

WAIKATO DISTRICT COUNCIL

Hearings of Submissions on the Proposed Waikato District Plan

Report and Decisions of Independent Commissioners

Decision Report 28O: Zoning - Rest of District

17 January 2022

Commissioners

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Contents

1	Table of Contents.....	1
1	Introduction.....	3
2	Hearing Arrangement.....	3
3	Overview of issues raised in Submissions	6
	3.1 Overview of evidence.....	8
4	Panel Decisions.....	31
	4.1 Puketaha.....	31
	4.2 Ruakura	34
	4.3 Tamahere	34
	4.4 Matangi.....	41
	4.5 Glen Massey.....	43
	4.6 Te Uku	45
	4.7 Horotiu	45
	4.8 Rotokauri	47
	4.9 Horsham Downs	48
	4.10 Whatawhata.....	49
	4.11 Gordonton.....	50
	4.12 Extensions to existing settlements	51
	4.13 Isolated Rural Zoned Land	53
	4.14 Te Hoe.....	54
	4.15 Maioro Mining Zone	54
	4.16 Ohinewai.....	54
	4.17 Mangatawhiri.....	57
	4.18 Tauwhare.....	58
	4.19 Waiuku.....	60
	4.20 Onewhero	61
	4.21 Designated Rail Corridor.....	62
	4.22 Retention of notified zones.....	63
5	Conclusion	63

1 Introduction

- 1.1 While Hearing 25 related to all the submissions pertaining to zoning, this decision report addresses the zoning of land not adjoining a town or village and includes the periphery of Hamilton City. This 'Rest of District' area largely encompasses the wider Rural Zone properties that fall outside of the larger Waikato District townships (such as Raglan, Hopu Hopu, Tuakau, Te Kauwhata, TaTa Valley, Kimihia Lakes, Te Kowhai, Horotiu, Ngaruawahia and Taupiri, Mercer and Meremere and Ohinewai). Our decision on Rural Zoned blocks of land immediately adjacent to these townships are considered in the relevant decision reports on these townships. This report should be read along with the Zoning Overview report, which sets out the statutory matters and key principles relating to all submissions pertaining to zoning. By its very nature, this report covers a wide expanse of the District, and many different issues.
- 1.2 In general, the submissions addressed in this decision sought rezoning from Rural Zone to either Country Living or Village Zone, although a number requested alternative zonings such as a Business Zone or Mining Zone. Both the Country Living Zone and the Village Zone are predicated on reticulated services not being available and therefore sites within these zones need to be sufficiently large in order to manage on-site wastewater and stormwater disposal. The change in zoning sought by submitters would create significantly greater density than what is enabled by the Rural Zone provisions of the Proposed Waikato District Plan (PDP).
- 1.3 There were a large number of submissions received from landowners in Tamahere and Matangi. These areas in particular have experienced rapid growth within the last 15 years, which is primarily due to the lifestyle living opportunities they enable within an easy commute to Hamilton. Tamahere is a large rural lifestyle settlement (which includes sites zoned both Rural and Country Living) immediately adjoining the southern boundary of Hamilton City. The Matangi village is located approximately 5km southeast of Hamilton and comprises two short strips of residential development, with a small cluster of local shops on the Matangi Road/Tauwhare Road corner, including the Matangi Dairy Factory site. The Rural Zoned land surrounding the village is a mix of actively farmed rural properties and smaller rural lifestyle blocks that typically range in size from 0.5ha to several hectares.

2 Hearing Arrangement

- 2.1 The hearing was held on Wednesday 9 June and Thursday 10 June 2021 via Zoom. Due to the arrangement of hearings, we heard evidence for the Ohinewai submissions in Hearing 19 from 14-16 September 2020 and submissions allocated to Hearing 28 Other Matters on 12 July 2021, both via Zoom. All of the relevant information pertaining to this hearing including the section 42A report, legal submissions and evidence is contained on the Waikato District Council (Council) website.
- 2.2 We heard from the following parties regarding their submissions on zoning:

Submitter organisation	Attendee at the hearing
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Council	<p>Susannah Tait (author of the section 42A report focused on the edge of Hamilton)</p> <p>Catherine Boulton (author of the section 42A report addressing rezoning requests for the rest of the District)</p> <p>Chloe Trenouth (author of the section 42A report addressing Hearing 19 Ohinewai Zone Extent)</p> <p>Susan Chibnall (author of the section 42A report addressing rezoning requests that were allocated to Hearing 28 Other Matters)</p>
Ian Thomas	Andrew Wood
Andrew and Christine Gore	In person
Mark Smith	In person
Grant and Merelina	Steve Bigwood
Amy and Andrew De Langen	In person
J and T Quigley Ltd (389)	Leigh Shaw
Ian and Darienne Voyle	Leigh Shaw
Malcom MacDonald	<p>In person</p> <p>Tracey Morse (planning)</p>
Tamara Huaki	In person
Waka Kotahi New Zealand Transport Agency	Mike Wood
David and Barbara Yzendoorn	<p>In person</p> <p>Jacob Robb (planning)</p>

Hamilton City Council	Laura Galt
Waikato Regional Council	Miffy Foley
Martin and Stephanie Lynch	In person
Dinah Robcke	Leigh Robcke
David Hall	In person
Dale Pitcher	In person
Quigley Family Trust	Dr Joan Forret (legal counsel) Stuart Quigley (landowner) Tracey Morse (planning) Judith Makinson (transport) Dave Miller (soil assessment and productivity)
Bowrock Properties Limited	Hannah Palmer (planning)
Dilworth Trust Board	Mark Arbuthnot (planning)
Diamond Creek Farm Limited	Dr Joan Forret (legal counsel) Glen and Abbie Neems (landowners) Bevan Houlbrooke (planning) Dave Mansergh (landscape) Judith Makinson (transport)
Horotiu Properties Limited	Dr Joan Forret (legal counsel) Andrea Simpson (landowner) Tracey Morse (planning)

Ohinewai Lands Limited	Dr Robert Makgill (legal counsel) Sam Hutchings (legal counsel) Tony McLauchlan (land development) Matthew Twose (planning)
David Whyte	Ohinewai Area Committee
Khushwin Limited	In person
Tainui Group Holdings	Douglas Allan (legal counsel)

2.3 Evidence was tabled by:

- a) Mercury Energy New Zealand Limited;
- b) Matangi Community Committee;
- c) John Olliver on behalf of the Village Church Trust;
- d) Nick Smith; and
- e) Noel Smith.

3 Overview of issues raised in Submissions

3.1 Ms Susannah Tait's section 42A report set out the full list of submissions received pertaining to the zoning on the edges of Hamilton. The submissions related to the following geographic areas, as depicted in Figure 1 below:

- a) Puketaha (blue);
- b) Ruakura (yellow);
- c) Tamahere (red); and
- d) Matangi (green).

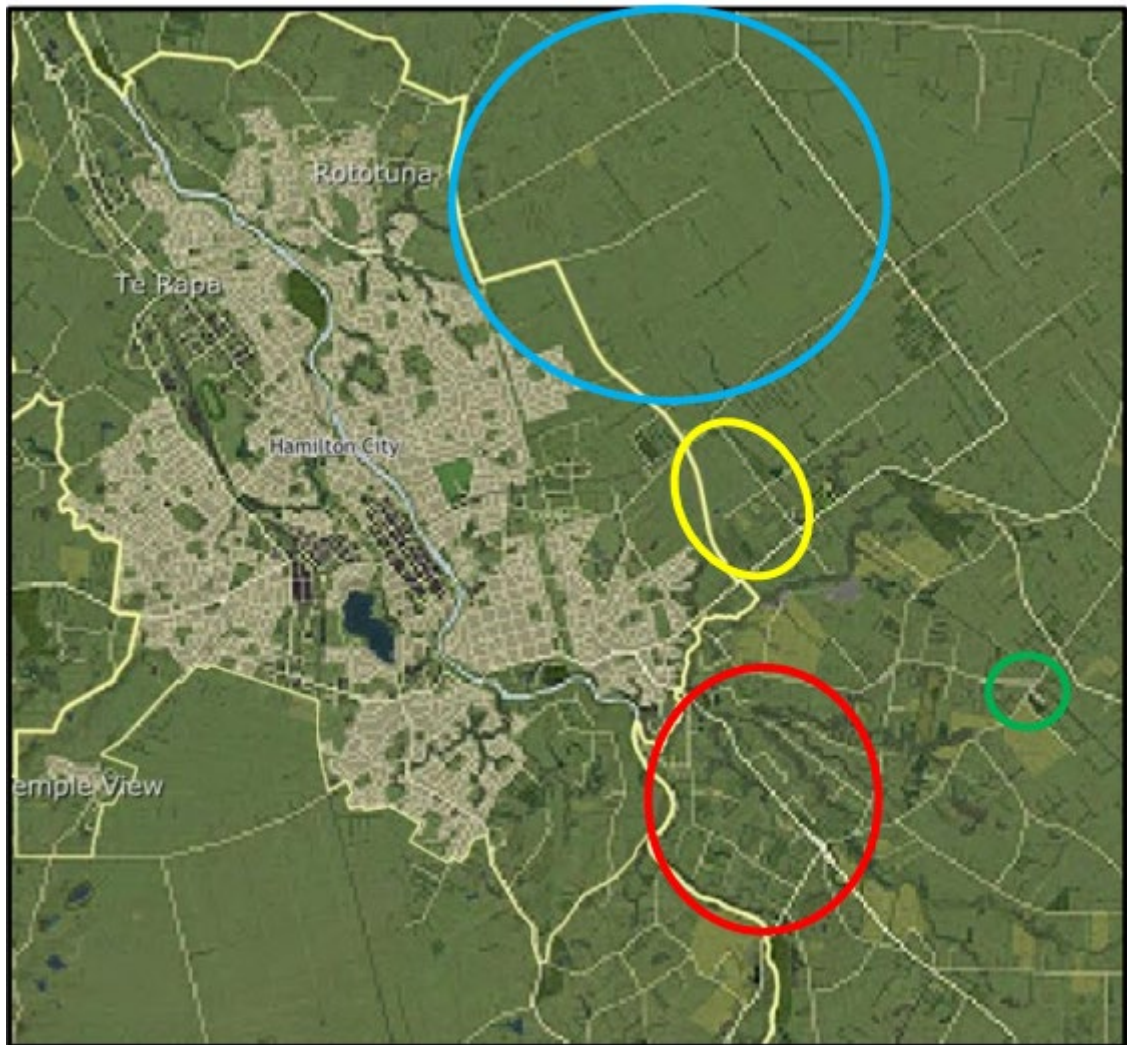


Figure 1: Location of submissions pertaining to zoning on the edge of Hamilton

- 3.2 In Matangi, the submissions generally sought to rezone the Rural zone to a more intensive zone (i.e. Country Living, Village or Residential), while in Tamahere the submissions largely sought a Rural to Country Living Zone change. Ruakura is a single submission from Tainui Group Holdings (TGH) seeking a change from Rural to a large industrial zoning. In Puketaha there are three submissions; one seeking an extensive tract of Future Urban-Zoned land, another seeking a spot Business zoning and the third seeking a rezoning of land within the Waikato Expressway to Residential (all the Puketaha sites are currently zoned Rural).
- 3.3 Ms Boulton organised her section 42A report largely by geographic area and covered the following areas:
- a) Glen Massey;
 - b) Te Uku;
 - c) Maramarua; and

d) Ohinewai.

