMEF PARTNERSHIP (“BSP”)** appeals against the decision of the Waikato District Council on the **PROPOSED WAIKATO DISTRICT PLAN (“PWDP”)**.
2. BSP made a submission on the PWDP.
3. BSP is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (“RMA”).
4. BSP received notice of the decision on 17<sup>th</sup> January 2022.
5. The decision was made by the Waikato District Council.
6. BSP appeals the decision insofar as it relates to zoning of land on the Hamilton fringe.

## **7. CONTEXT**

- 7.1 BSP comprises of Sheryl Eileen Bettley, Zane Bettley, Joel Zane Bettley and Petar Mitko Stamef. Current properties in collective ownership include 165D/167A, and 167 Matangi Road, being Lot 3 DP 553532 (RT:960724) and Lot 1 DP 553532 (RT:960722) respectively.
- 7.2 Since the submission was made in 2018, property boundaries and legal descriptions have changed. However, there is no change to the overall boundary of the land that was identified in the original 2018 submission.
- 7.3 The Waikato Expressway (“WEX”) is currently under construction and abuts the eastern side of 167 Matangi Road and abuts the north and eastern side of 165D/167A Matangi Road.

### **BSP submission**

- 7.4 BSP made a submission on the PWDP specifically in relation to the zoning applying to land at 125, 131, 145, 158, 165A, 165B, 165C, 167A, 168, 171 and 174 Matangi Road and 21A, 21B, 26, 29, 51, 54, 58, 59, 60, 61A, 61B, 61C, 62A and 62B Yumelody Lane. For clarity, this land incorporates the re-assigned RAPID numbers of 165D/167A and 167 Matangi Road.
- 7.5 Collectively, this land comprises some 65ha and accommodates residential dwellings on lifestyle blocks, vacant lots, the Atawhai Assisi Rest Home and Hospital and surplus land relating to the WEX project. The land lies on the Hamilton fringe, immediately abutting the Country Living Zone (to the west and south-west) and is physically segregated from other rural zoned land to the east by the WEX.
- 7.6 The key relief sought by BSP was the rezoning of the land from Rural to Country Living.
- 7.7 Several other parties lodged submissions and further submissions on the same topic. The topic was heard by independent hearing commissioners on 9<sup>th</sup> and 10<sup>th</sup> June 2021.
- 7.8 BSP did not participate in the hearing process.
- 7.9 BSP received notice of the decision on 17 January 2022. The decision rejected the BSP submission. The decision did however support a submission by Tamahere Eventide Retirement Village – Assisi (“TERV - Assisi”) to rezone 158, 168 and 174 Matangi Road from Rural zone to Country Living zone.

## **8. BETTLEY-STAMEF PARTNERSHIP APPEAL**

- 8.1 BSP appeal the decision to reject the zoning to Country Living insofar that it relates to properties at 125, 131, 145, 165A, 165B, 165C, 167A, and 171 and Matangi Road and 21A, 21B, 26, 29, 51, 54, 58, 59, 60, 61A, 61B, 61C, 62A and 62B Yumelody Lane.
- 8.2 BSP supports the decision to rezone 158, 168 and 174 Matangi Road from Rural zone to Country Living zone.

## Reasons for the appeal

- 8.3 The reasons for BSP's appeal are that:
- (a) In their decision to reject the submission, the independent hearing commissioners failed to consider the revised recommendation of the s42A reporter as contained in the rebuttal evidence dated 10 May 2021 to support the rezoning. Instead, the decision and reasons for the decision referred to and relied on the initial recommendation of the s42A reporter in the s42A report dated 16 April 2021 to reject the submission.
  - (b) The decision to rezone the land at 158, 168 and 172 Matangi Road from Rural to Country Living directly conflicts with the reason to reject the BSP submission to rezone land in the immediate vicinity.
- 8.4 In the Section 42A report for Hearing 25: Zone Extents – Hamilton Fringe, dated 16 April 2021, the reporting planner concluded in paragraph 10 on page 40 that: “I acknowledge that the rezoning of these sites (to Country Living, or a more intensive zoning appropriate to the needs of Hamilton City) is a question of when, not if. At this time however, I maintain that it is more appropriate for them to retain their rural zoning.” The main reason for this recommendation was because the land was identified in Future Proof 2017 as a possible expansion area and that this land may move from Waikato District Council into Hamilton City Council jurisdiction (paragraph 10, page 40). This recommendation was made for both the BSP and TERV-Assisi submissions.
- 8.5 In the Section 42A Rebuttal Evidence for Hearing 25: Zone Extents – Hamilton Fringe, dated 10 May 2021, the reporting planner revised her recommendation and in paragraph 25, stated that “...in this instance I consider that the rezoning the land to Country Living Zone represents an appropriate planning response...”. In paragraph 26(a), the s42A reporting planner's recommendation was to accept the submission made by BSP. This recommendation was made for both the BSP and TERV-Assisi submissions.
- 8.6 The reasons given in the Rebuttal Evidence for the revised recommendation directly relate to the revised Strategic Boundary Agreement between Hamilton City Council and Waikato District Council which was updated in 2020 to remove Tamahere (which includes land in the BSP submission) from the provisions of that Agreement as a future transfer area. Paragraph 24 of the Rebuttal Evidence states:

*As noted above, the land seeking to be rezoned by these submissions is effectively an 'island' of Rural Zoned land (see Figure 2 below where the properties are circled blue) with a number of factors contributing to their rural residential character including size and use. Knowing that this land is no longer destined for use by Hamilton City and acknowledging the specific locational constraints that apply to this land parcels (namely the adjoining Country Living Zone and Waikato Expressway), I consider that the land should now be rezoned Country Living Zone. I note that all other boundaries of the main body of Tamahere Country Living Zone are defined by significant geographical constraints (namely, the Waikato River, Mangaharakeke Stream, Tauwhare Road and Airport Road).*

- 8.7 In paragraph 14 of the Section 42A Report Opening Statement for Hearing 25: Rest of District – Hamilton Fringe (incorrectly dated 9 March 2021 as it should have been dated 9 June 2021), the s42A reporting planner reiterated her revised recommendation, stating:

*As noted in my rebuttal statement, I revised my recommendation on land in Yumelody Lane and the Atawhai Assisi Retirement Village due to the paragraph 15 in the Strategic Boundary Agreement between Hamilton City Council and Waikato District Council 2020, which states that the Councils agree that Tamahere is excluded from the provisions of this Agreement, and as a future transfer area. My revised recommendation was that these properties should be rezoned from Rural to Country Living and that this was appropriate due to the clear physical constraints surrounding the land that I considered were sufficient to avoid precedent effects.*

- 8.8 In paragraph 8.3 (page 34) of the independent commissioner Decision Report 280:Zoning Rest of District dated 17 January 2022 the BSP submission was rejected (in full), for reasons as stated:

*We agree with Ms Tait’s assessment in her section 42A report that the rezoning of this area would not give effect to the NPS-UD nor the RPS.*

*And*

*We consider that the rezoning of this area would conflict with the foreseeable long-term needs for the expansion of Hamilton City.*

- 8.9 The decision failed to recognise or refer to the revised recommendation of the s42A reporter, instead relying on her initial recommendation which was based on an outdated version of the Strategic Boundary Agreement.

- 8.10 In paragraph 8.9 (page 37) of the same decision report, the decision was to support the TERV-Assisi submission to rezone 158, 168 and 174 Matangi Road from Rural to Country Living for the reason that it is “a logical extension of the of the Country Living Zone given that the sites are immediately adjoining the Country Living Zone to the west and the Waikato Expressway on the eastern boundary. We consider the Country Living Zone will better achieve the objectives of the PDP while reflecting the current levels of development and existing character in the area.”

- 8.11 The BSP submission that was rejected, included the land owned/occupied by TERV-Assisi. The reason for supporting the TERV-Assisi submission is directly at odds with the reason for the rejection of the BSP submission. Collectively, the land in the BSP submission is a logical extension of the Country Living zone given the abutting zones and physical barrier of the WRX.

9.0 **RELIEF SOUGHT**

- 9.1 BPS seek the following relief:

(a) Rezone land at 125, 131, 145, 165A, 165B, 165C, 165D/167A, and 167/171 Matangi Road and 21A, 21B, 26, 29, 51, 54, 58, 59, 60, 61A, 61B, 61C, 62A and 62B Yumelody Lane from Rural to Country Living.

(b) Retain the rezoning of 158, 168 and 174 from Rural to Country Living.

#### 10.0 ATTACHMENTS

10.1 BSP attaches the following documents to this notice:

- (a) A copy of BSP's submission (**Appendix A**);
- (b) A copy of the s42A Report (**Appendix B**);
- (c) A copy of the s42A Rebuttal Evidence (**Appendix C**);
- (d) A copy of the s42A Opening Statement (**Appendix D**);
- (e) A copy of the relevant decision (**Appendix E**); and
- (f) A list of all submitters to be served with a copy of this notice of Appeal (**Appendix F**).

**Dated at Hamilton** this 14<sup>th</sup> Day of February 2022

By its authorised agent **Feathers Planning**:



**Louise Feathers**

#### **Address for service of the Appellant:**

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