3.4 We have similarly organised our decision into geographic areas where this is possible.

4 Overview of evidence

Matangi

- 4.1 Mr Andrew De Langen attended the hearing and spoke of the challenges of operating a sport horse training and breeding farm next to the development on the Matangi Dairy Factory site. He therefore sought the rezoning of his site at 436B Tauwhare Road from Rural Zone to Country Living Zone. Mr De Langen expressed concern about the industrial uses expanding on the Matangi Dairy Factory site, and the incompatibility of the industrial uses with training horses. He further explained that he would like to be able to subdivide one of the dwellings on his property onto a separate title, and relocate to somewhere more suitable.
- 4.2 Mr Shaw represented Ian and Darienne Voyle and their request to rezone their 3.78ha property at 436A Tauwhare Road from Rural Zone to either Residential or Village Zone (as clarified in Mr Shaw's evidence). Mr Shaw considered that the property was suitable for Village Zone for the following reasons:
- a) The site abuts residential areas along the north-western and eastern boundaries;
 - b) The site has frontage to Tauwhare Road (90m) and Taplin Road (160m) which will provide for good connection and integration with the existing transportation network;
 - c) The site will also have a good pedestrian connection to the village centre as a new footpath has recently been constructed along the road frontages as part of the residential development to the south of the subject site;
 - d) The site is close to urban amenities and facilities; and
 - e) The existing persimmon orchard does not provide a sustainable livelihood and is becoming a liability and a burden to maintain each year.
- 4.3 Mr Shaw assessed the proposal against the relevant objectives and policies in the PDP. He concluded that the rezoning proposal is supported by the objectives and policies that identify, in general, the suitable locations for urban growth, with the exception of Objective 5.1.1 and its reference to high quality soils. We note that the soils are (high) Class 2s and Class 2w on this site (these are high quality soils with few limitations for agricultural, horticultural or forestry uses). Mr Shaw specifically noted that the site is directly adjacent to an existing Residential Zone, within 120m of the Matangi town centre and less than 400m from the school, all of which promotes a compact urban form. Also,

the site is within the indicative urban limits shown on the maps in the Future Proof Strategy Planning for Growth (Future Proof).¹ Mr Shaw similarly assessed the proposal against the Waikato Regional Policy Statement (RPS) and Future Proof and concluded that it was consistent. We note from Mr Shaw's evidence that the site is within the indicative urban limits shown on the Future Proof maps, however growth in Matangi has not been identified in the Waikato 2070 growth strategy (Waikato 2070). Mr Shaw further assessed the proposal against the National Policy Statement for Urban Development (NPS-UD) and considered that the requested zoning would be supported by the NPS-UD and would enable the requirements of the NPS-UD to be better met.²

- 4.4 A preliminary contaminated site investigation was undertaken on the property, given the existing usage of the site as a persimmon orchard. We note the site was listed on the Waikato Regional Council's (WRC) Selective Land Use Register as Unverified HAIL A10 – Persistent pesticide bulk storage or use, however the preliminary contaminated site investigation report considered this was an error as organochlorines are unlikely to have been used. That assessment also considered the orchard to be too small for the bulk storage of persistent pesticides; and that any potential arsenic, copper and lead concentrations in soil will more than likely be below National Environment Standard residential soil guideline values.
- 4.5 Mr Andrew Wood appeared on behalf of I. and C. Thomas whose submission sought to amend the zoning of the property at 647 Marychurch Road, and the surrounding properties including the properties on the corner of Marychurch Road and Tauwhare Road, from Rural to Country Living Zone (or alternatively Village Zone or Residential Zone). He clarified at the hearing that the land which is the subject of the submission is bounded by the branch railway line, Tauwhare Road and State Highway 1B. Mr Wood described the sites as being approximately 25ha in area and rural residential in character, ranging in size from approximately 0.5ha to 5ha.³ Mr Wood considered that rezoning the land to Country Living Zone will provide more consistency with the sustainable management objectives of the Resource Management Act 1991 (RMA) and the PDP, and is more consistent with the existing environment, and character of Matangi. He further considered that the property is not productive for rural activities and referenced a report from AgFirst which demonstrated that productive use of the land is very unlikely to be able to be achieved. We note that the AgFirst report identified the site as containing high class soils suitable for a range of agricultural and horticulture activities; but considered that the built-up nature of surrounding properties would impose significant complications and constraints to the typical spray programmes required on such horticultural operations. Mr Wood considered that retaining a rural zoning effectively prohibited the ability of the property to be productive.

¹ Evidence in chief of Leigh Shaw on behalf of Ian and Darienne Voyle, Paragraph 21, dated 25 February 2021.

² Ibid, Paragraph 40.

³ Evidence in chief of Andrew Wood on behalf of I & C Thomas, Paragraph 10.

4.6 Mr Wood also undertook an assessment of the proposed rezoning of the site to Country Living Zone against the objectives in the PDP. He concluded that the proposal is not inconsistent with the objective and policy framework of the PDP when considering the limitations on giving effect to the rural zoning on the site, the sites' location and the existing environment.⁴ Mr Wood did not agree with Ms Tait's assessment in the section 42A report with respect to the following matters:⁵

- a) That rural residential zoning (Country Living Zone) will impede any future planning potential for the area to become urban (i.e. residential) should infrastructure provision allow;
- b) The section 42A report recommendation there be "no growth" for Matangi;
- c) The section 42A report fails to acknowledge that the Matangi Dairy Factory rezoning is being supported by the corresponding section 42A author and will create additional employment within Matangi Village;
- d) The statement that a rural residential zoning is contrary to outcomes expected by the NPS-UD;
- e) The reliance on the NPS-UD as a determining factor on whether to provide any rezoning in Matangi given large amounts of policy support in the PDP, the Future Proof and the RPS;
- f) That rural residential zoning is not a suitable outcome for Matangi;
- g) That a possible Future Urban Zone provides expectations on Council to deliver infrastructure to land;
- h) There has been no consideration of the inappropriateness of the existing zoning, including the existing rural residential character of the area; and
- i) The section 42A report states that the Council has "no intentions to expand the service capacity in Matangi" regarding wastewater but does not consider other regional wastewater documented in a recent report which shortlisted wastewater reticulation for Matangi. The section 42A report also does not acknowledge the recommendations in the section 42A report for the Matangi Dairy Factory site that wastewater expansion is possible.

4.7 Mr Wood also drew attention to the report "Hamilton Metro Spatial Wastewater Treatment Feasibility Study (September 20)" where wastewater reticulation for Matangi was one of the options presented.

⁴ Evidence in chief of Andrew Wood on behalf of I & C Thomas, Paragraph 17.

⁵ Rebuttal evidence of Andrew Wood on behalf of I & C Thomas, Paragraphs 5-7.

- 4.8 Mr Thomas' evidence explained that the property was small and unproductive land which, in his opinion, could not make money as a farming operation and therefore runs at a loss.
- 4.9 The Matangi Community Committee submission sought amendments to the PDP to:
- a) Amend the zoning of the properties adjacent to the Matangi village, as identified in the Community Plan 2013, from Rural to Village Zone;
 - b) Include a Council-driven structure plan for Matangi; and
 - c) Reconsider the intent of Matangi and the indicative village limits.
- 4.10 The evidence, including a section 32AA evaluation, clarified that a Village Concept Plan was prepared by the community identifying an area around the village for urban limits in which they would like development to occur. The evidence stated that the community believes growth should be complementary with the existing Matangi Village, continue the close knit feel of the community, enable the community to grow in a way that makes it sustainable and does not adversely impact on the highly productive farm and horticulture surrounding land (in that it provides jobs for the community). As the land surrounding the village is primarily zoned Rural (apart from the Dairy Factory), the Matangi Community Committee considered a change of zone was required and considered that a Village Zone fits with the community's goals and vision. The size of the rezoning sought was approximately 60ha, creating an approximate yield of 140-150 sites.

Horsham Downs

- 4.11 Mr Andrew and Mrs Christine Gore prepared both primary and rebuttal evidence and attended the hearing to speak to their submission which sought rezoning of 295 Kay Road (4.18ha) from Rural Zone to Country Living Zone. Of particular concern to Mr and Mrs Gore were the number of overlays which applied to their site, including Urban Expansion Area, Waikato River catchment and Hamilton Basin Ecological Management Area. They explained that they acquired the site from the New Zealand Transport Agency in 2007, in exchange for their previous property which was required for the Waikato Expressway. Mr and Mrs Gore described the characteristics of the site and their desire to enable appropriate development of it. They also considered that productive rural land uses cannot be supported on the property given its fragmented size and existing development and submitted that it should be rezoned Country Living Zone.⁶ Their reasons for seeking rezoning included:
- a) Continuing to re-establish ecosystems and retain biodiversity;

⁶ Statement of evidence of Andrew and Christine Gore, Paragraph 4.4, dated February 2021.

- b) Retaining the natural environment and topography that exists as much as possible;
- c) Providing choice in the housing market; and
- d) The Country Living Zone is more appropriate given the surrounding environment.

4.12 Mr and Mrs Gore considered that rural residential would be a sensible use of what would otherwise be waste land, until such time as it eventually becomes urban.

Summerfield Lane

4.13 Mr Mark Smith presented evidence in support of his request to have the properties in Pencarrow Road and Summerfield Lane rezoned from Rural Zone to Country Living Zone. He set out the background to the subdivision which created the current pattern of development, resulting in eleven sites ranging between 5218m² and 2.0375ha. Mr Smith considered that this area had the existing characteristics of a Country Living Zone, low quality soils, is satisfactorily serviced by road, telecommunications, power and is within 10km of Cambridge and Hamilton City.⁷ He further considered that releasing the land for development would allow further country living opportunities to be created without encroaching on good quality rural land, and without an extension of the urban fringe. After assessing the proposal against the objectives of the Rural Zone in the PDP, Mr Smith concluded that the properties have none of the characteristics of the activities anticipated in the Rural Zone and are incapable of maintaining productive rural activities. Conversely, he considered that the Summerfield Lane Precinct exactly reflects the description of the Country Living Zone in the PDP, as it provides for low density living in a specific location in a rural area. Mr Smith also stated all of the infrastructure which was either already present or would be needed to support development.

Te Awa Lane

4.14 Mr Steve Bigwood prepared evidence on behalf of Grant and Merelina Burnett in relation to their property at 50 Te Awa Lane, Tamahere. The submitters sought rezoning of the 4.0898ha site from Rural Zone to Country Living Zone. In his evidence, Mr Bigwood described both the site and the surrounding sites which are similarly used for predominantly rural residential living, most of which are between 0.8-1ha in size. He noted that a portion of the site (where it adjoins the Waikato River) is subject to the Significant Amenity Landscape Overlay and a Significant Natural Area. A Maaori pa site near the south-western corner of the site is also identified as being a Maaori Site of Significance in the PDP. Mr Bigwood clarified that the submission only sought rezoning,

⁷ Statement of evidence of Mark Smith, Paragraph A2.

and did not request any changes to the overlays. The main reasons he provided for supporting the rezoning were as follows:

- a) The site is surrounded by properties to the north and east that are zoned Country Living;
- b) The site is legally and physically separated from adjoining Rural Zone lots where a potential for amalgamation would otherwise exist to give effect to sustainable rural land use;
- c) Sustainable rural land uses are dictated by minimum parent lot size in Chapter 22 of the PDP, which does not align with the size of the site; and
- d) Intensive or horticultural rural land use is unlikely due to the high risk of reverse sensitivity effects as the site is immediately surrounded on all boundaries with land use activities that are residential in character.

4.15 In his evidence, Mr Bigwood assessed the proposal against the PDP objectives, policies and strategic direction and concluded that the main areas of tension relate to the objectives that limit urban development to existing defined growth areas and avoiding urban development in rural environments that would result in fragmentation or loss of productive farm land.⁸ Mr Bigwood undertook a similar exercise for the RPS, and concluded that the rezoning proposal (and resultant expected (permitted) development) is generally aligned with, and not contrary to, the objectives and policies of the RPS. He considered that the rezoning of the subject site is consistent with the purpose of the RMA, is consistent with the relevant objectives and policies of the RPS and also aligns with the relevant sections and expectations of the Waikato Tainui Environmental Plan Tai Tumu, Tai Pari, Tai Ao.⁹

4.16 Mr Bigwood also prepared supplementary evidence addressing Ms Tait's recommendation in her section 42A report to reject Mr and Mrs Burnett's submission. Mr Bigwood did not agree that the property was adjacent to Hamilton City Council's (HCC) territorial boundary or that interplay with Hamilton City needed to be considered. He also did not agree with the application of the NPS-UD to the proposal, or Ms Tait's assessment of the proposal against the RPS.

4.17 A geotechnical investigation was undertaken on the subject site by CMW Geosciences. The report stated that the risk of liquefaction and lateral spread is low, and concluded that ground conditions are good, although minor ground improvements and rib raft foundations for any future building platform were recommended. The report also stated that the natural slope of the area on the north-western edge of the site does not meet the required safety factor criteria due to the steepness of the slope. As a result of this,

⁸ Evidence in chief of Steve Bigwood on behalf of Grant and Merelina Burnett, Paragraph 50, dated 12 February 2021.

⁹ Ibid, Paragraph 103.

the report recommended a 10m setback from the top of the slope of the gully or, alternatively, that remedial works be considered.

- 4.18 A Preliminary Site Investigation was also prepared for the subject site by 4Sight Consulting. The investigation drew attention to the presence of lead and asbestos in the soil which exceeded recommended guidelines, but only in selected locations immediately surrounding the shed, with the presumed source being shed cladding materials. Based on that assumption, the report considered that the concentration of potential contaminants in soils across the vast majority of the site were highly unlikely to pose a risk to human health, if the proposed rezoning occurred. The report further considered that subdivision of the site was a permitted activity under Clause 8(4) of the National Environmental Standard for Assessing Contaminants in Soil to Protect Human Health and soil disturbance across the site was a permitted activity under Clause 8(3), provided relevant thresholds were met.
- 4.19 Infrastructure service providers also gave written confirmation that there was infrastructure available within the vicinity of the subject site to supply future potential subdivision / development. They highlighted that there was a Council Rural Zone water supply reticulation that runs along the eastern and southern boundaries of the site, situated within Te Awa Lane. A road capacity assessment was also prepared by Traffic Engineer, Mr Lindsay Boltman which looked at the effects of developing five additional lots (equating to 50 vehicle movements per day (vpd) which would need to be catered for within the existing road network). The technical report considered that Te Awa Lane currently caters for 150 vpd and therefore has plentiful capacity to accommodate additional traffic movements that may result from the proposed rezoning. The report further noted that Te Awa Road is relatively flat, has good access sightlines, very low heavy commercial vehicle use, low vehicle speeds and no evidence of safety issues. The report concluded that it is unlikely an additional 50 vpd due to five additional dwellings would create any serious or significant safety issues.
- 4.20 Mr Warren Gumbley undertook a site inspection to determine the presence and significance of archaeology within the subject site. He identified two areas of Maaori made soils on the property, one on the lower terrace and one on the upper. As the made soils within the lower terrace were near the existing external property boundaries, any future development that complies with the relevant boundary setbacks (12m) would be clear of this area. Regarding the small area of made soils within the upper terrace, Mr Gumbley noted that the area is effectively outside any likely building platform and that any effects of development would be mitigated with a detailed archaeological investigation prior to soil disturbance.

Tamahere Drive

- 4.21 Mr Leigh Shaw prepared evidence on behalf of J and T Quigley who sought rezoning of their 1.9ha property at 25 Tamahere Drive from Rural Zone to either Country Living or Village Zone. He clarified that upon receipt of the section 42A report, the submitters are pursuing the Village Zone in order to meet the future needs of the existing village centre

in Tamahere. Mr Shaw sought consequential amendments to Rule 24.4.2 of the PDP to enable the Village Zone in Tamahere to be subdivided to minimum lot sizes of 1000m². He considered that the property was suitable for village zoning for the following reasons:

- a) The southern boundary is owned by the Crown and the topography falls away to a low-lying gully. As a result, there is no physical connection to any other rural land.
- b) The site is heavily modified and used as an early learning centre for up to 114 children.
- c) The area to the north and west of the site is characterised by country living development dispersed around the Hamilton City periphery.
- d) The site is surrounded by urban development and amenities.

4.22 In his evidence, Mr Shaw assessed the proposal against the relevant objectives and policies in the PDP and concluded that the rezoning proposal is supported by the objectives and policies that identify the suitable locations for urban growth. Specifically, he noted that the site is directly adjacent to an existing urban development, within 200m of a regional bus stop, 500m of the school and 800m of the existing commercial area, which promotes a compact urban form, and the site is within the Hamilton urban area of the Future Proof.¹⁰ Mr Shaw similarly assessed the proposal against the RPS and the Future Proof, concluding it was consistent with both. We note from Mr Shaw's evidence that the site is within the indicative urban limits shown on the Future Proof maps, however growth in Tamahere has not been identified in Waikato 2070. Mr Shaw further assessed the proposal against the NPS-UD and concluded that the rural zoning of the subject site in the notified PDP fails to achieve the requirements of the NPS-UD. He considered that the requested Country Living or Village zoning of the site would be supported by the NPS-UD and enable the requirements of the NPS-UD to be better met.¹¹

4.23 Two technical reports were also appended to Mr Shaw's evidence. The first report was an agricultural impact assessment undertaken by AgFirst which concluded that the proposed rezoning to the Village Zone would have no impact on future agricultural or horticultural potential. The report also identified the site as having LUC 1 and the rezoning was likely to result in a productivity loss of 6 - 10 sheep or 1 yearling beef animal. The second report was a wastewater report undertaken by Ormiston Associates Limited which considered that the site could be adequately serviced via a decentralised on-site wastewater treatment and disposal system.

¹⁰ Evidence in chief of Leigh Shaw on behalf of J and T Quigley, Paragraph 34 dated 25 February 2021.

¹¹ Ibid, Paragraph 53.

Greenhill Road

- 4.24 Mr Malcom MacDonald appeared at the hearing and filed several pieces of evidence to support his submission seeking zoning in order to enable a service centre development on the northern side of Greenhill Road. The rezoning specifically related to 4.5 ha of the 33.7023 ha site, with the area proposed to be rezoned being located immediately adjoining the Waikato Expressway off ramp. Mr MacDonald also filed an indicative layout plan of the site in support of his submission.
- 4.25 Ms Tracey Morse prepared planning evidence for Mr MacDonald's zoning proposal. In her evidence, Ms Morse assessed the rezoning proposal against the RPS and notified PDP objectives, considering that it was consistent with relevant provisions, with the exception of the PDP objectives focused on retention of high quality soils. She also assessed the proposal against the Future Proof principles for rural areas and concluded that the proposal was consistent with these. Ms Morse further concluded that the rezoning proposal is generally consistent with achieving the outcomes sought in the higher-level planning instruments, with the proposal being, most notably, consistent with the general development principles listed in Section 6A of the RPS.¹² She also considered that the rezoning was generally consistent with achieving good planning practice in terms of the application of a new zone.¹³
- 4.26 Ms Morse also provided rebuttal evidence with respect to the section 42A report which recommended that the rezoning proposal be rejected. In that regard, Ms Tait considered that the proposal was contrary to the NPS-UD because it enabled urban development in a rural area. Ms Morse had an opposing opinion and considered that the rezoning request was unrelated to the nearby Hamilton urban environment, and instead reflected the immediate proximity of the site to the on-and off-ramps of the Waikato Expressway. She considered that the rezoning from Rural to Business Zone with a Motorway Service Centre Overlay would have been made irrespective of where this property lay in relation to any existing urban environments.¹⁴ She further noted that the existing motorway service centres at Bombay, Drury and Taupiri have not resulted in additional urban development and have remained focussed on servicing travellers. She considered that the rezoning would not impact on the future development of growth cell R2.
- 4.27 In her section 42A report, Ms Tait considered that a traffic impact assessment and assessment of effects are necessary in order to determine the appropriateness of Mr McDonald's rezoning request. However Ms Morse considered this was more appropriate to consider at the point of resource consent as either a controlled or restricted discretionary activity.¹⁵ Ms Morse also addressed the evidence of HCC and its desire to progress the review of Future Proof and the Metro Spatial Plan before considering

¹² Evidence in chief of Tracey Morse for Malcolm MacDonald, Paragraph 35, dated 17 February 2021.

¹³ Ibid, Paragraph 37.

¹⁴ Rebuttal evidence of Tracey Morse for Malcolm MacDonald, Paragraph 7, dated 3 May 2021.

¹⁵ Ibid, Paragraph 20.

rezoning proposals such as this. Ms Morse considered that if this was in fact the case, then the PDP would not be progressed at all. In response to Mr Wood's evidence on behalf of Waka Kotahi New Zealand Transport Agency (NZTA), Ms Morse considered there was little risk to the safety of road users. This was as development of the site would need an access design that meets all of NZTA's relevant design and safety outcome requirements in order to avoid adverse impacts on the safe and efficient operation of the Waikato Expressway. She considered that the proposal would contribute to traveller safety by preventing unnecessary accidents due to driver fatigue.¹⁶

- 4.28 An agricultural impact assessment was undertaken by AgFirst for the subject site and concluded that the site has Class 2 soils. The report pointed out that the distance to the dairy shed reduces the agricultural productivity for this part of the site, as it prevents effluent application and makes the area reliant on solid fertilisers to maintain pasture production. The report further considered that proximity to the Expressway limits the use for horticulture due to real or perceived contamination from particulate matter and emissions from vehicles. The loss of productivity of the site was calculated as a 3.7% reduction of the current dairy farming operation. Ms Morse addressed this issue in her rebuttal evidence and considered that because the site contains some high-quality soil it does not mean any subdivision, use or development is inherently inappropriate. She observed that the explanation of Policy 14.2 (High class soils) of the RPS is helpful as it advises that the intention of the policy or its methods is not to prevent all development on high class soils.¹⁷ Ms Morse considered that the development did not represent a net loss of productive rural land due to the ability for the wider site to increase productivity in order to accommodate any loss of rural productivity.

Ruakura Road

- 4.29 Ms Tamara Huaki appeared and talked to her concerns about the request by TGH for industrial zoning near her home at 495 Ruakura Road. She spoke of the adverse effects she had experienced from the earthworks already undertaken, including the loss of rural amenity, noise, vibration, flooding, traffic volumes, deterioration in road quality, and the decreasing safety of the roads for all transport modes including pedestrians and cyclists. She expressed concerns that the rezoning sought by TGH was likely to exacerbate these adverse effects. Ms Huaki also spoke about the loss of soil productivity if the rezoning occurred.
- 4.30 TGH filed a legal submission which explained that it had not filed technical or planning evidence to support its submission as it is currently focusing its efforts on the regional strategic planning process of the Metro Spatial Plan. The Metro Spatial Plan identifies the possibility of providing for industrial and inland port-related activities on the eastern side of the Waikato Expressway, as a matter for future investigation. To that end,

¹⁶ Ibid, Paragraph 29.

¹⁷ Rebuttal evidence of Tracey Morse for Malcolm MacDonald, Paragraph 14, dated 3 May 2021.

investigation of alternative land use arrangements for the long-term development of Ruakura, including to the east of the Waikato Expressway, has been identified within the “priority development area” programme for the Central Corridor. The intention is that these investigations take place through Phase 2 of the Future Proof review which is currently underway.

- 4.31 We understand that TGH’s preference is that the Future Proof Phase 2 process be completed prior to any substantive investment in related rezoning and regulatory processes. As the PDP process is progressing ahead of the Future Proof Stage 2 work programme, TGH maintains its submission seeking rezoning and depending on the outcome of the Future Proof Stage 2 work, work will be commenced in accordance with the RMA to progress and support an agreed outcome for the land east of Waikato Expressway.¹⁸
- 4.32 Mr Noel Smith filed evidence opposing TGH’s rezoning request. Mr Smith outlined that the area subject to the submission is currently used for rural and horticultural activities, along with established childcare facilities, cafes / restaurants, bed and breakfasts, a riding centre and other small family enterprises. He disagreed with TGH’s assertion that the site is virtually connected to the land on the western side of the Waikato Expressway, with a separation distance of 160m. Mr Smith expressed concerns about the traffic generation and the loss of quality horticultural soils that would result from an industrial zoning.

Gordonton

- 4.33 Jacob Robb filed evidence on behalf of David and Barbara Yzendoorn which addressed their request to rezone their properties at 1002 and 1012 Gordonton Road from Rural to Residential Zone. In her section 42A report, Ms Boulton supported rezoning of 1002 Gordonton Road but considered that supporting detail was lacking for the rezoning of 1012. Mr Robb addressed this shortfall of information in his rebuttal evidence, in which he spoke to servicing for wastewater, stormwater and fresh water (three waters), transport and connectivity, high class soils, natural hazards and consistency with the RPS. He considered that the requested rezoning was appropriate as the site is relatively small, already developed, abuts Residential Zoned sites of similar size and can serve no productive rural purpose.¹⁹
- 4.34 In his evidence, Mr Robb also addressed the further submission from HCC and its opposition to rezoning before the Metropolitan Spatial Plan and Auckland to Hamilton Corridor Plans were completed. He considered this approach to be too heavy handed and did not give adequate consideration to the existing characteristics of the site and surrounding environment. He further noted that neither of the planning initiatives

¹⁸ Memorandum of Counsel for Tainui Group Holdings Limited, Paragraphs 14-15, dated 17 February 2020.

¹⁹ Rebuttal evidence of Jacob Robb on behalf of David and Barbara Yzendoorn, Paragraph 18 dated 3 May 2021.

specifically related to Gordonton.²⁰ Overall, Mr Robb considered that the site had no real potential to contain additional development that could in any way undermine or impede the implementation of any future spatial planning.

Ohinewai

- 4.35 We heard from several expert witnesses and legal counsel representing Ohinewai Lands Limited (OLL) as part of Hearing 19 Ohinewai Zoning, and then again in Hearing 25. The evidence at Hearing 19 focused on land on the southern side of Tahuna Road, where the submitter sought that a further 39ha growth area be signalled within the Ohinewai Structure Plan. No 'live' zoning was sought at that time by OLL, and the intention was to undertake a plan change at some later date. By the time of Hearing 25, OLL's focus had been extended to include land to the north / north-east of Balemi Road, and Mr Matthew Twose's evidence supported Future Urban Zoning for both of these areas. In his legal submissions Dr Robert Magkill explained that at the time of Hearing 19, the inclusion of a Future Urban Zone in the PDP had not been proposed and was therefore not addressed by OLL, or other submitters, in evidence or legal submissions.
- 4.36 In his evidence on behalf of OLL, Mr Twose assessed a Future Urban Zone over the OLL land against objectives and policies of the notified PDP. He concluded that should the Ambury Properties Limited (APL) land be accepted for urbanisation and the Hearings Panel adopts the introduction of a Future Urban Zone, then the PDP will have an appropriate framework for managing future urban areas such as OLL's, where immediate live zoning is not proposed.²¹ He also concluded that the OLL proposal gives effect to Policy 8 of the NPS-UD and is consistent with the Waikato 2070 strategy. Mr Twose considered that as Waikato 2070 is more recent and cognisant of the significant growth issues the district is now facing, it is more closely aligned with growth management directions contained in the NPS-UD than Future Proof 2009 (although this is the document that is embedded in the RPS).²² In terms of the physical attributes of the sites, he considered that the OLL land to the south of Tahuna Road is well suited to be zoned residential in the future, in conjunction with the land areas proposed by APL. To ensure sufficient land capacity was available to address industrial land supply for the medium and long term, Mr Twose also supported the identification of the OLL land to the north of the APL land areas as part of a Future Urban Zone.²³

²⁰ Ibid, Paragraph 22.

²¹ Evidence in chief of Matthew William Twose on behalf of Ohinewai Lands Limited, Paragraph 30, dated 17 February 2021.

²² Ibid, Paragraph 64.

²³ Ibid, Paragraph 77.

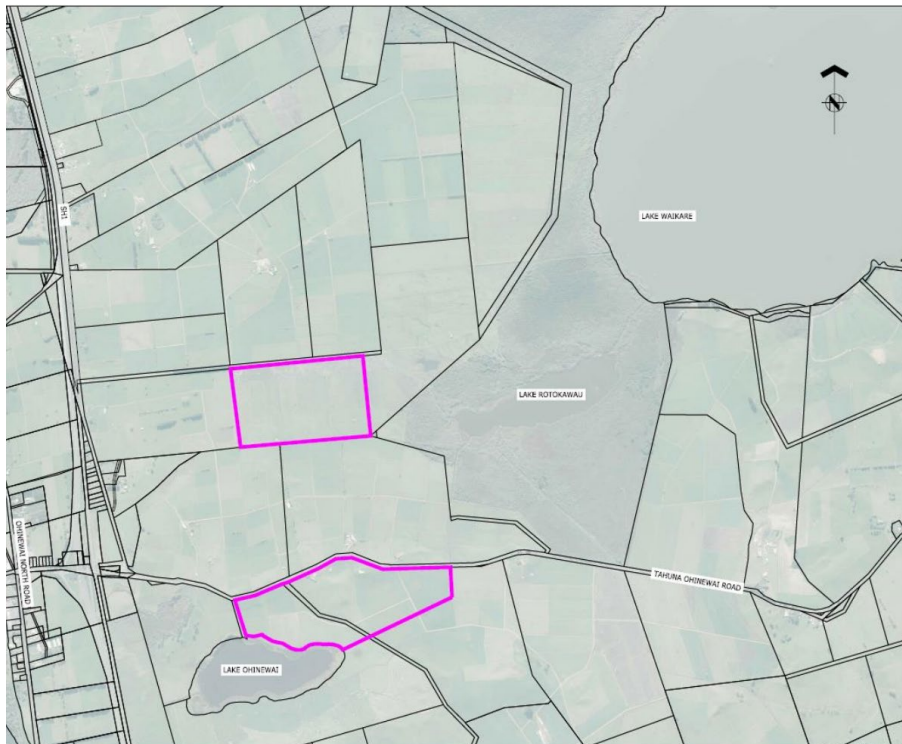


Figure 2: Extent of Future Urban Zone sought by Ohinewai Lands Limited sites as sought in Hearing 25

- 4.37 High level technical assessments focussed on the Tahuna Road site were included in the evidence from OLL, including geotechnical, earthworks calculations and transport assessments. An archaeological assessment undertaken by Mr Gainsford and Mr Gumbley²⁴ also stated that there are no archaeological sites recorded on the OLL sites subject to the rezoning requests. While a pa was identified on the south side of Tahuna Road bordering Lake Ohinewai, and thirteen archaeological sites were identified during the 1983 Foster survey including midden, pit/terrace, a find spot and a historic site, none of these are located within the OLL site.
- 4.38 Preliminary calculations of water and wastewater servicing requirements for the OLL site are contained within the Infrastructure Services Assessment and show a population of 1035 people on the OLL land would equate to water and average wastewater demand of 207m³/day²⁵ and 270m³/day²⁶, respectively. Specific options were not confirmed but were considered to be feasible.
- 4.39 The technical report provided by OLL indicates that the OLL sites contain land subject to flood risk. This includes both surface flooding from watercourses, and flooding in the event of the failure of the Waikato River stopbanks. The majority of the low lying land in the Ohinewai area is prone to flooding and has a high water table, with grazing of the

²⁴ Archaeological assessment of effects, Matthew Gainsford and Warren Gumbley, dated June 2019.

²⁵ Infrastructure Service Assessment, Harrison Grierson, Section 8.2, dated 19 November 2019.

²⁶ Ibid, Section 8.3.

land enabled by drainage schemes and pumping managed by the Waikato Regional Council (WRC). In their evidence, OLL provided flood modelling results demonstrating that future development could reasonably manage flood risks, including consideration for climate change. The potential residential area within the OLL site is relatively elevated compared to some other areas within Ohinewai and this was a key factor in its identification as a potential future growth area. Approximately 7ha (equating to 30%) of the potential residential area is identified as being below the flood level of RL 8m 1% AEP and therefore may require filling to elevate building platforms above the flood risk area. To reduce any increased risk to surrounding properties, OLL suggested that the same amount of material used to fill the OLL site could be removed elsewhere in the floodplain to achieve hydraulic neutrality.

- 4.40 The OLL section 32AA report identified that upgrades will be required to provide safe pedestrian and cycle access across the Waikato Expressway and railway; and to Tahuna Road to provide access for vehicles, pedestrians and cyclists to development on both sides of the road. Based on the anticipated scale of residential development (235 dwellings), traffic generation could be 2,350 vpd. The OLL proposal sought changes to the APL Structure Plan to provide for development on both sides of Tahuna Road. The proposal also noted that upgrades to Tahuna Road would be required in order to provide for vehicles, pedestrians and cyclists as well as access to land to the north (APL site) and south (OLL site) as part of the development of those areas. OLL requested that the APL masterplan be modified to reduce vehicle speed (ideally 50km/h) along Tahuna Road and for a fourth leg to be provided for on the Tahuna Road roundabout to provide future access to its site. OLL also sought inclusion on the APL Structure Plan of the potential access locations from APL's site to the northern land it owned.
- 4.41 In terms of the ecological effects of the OLL development identified in the OLL section 32AA report, the main focus was the retirement of 39ha of land from farming usages, as well as the opportunities to preserve the natural character of Lake Ohinewai and its margins through the retirement of grazing land adjacent to Lake Ohinewai which had the potential to create a new reserve for ecological enhancement and recreation.
- 4.42 Mr David Whyte attended Hearing 19 in support of the submission from Ohinewai Area Committee and described the current Ohinewai community as well as the future of the sites addressed in their submission.

River Road

- 4.43 Mr Martin Lynch spoke to his submission seeking the rezoning of the property at 2044 River Road to Country Living Zone, as it currently is zoned in the Operative District Plan (ODP). He explained how his property had been notified in the PDP as being in the Rural Zone, despite there being a consent for a 5-lot subdivision and explained the progress he has made towards implementation of the subdivision consent. He noted that the property reflects the character and amenity of the neighbouring properties immediately

adjacent to the west, northwest, south east and south of his property, which are all zoned Country Living Zone.

Glen Massey

4.44 Mr Leigh Robcke presented evidence on behalf of Dinah Robcke supporting the rezoning of 16ha of the properties at 859 and 889 Waingaro Road from Rural to Village Zone. He outlined the background to the development and zone pattern of Glen Massey, including the Glen Massey structure plan. We note that the ODP has 48ha of land zoned Country Living Zone, but this was reduced to 31ha in the PDP. Mr Robcke's evidence focused on rezoning the 31ha of land zoned Country Living Zone to Village Zone rather than reinstating the full extent of the Country Living Zone. Mr Robcke considered that the soils in and around Glen Massey do not meet the definition of high class soils and are generally LUC6 or LUC4 in the case of this site.²⁷ Mr Robcke attached the following technical information to his evidence:

- a) An initial investigation of site soil and ground conditions undertaken by a geotechnical engineer which assessed the appropriateness of the site for rural residential development. The report concluded that the soil and ground conditions were inherently stable, surface soils were suitable for wastewater treatment and disposal and considered that no specific earthworks are required. The report also referenced the central gully which could be used as a natural feature and for stormwater attenuation.²⁸
- b) A Tonkin & Taylor report that was commissioned by Council in 2015 which concluded that the ecological, flooding and overall constraints to Glen Massey are low.

4.45 Mr Robcke assessed the proposal against the Future Proof 2017 principles and considered that no issues would be created, or exacerbated, by the rezoning as the proposal would be consistent with it.²⁹ He also assessed the proposal against the relevant objectives and policies in the PDP and concluded that the proposal would not be inconsistent with those either.

4.46 Dr Joan Forret filed legal submissions on behalf of S and K Quigley and Quigley Family Trust who sought rezoning of the property at 233 Wilton Collieries Road, Glen Massey to either Country Living or Village Zone. Her submission stated that the proposal would support the existing Glen Massey village by concentrating residential development; and would be a better option for those seeking a rural lifestyle than allowing for ad hoc and scattered subdivision throughout the rural zone, especially in areas close to Hamilton

²⁷ Evidence in chief of Leigh Robcke on behalf of Dinah Robcke, Paragraph 8.4, dated 19 February 2021.

²⁸ Ibid, Paragraph 10.4.

²⁹ Ibid, Paragraph 11.8.

City. Dr Forret further disagreed with the assessment and recommendation in the section 42A report to reject the submission and considered that Country Living Zone would ensure an efficient use of land resource.³⁰ In her submissions, Ms Forret also noted that a subdivision consent had previously been approved for the site and was only partly implemented.³¹

- 4.47 Ms Morse filed planning evidence on behalf of Quigley Family Trust and described the key features of the previously approved subdivision. She summarised the assessment of various technical experts and concluded that the surrounding road network could accommodate the additional traffic volumes and that access to lots could be provided for in comparable locations to those shown on the previously approved subdivision plan. Ms Morse observed that the site comprises solely of low class (Class 6) soils, and this, combined with the contour and fertility of the soils, provides significant limitations to the agricultural productivity of the site.³²
- 4.48 In her evidence, Ms Morse considered that the rezoning proposal was generally consistent with achieving the relevant objectives of the PDP, as well as being generally consistent with achieving the outcomes sought in the higher-level planning instruments. Ms Morse also drew our attention to consistency with the general and rural-residential development principles contained in Section 6A of the RPS.³³ Overall, Ms Morse concluded that the site was well suited to be zoned Country Living due to its location adjacent to the Glen Massey village with existing facilities. She expressed concern with the assessment in the section 42A report and considered that the reliance on Future Proof to determine areas appropriate for growth was flawed.³⁴
- 4.49 Mr Stuart Quigley filed rebuttal evidence for Quigley Family Trust providing the details of the 18-lot subdivision consent and addressing the delays that occurred with implementation of the consent prior to section 223 approval finally being obtained for 2 lots in February 2011. He explained that the consent had since lapsed due to delays in implementation, some of which have been attributed to roading repairs.³⁵ Mr Quigley also outlined reasons why the site was appropriate to rezone including:
- a) The soil is not productive;
 - b) Enabling other people to enjoy the lifestyle of living in the country and being self-sufficient;

³⁰ Ibid, Paragraph 56.

³¹ Legal submission on behalf of Quigley Family Trust, Paragraphs 5-7, dated 10 February 2021.

³² Evidence in chief of Tracey Morse on behalf of Quigley Family Trust, Paragraphs 14-16, dated 17 February 2021.

³³ Ibid, Paragraph 37.

³⁴ Rebuttal evidence Ms Morse on behalf of Quigley Family Trust, Paragraphs 22-25, dated 3 May 2021.

³⁵ Rebuttal evidence of Mr Quigley on behalf of Quigley Family Trust, Paragraphs 3-24, dated 3 May 2021.

- c) Supporting the Glen Massey school; and
 - d) Providing a diversity of housing options within the Waikato District.
- 4.50 Ms Judith Makinson filed evidence on behalf of Quigley Family Trust regarding transport effects. She outlined the likely number of vehicle movements and considered that the current width of Wilton Collieries Road was sufficient enough for the proposed zone change. Ms Makinson concluded that the transportation effects of the proposed rezoning to the Country Living Zone would be less than minor and that the mitigation measures required as part of the previous 18-lot residential subdivision consent remain applicable.³⁶
- 4.51 Mr Dave Miller filed evidence on behalf of Quigley Family Trust regarding soil types and productivity, concluding that there was no prospect for horticulture on the site due to the soil and topographical limitations (although forestry was an option). He further acknowledged that a shift to Country Living Zoning would result in a modest drop in the carrying capacity of stock but observed that if the property was rezoned, then it was reasonable to assume that a number of the lot owners would continue to run stock of some kind as a means of controlling pasture and weeds.

Rotokauri

- 4.52 Mr David Hall attended the hearing and spoke to his site at 32 O'Brien Road, close to the western edge of Hamilton City. He observed that there are 15 houses on the 500m length of road, as well as a creche, and noted that the area was not rural in character. While the site was currently zoned Rural, Mr Hall wished to be able to subdivide and put more houses on the site (either through rules or a change in zone to Country Living Zone) to enable his children to own property. Due to the small size of sites around his property, Mr Hall observed that it was uneconomic to farm cattle on the land.

Horotiu

- 4.53 Mr Dale Pitcher attended the hearing and addressed his site at 20 Horotiu Bridge Road and his desire to subdivide the 1.5ha site into 3 lots by rezoning it to Country Living Zone. He described the pattern of development that surrounded the site which comprises 5,000m² sections zoned Country Living.
- 4.54 Dr Forret filed legal submissions on behalf of Horotiu Properties Limited (HPL) who requested that its site at Horotiu be rezoned from Rural to Country Living or Village Zone. She outlined the main reason for this request was because the property was too small to be a productive rural property as it was a balance lot resulting from a previous

³⁶ Evidence in chief of Ms Matkinson on behalf of Quigley Family Trust, Section 11, dated 5 February 2021.

subdivision with prominent physical constraints. This meant the property could not grow nor support any practicable rural productive activity.

- 4.55 Ms Morse filed planning evidence on behalf of HPL and clarified that the submitter was seeking Country Living Zone for the 7.54ha property on Sullivan Road which was capable of accommodating 13 dwellings. She described the site and the key features of the structure plan which had been developed. Ms Morse also provided an analysis of the Council's section 42A Framework Report and noted that the proposal was generally consistent with achieving the relevant objectives of the PDP. She considered that Horotiu was an appropriate location for a Country Living Zone as it would enable the consolidation of an existing node and offers an alternative to further fragmentation in the Rural Zone. While Ms Morse acknowledged that there would be some loss of rural land and a change to the existing visual character and amenity of the area, she considered that the site had a number of characteristics that made it ideal for the Country Living Zone. She further considered that the proposal was generally consistent with achieving the outcomes sought in the higher-level planning instruments and, most notably, the proposal was consistent with the general and rural-residential development principles contained in Section 6A of the RPS.³⁷ Ms Morse's evidence also addressed the assessment and recommendations of the section 42A report and outlined the areas in which she disagreed.
- 4.56 Ms Andrea Simpson, the sole director of HPL, filed evidence and provided a background of the history of the site including farming, compulsory land acquisition under the Public Works Act, previous sand mining and the creation of 3 lifestyle lots through subdivision and the requirements of the Hamilton to Ngaruawahia cycleway.³⁸ Ms Simpson's evidence detailed the soil / farming issues pertaining to the site and included a report from AgFirst which concluded that the site was no longer suitable for high value horticulture activities due to the history of sand quarrying.
- 4.57 An archaeological report completed by Opus was also filed as evidence by HPL and stated that any archaeological features that may have once been present on the site are likely to be long gone by now due to the sand mining. Ms Simpson's submissions note that no archaeological features were uncovered during the development of the 3 lifestyle blocks that were established on the southern part of the block, adjoining the Waikato River.³⁹ Ms Simpson concluded that rezoning of the site would:
- a) Result in a more efficient use of the land;
 - b) Provide significant economic benefit to the landowner;
 - c) Enable additional housing in an appropriate location;

³⁷ Evidence in chief Ms Tracey Morse on behalf of Horotiu Properties Limited, Paragraph 33, dated 17 February 2021.

³⁸ Evidence in chief Andrea Simpson on behalf of Horotiu Properties Limited, Paragraphs 3-12, dated 17 February 2021.

³⁹ Ibid, Paragraph 19.

- d) Result in additional development contributions and rates to Council; and
- e) Provide a variety of product onto the housing market in close proximity to the existing Horotiu village.⁴⁰

Mangatawhiri

4.58 Mr Mark Arbuthnot filed evidence on behalf of the Dilworth Trust Board in support of rezoning the property at 500 Lyons Road, Mangatawhiri through the creation of “Specific Area” provisions for activities and facilities of the Dilworth School (Rural Campus). Mr Arbuthnot considered that the notified objectives and policies of the PDP did not support “educational facilities” in the Rural Zone and that there were aspects of the provisions that conflicted with the ongoing use and development of the Rural Campus. He observed that as Dilworth School operates as an independent school, it does not benefit from requiring authority status and cannot rely on a designation to develop its facilities in the same way that other Rural-zoned “educational facilities” can. He considered that requiring all additional development at the Rural Campus to obtain resource consent as a restricted discretionary activity did not “enable” the activity to provide for the social, cultural, and recreational needs of the community. He also included a set of provisions for a “Specific Area” in his evidence which was largely based on the Rural Zone rules.

4.59 While Mr Arbuthnot agreed with the section 42A report assessment on the RPS provisions, he considered that requiring resource consent for any further additions to the school as a restricted discretionary activity was not appropriate. He pointed out that even the most mundane development at the Rural Campus (for example, toilet block extensions or equipment sheds) would need to obtain resource consent, resulting in an unnecessarily inefficient and onerous process.⁴¹ Mr Arbuthnot remained of the opinion that the inclusion of “Specific Area” provisions for the Dilworth Rural Campus was the most appropriate way to achieve the purpose of the RMA, and in particular, the social, cultural and economic well-being of the community.

Te Uku

4.60 Dr Forret filed legal submissions on behalf of Diamond Creek Farm Limited (DCFL) and provided a summary of their proposal which sought the rezoning of 43ha of a 252ha property located north of State Highway 23 at Te Uku, from Rural to Country Living Zone. She described the Te Uku setting, with the main features being a rural community with a primary school, a coffee shop, church and a community hall. She then summarised the supporting technical reports and assessments as well as the applicable statutory framework and case law. Dr Forret disagreed with the assessment of the section 42A report which recommended that the submission be rejected and noted the

⁴⁰ Ibid, Paragraph 25.

⁴¹ Rebuttal evidence Mark Arbuthnot of behalf of Dilworth Trust Board, Paragraphs 2.3-2.5, dated 3 May 2021.

absence of opposition from NZTA.⁴² Dr Forret further noted that the request to rezone has been subject to a comprehensive planning assessment, which included a structure plan, and had significant support from the local community.

- 4.61 Mr Glen and Mrs Abbie Neems filed evidence as directors of DCFL, providing a description and history of the property along with details of the current use of the site as a sheep and beef farm. They also noted issues they faced with respect to the property, observing that farming the site was difficult due to it being split into two by State Highway 23. Mr Gore and Ms Neems considered that development of their property on the northern side of State Highway 23 was an appropriate location for future growth and would help create a more vibrant community.
- 4.62 Mr Bevan Houlbrooke filed planning evidence on behalf of DCFL and described the key features of the structure plan that had been developed to support the rezoning request. Mr Houlbrooke considered that the rezoning proposal was generally consistent with achieving the relevant objectives of the PDP and the outcomes sought in the higher-level planning instruments. He also considered the proposal to be consistent with the general and rural-residential development principles listed in Section 6A of the RPS and generally consistent with achieving good planning practice in terms of the application of a new zone.⁴³ Overall, Mr Houlbrooke considered the site to be well suited to be zoned Country Living.
- 4.63 Mr David Mansergh filed landscape evidence on behalf of DCFL and, after undertaking a landscape assessment, considered the site was well suited to the level of intensification and development that could occur under the proposed Country Living Zone. He outlined the reasons for the key features of the structure plan such as maintaining and enhancing key landscape and ecological features, reinforcing the existing Te Uku Village core as the heart of a rural village and enabling connections to the village centre and school. He further noted that while rezoning would change the rural characteristics of the area, it was appropriate because it enabled the consolidation of an existing node of development in and around Te Uku as well as being an alternative to further fragmentation.⁴⁴ Mr Mansergh considered that the adverse landscape effects lost as a result would be partially offset by the positive effects associated with proposed riparian restoration and gully / wetland enhancement works.⁴⁵
- 4.64 Ms Judith Makinson filed transport evidence on behalf of DCFL. She summarised the findings of the integrated impact assessment and consultation with NZTA, with the key issues being access location and traffic volumes on State Highway 23. She further

⁴² Legal submissions on behalf of Diamond Creek Farm Limited, Paragraphs 36-46, dated 12 May 2021.

⁴³ Evidence in chief of Bevan Houlbrooke on behalf of Diamond Creek Farm Limited, Paragraphs 19-37, dated 17 February 2021.

⁴⁴ Evidence in chief of Dave Mansergh on behalf of Diamond Creek Farm Limited, Paragraph 139, dated 16 February 2021.

⁴⁵ Summary Statement of Evidence Dave Mansergh on behalf of Diamond Creek Farm Limited, Paragraphs 2-3.

described the proposed transport network for the development, including alternative transport modes and connectivity. Ms Makinson concluded that the traffic and transportation elements of the proposed future residential use of 50 to 200 dwellings was consistent with, and supportive of, the relevant objectives and policies of the PDP. She further considered that it would not impede the current NZTA considerations in relation to speed limit and future road safety improvements.⁴⁶

Tauwhare

- 4.65 Ms Hannah Palmer filed evidence on behalf of Bowrock Properties Limited and spoke to its request to rezone 20ha on Tauwhare Road from Rural to Country Living Zone. She considered that rezoning the subject site would be a natural extension of the Country Living Zone on the eastern boundary of the site. Ms Palmer explained that the site cannot be used for traditional rural purposes due to the adjoining rural-residential properties and reverse sensitivity complaints as well as its size not being economically viable in the long term. She summarised the findings of the technical reports which demonstrated that the site was suitable for rezoning and development. She also outlined the main effects and mitigation measures for contamination, three waters servicing, geotechnical, transport, economic, landscape, amenity and character. Ms Palmer considered that these technical reports demonstrate that, subject to appropriate mitigation, there were no site constraints or transport issues that would prevent the site from being developed in accordance with the proposed provisions of the Country Living Zone, or under amendments sought in other hearings.⁴⁷
- 4.66 Ms Palmer concluded that while the subject site did not fit neatly into the policy framework due to it being located outside of an identified growth area, the rezoning to Country Living is a pragmatic solution to the key issues currently being experienced. Furthermore, she considered that the section 32AA report demonstrates that rezoning the site is appropriate and feasible.⁴⁸
- 4.67 Ms Palmer also filed rebuttal evidence addressing the reasons for rejecting the request set out in the section 42A report. In particular, she considered that the reporting officer had placed too much weight on the strategic direction set for urban growth in higher order documents, particularly Future Proof and Waikato 2070 (including Section 6C Map 6-2 in the WRPS), and the overall approach to growth management within the Waikato District. Ms Palmer observed that Future Proof and Waikato 2070 are dynamic rather than static documents noting that and provision exists to consider rezoning proposals outside of these areas, particularly where there is strong evidence to do so.⁴⁹

⁴⁶ Evidence in chief of Judith Makinson on behalf of Diamond Creek Farm Limited, Paragraphs 28-29, dated 17 February 2021.

⁴⁷ Evidence in chief of Hannah Palmer on behalf of Bowrock Properties Limited, Section 8, dated 17 February 2021.

⁴⁸ Ibid, Section 10.

⁴⁹ Rebuttal evidence of Hannah Palmer on behalf of Bowrock Properties Limited, Section 3.34, dated 10 May 2021.

- 4.68 Mr Nick Smith filed a section 32AA analysis in support of his submission to rezone properties at Scotsman Valley to the Country Living Zone. The properties are currently zoned Country Living Zone in the ODP but were notified in the PDP as Rural Zone. Mr Smith advised that landowners in the Country Living Zone at Scotsman Valley have already made plans and investment decisions that reflect the value of the land and subdivision potential of the Country Living Zone. He considered that it was unfair to change the zoning to Rural Zone, as there would be no agricultural production value to the district from rural zoning.

Horsham Downs

- 4.69 Mr John Olliver filed a memorandum on behalf of the Village Church Trust whose submission sought the rezoning of their site on the southern side of Martin Lane from Rural Zone to Village zone (or a suitable alternative zone). The site is bounded by the Waikato Expressway to the south and Resolution Drive / Horsham Downs Link Road to the east, together with neighbouring land. Mr Oliver explained that the primary purpose of the submission was to ensure the future expansion of the Church was reasonably provided for, and he attached preliminary plans for the expansion to his memorandum. He further explained that an alternative solution was to classify 'community activities' as a permitted activity in the Rural Zone by amending Rule 22.1.2. Mr Olliver explained that the recommendations in the section 42A report for the Rural Zone (which were to provide for expansion of the Church as a restricted discretionary activity in the Rural Zone) would satisfy the Village Church Trust. He considered this to be a reasonable compromise and therefore clarified that no rebuttal evidence to the rezoning request was necessary.

Waiuku

- 4.70 Mr Choudhary of Khushwin Limited, the owners of the property at 135 Hull Road, Waiuku, spoke in support of their submission seeking rezoning of 42ha of land from Rural to Living or Country Living Zone. Mr David Lawrie filed a letter describing the site as adjoining the Auckland Council boundary to the north-west which is zoned "Residential – Large Lot". He noted that although the soils are labelled 'versatile' on Council's maps, the soils will be retired to pasture grazing, which will stop any spray and dust problems so close to a residential area. He further explained that cropping is no longer economically viable due to the topography and the land adjoining residential Waiuku (which is under the jurisdiction of the Auckland Council). He stated that the land area was rather small and it was not economically sustainable to crop the land anymore. He considered that the rezoning proposal was not inconsistent with Objective 5.1.1 in the notified PDP as the site would provide an appropriate buffer between residential and rural land and has minimal impacts on the existing rural and urban character of the area because the re-zoning would blend into the existing environment. He considered that the proposal achieved the purpose of the RMA as it promotes the sustainable management of natural and physical resources and avoids any adverse effects of activities on the environment.

District-Wide

4.71 Mr Mike Wood filed evidence on behalf of NZTA and addressed all the rezoning requests that NZTA further submitted on. He helpfully set out his position on each of the requests:

- a) TGH – opposed, as further work is required through Phase 2 of the Future Proof review to further assess the strategic implications of urbanising this area. Until such time as this review is complete, he considered the zoning should remain Rural.
- b) Malcolm MacDonald – opposed, on the basis that unplanned growth beyond urban limits has the potential over time to erode the efficient movement of people and freight along the Waikato Expressway. He considered there was a lack of defensible boundaries and the current access arrangements would impact on safety of the Waikato Expressway.
- c) Ohinewai Lands Limited – opposed, on the basis that the request was inconsistent with the approved Future Proof settlement pattern and because the submission did not consider the adverse effects on the transport network.

4.72 Ms Laura Galt filed evidence on behalf of HCC that addressed all of the rezoning requests that HCC filed further submissions on. In terms of the submissions seeking rezoning from Rural to Country Living Zone (such as the submissions from G & M Burnett, M Smith, HPL, Bowrock Properties, and A & C Gore); Ms Galt opposed any further expansion of the Country Living Zone within Hamilton’s Area of Interest. She considered that there was often a disconnect between the expectation for levels of infrastructure service versus the ability to fund those services. She outlined concerns with cross-boundary impacts on infrastructure within Hamilton, particularly transport, three waters and social infrastructure. She observed that when the Country Living Zone is located adjacent to existing urban areas, it precludes future urban expansion.

4.73 Ms Galt also addressed the request from TGH and clarified that collective planning for this area is being progressed through Future Proof and the Metro Spatial Plan. As an alternative, she supported the area becoming a Future Urban Zone, provided that land uses are limited to industrial activities with appropriate infrastructure and capacity staging triggers. She addressed the request from Malcolm MacDonald in a similar way and considered that rezoning was premature given the progress of the Metro Spatial Plan. Ms Galt continued to oppose the submissions in Matangi seeking rural residential zoning but did accept that these locations are within the Future Proof and RPS urban limits.

4.74 Ms Galt summarised HCC’s overall position as:

- a) Urban rezoning requests outside of the identified growth nodes should not be considered favourably; and

- b) The extent of the Country Living Zone remains static in the Waikato District, particularly in the Urban Expansion Area.

4.75 Ms Miffy Foley filed evidence for WRC and addressed both general matters relating to zone extents and specific submissions / groups of submissions requesting changes to the notified zoning. She expressed concern about the approach to new 'live' zone areas, and in particular the lack of certainty regarding infrastructure provision. She considered such an approach does not give effect to the RPS. Ms Foley also considered that the notified PDP had sufficient short and medium-term capacity for urban development, thus negating the need to include extensive areas of greenfield residential zoned land at this time.

5 Panel Decisions

- 5.1 We note that a large number of primary submission points were received on the zoning across the Waikato District, and these were all considered in comprehensive section 42A reports, rebuttal section 42A reports and closing statements prepared by Ms Tait and Ms Boulton. Where possible, we have grouped our findings on these submission points into geographic areas.

6 Puketaha

Greenhill Road Motorway Service Zone

- 6.1 Having heard from Mr MacDonald and his planning expert Ms Morse, we consider that the proposal has merit and is an efficient use of the land given the immediate proximity of the site to the on-and off-ramps of the Waikato Expressway. We understand the issues raised by Mr Wood on behalf of NZTA regarding safety of the Waikato Expressway and access to the site but consider that these can be addressed through good design and subsequent RMA processes. While we acknowledge that the site is within Hamilton's Urban Expansion Area where the general policy approach is not to allow development, we do not consider development of this site will compromise future urbanisation in the vicinity. Additionally, we agree with Ms Morse that the rezoning of this site will not impact on the future development of growth cell R2, particularly given its unique location on the Waikato Expressway off-ramp.⁵⁰ We also agree with Ms Morse's analysis and conclusion that the rezoning proposal is generally consistent with achieving the outcomes sought in the higher-level planning instruments, including the general development principles listed in Section 6A of the RPS.⁵¹ In this regard we consider that the proposal gives effect to the RPS.

⁵⁰ Rebuttal Evidence of Tracey Morse on behalf of Malcolm MacDonald, Paragraph 16, dated 3 May 2021.

⁵¹ Evidence in chief of Tracey Morse on behalf of Malcolm MacDonald, Paragraph 35, dated 17 February 2021.

- 6.2 While Ms Tait's section 42A report considered that a traffic impact assessment and assessment of effects are necessary to determine the appropriateness of this rezoning request, we agree with Ms Morse that this is more appropriate at the resource consent stage. We further consider that a restricted discretionary activity status is the most appropriate in this respect and will enable such issues to be considered and addressed.
- 6.3 Ms Morse sought the site be zoned as Business Zone with a Motorway Service Area overlay and we agree. The additional provision is included in **Attachment 1**.



Figure 3: Zoning of 133 Greenhill Road

- 6.4 The Burton Family Trust's submission sought rezoning of approximately 500ha of land bounded by the Waikato Expressway, Puketaha Road, Telephone Road and Holland Road as the Future Urban Zone. We note that the site is not identified for growth in either Future Proof 2017 or Waikato 2070 and we did not receive any technical evidence to support the request. We have concluded it would be premature to rezone an area of this

size without a more comprehensive and integrated consideration of the proposal and its effects and have therefore rejected the submission.

- 6.5 David and Barbara Yzendoorn sought to amend the zoning of the properties between Gordonton Road, Greenhill Road and the Waikato Expressway (including 83 Greenhill Road, Puketaha) from Rural to Residential Zone. We agree with Ms Tait's analysis in her section 42A report that the location of this site within the R2 growth cell means it is suitable for urban development, but that rezoning of the area is premature. As this area will be transferred to HCC at some point, we consider that is a more appropriate opportunity to plan this area comprehensively. We have therefore rejected the submission.

7 Ruakura

- 7.1 TGH's submission sought a new Ruakura Industrial Zone to apply to land in Ruakura east of the Waikato Expressway. Given that legal counsel has clarified that TGH were not pursuing the submission through this district plan review process, we accordingly reject the submission.

8 Tamahere

- 8.1 Grant and Merelina Burnett sought that the property at 50 Te Awa Lane be rezoned from Rural to Country Living Zone. We are particularly aware that the surrounding properties are zoned Country Living Zone and see no reason why this property should not be zoned similarly. The rezoning of the property will make a more logical boundary with the adjoining Rural Zone, particularly as it will result in Te Awa Lane forming the boundary between the Rural Zone and the Country Living Zone. We are aware that there is a Maaori Area or Site of Significance on the site so care will need to be taken with the subdivision layout and location of buildings. Having said that, we agree with Mr Bigwood's assessment of the technical evidence that there are no environmental matters that would prevent the site from being developed for country living purposes. We further agree with Mr Bigwood's evaluation that the proposal is generally consistent with the objectives and policies of the PDP and gives effect to the RPS.

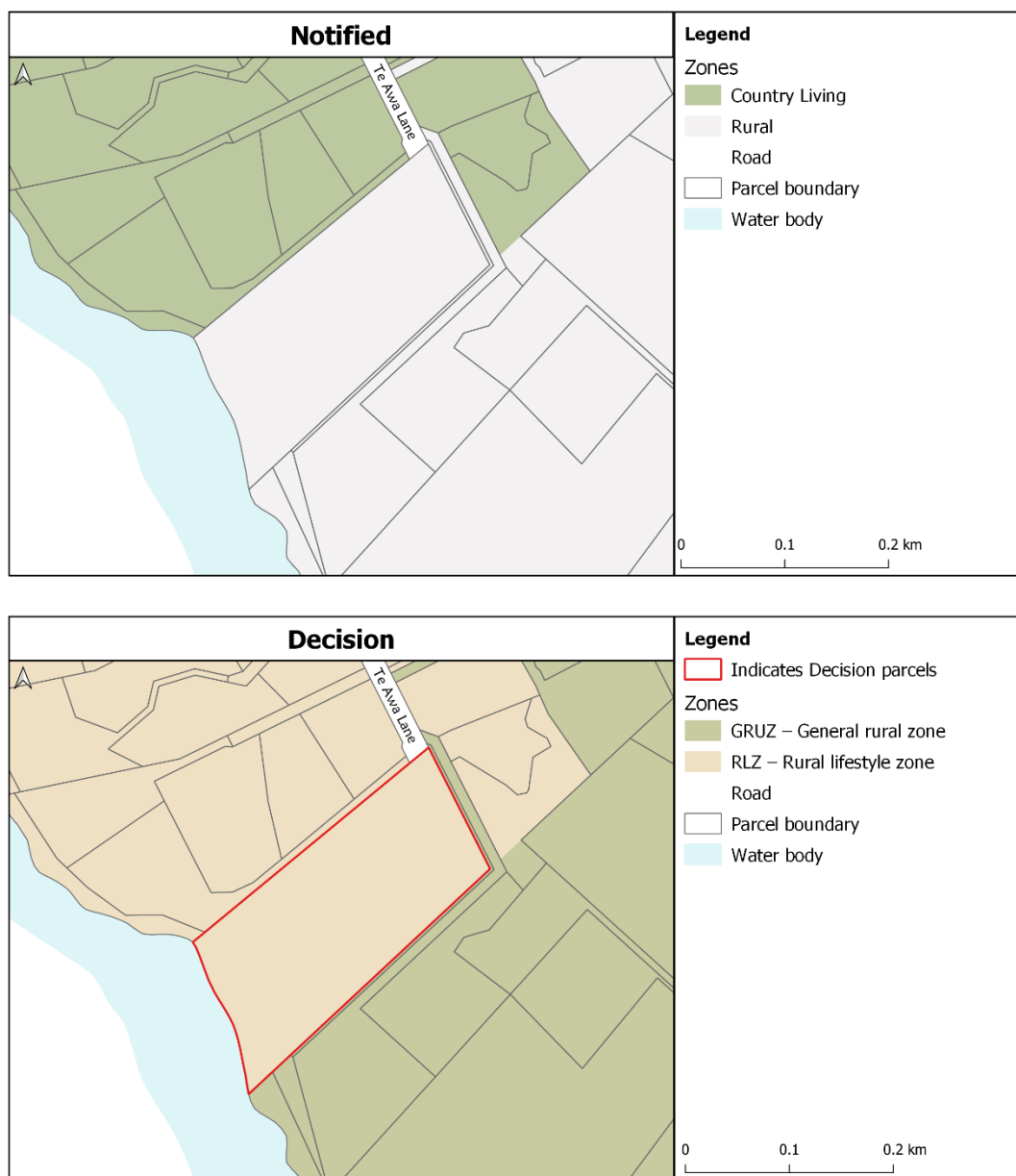


Figure 4: Zoning of 50 Te Awa Lane

- 8.2 Mr Smith sought rezoning of properties in Summerfield Lane, Tamahere from Rural to Country Living Zone. While we acknowledge that these are small sites, we consider that the zoning of this area needs to be considered more comprehensively to enable all the characteristics of the land in question and surrounding area to be evaluated. We are particularly aware of RPS Policy 6.17 which directs that careful management of rural residential development needs to recognise the pressures from, and the adverse effects of, rural residential development, particularly within close proximity to Hamilton City. Policy 6.17 also directs us to consider the potential for adverse effects, conflicts between activities, servicing demands and cross-territorial boundary effects. We consider that accepting this submission would likely result in an undesirable spot zone, created in

isolation of consideration of the most appropriate future development of the wider area. We therefore reject the submission.

- 8.3 Divina Libre, Mel Libre, Kim Angelo Libre and the Bettley-Stamef Partnership sought to amend the zoning for the land located between the Waikato Expressway and the Tamahere Country Living Zone (which includes Yumelody Lane) from Rural to Country Living Zone. 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. We are aware that Policy 6.17 of the RPS directs that careful management of rural residential development needs to recognise the pressures from, and the adverse effects of, rural residential development particularly within close proximity to Hamilton City; as well the potential for adverse effects, conflicts between activities, servicing demands and cross-territorial boundary effects. The policy states that rural residential development should have regard to the principles listed in Section 6A of 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 referenced in principle (b). On balance, we do not consider that the rezoning requests give effect to Objective 3.12, Policy 6.1, Policy 6.3, Policy 6.17 or the Section 6A principles of the RPS, particularly when contemplated through a conservative lens which the RPS signals is necessary for the Hamilton Fringe. We therefore have rejected these submissions.
- 8.4 J and T Quigley sought rezoning of 25 Tamahere Drive from Rural to Village Zone. We agree with Mr Shaw that a Village Zone is appropriate for the reasons he outlined; namely that there is no physical connection to any other rural land, the site is already urban in nature (being used as an early learning centre for up to 114 children), and the Tamahere Commercial Area is directly to the west of the site. We also agree with Mr Shaw's assessment that the rezoning proposal is supported by the PDP objectives and policies that identify the locations that are generally suitable for urban growth. We therefore consider that the rezoning of the site to Village Zone will give effect to the objectives of the PDP by enabling the consolidation of an existing settlement, in accordance with the requirements of Section 32AA of the RMA.

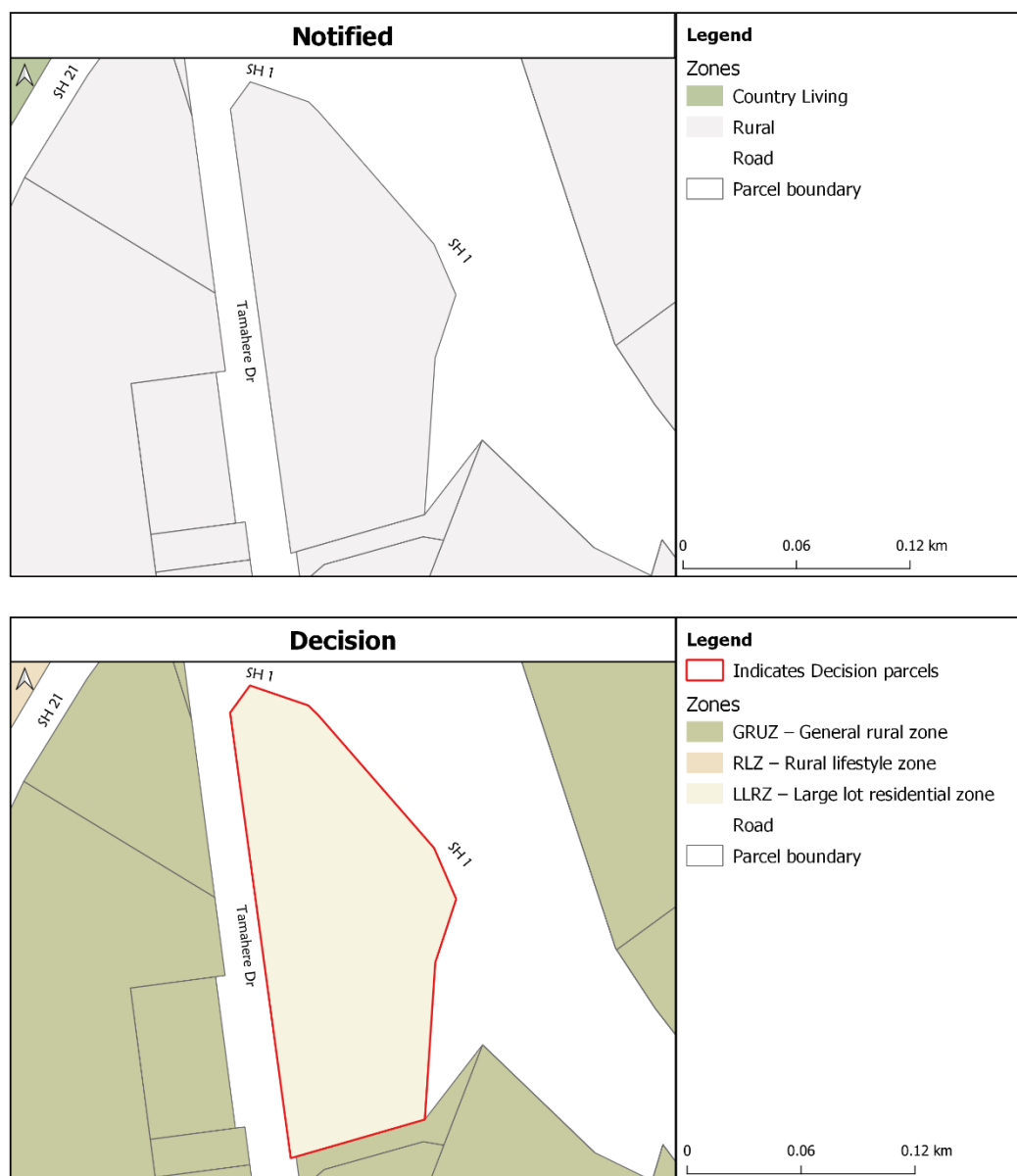


Figure 5: Zoning of 25 Tamahere Drive

- 8.5 Wendy Oliver sought rezoning of the property at 50C Cedar Park Road from Country Living to Village Zone (or to a deferred zone) or, alternatively, to reduce the minimum lot size of the Country Living Zone. We reject the submission as it would result in an inappropriately sited spot zone, that would also increase the potential for reverse sensitivity effects from the adjoining Rural Zone site.
- 8.6 Council sought to correct the erroneous zoning of the following two properties:
- 78 Strawberry Fields Lane from Road Zone to Rural Zone; and
 - 6, 6A and 20 Bates Road from Rural Zone to Country Living Zone.

8.7 We agree and have made the amendments accordingly.



Figure 6: Zoning of 6, 6A and 20 Bates Road



Figure 7: Zoning of 78 Strawberry Fields Lane

- 8.8 Tamahere Eventide Retirement Village (TERV) sought the retention of the Country Living Zone on land at, and immediately adjacent to, 621 and 597 State Highway 1 as per the notified PDP. We see no reason to change the zoning and accept the submission.
- 8.9 TERV also sought rezoning of the sites at 158, 168 and 174 Matangi Road from Rural to Country Living Zone. We agree that this is a logical extension 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.



Figure 8: Zoning of 158, 168 and 174 Matangi Road

8.10 Ngaakau Tapatahi Trust sought to either amend Rule 22.1.2 Permitted Activities to provide for "health facilities" to protect the ongoing operation and development of Tamahere Hospital and Healing Centre at 104A Duncan Road; or, alternatively, rezone the site from the Rural Zone to the Business Zone. Considering that all of the adjoining sites are zoned Rural, we do not consider a spot zoning to be appropriate. Through our consideration of the Rural Zone provisions, we have included a new policy that provides for 'other anticipated activities in rural areas', as well as a restricted discretionary activity rule for community facilities (the definition of which includes health facilities). We consider that the Rural Zone provisions will protect the ongoing use and development of the Tamahere Hospital and Healing Centre. We therefore accept in part the

submission as we have addressed the submitters concerns through provisions rather than rezoning.

9 Matangi

- 9.1 A number of submitters sought that properties in Matangi be rezoned from the Rural to the Country Living or Village Zone (Geoffrey Long, Peter Fitzpatrick, the Matangi Community Committee, Ian Thomas, Ian and Darienne Voyle, Sharp Planning Solutions, Matangi Farms, Ethan Findlay, Amy and Andrew De Langen and Family Jepma). It seems to us that the Matangi Dairy Factory forms the centre of the settlement, with sites zoned located on the western edge of the Matangi Dairy factory as well as along Matangi Road. We gave the future settlement pattern for Matangi considerable thought, particularly given that we are aware that there is a high likelihood of wastewater servicing being provided in the future and the development plans for the Matangi Dairy Factory site. We wish to avoid enabling development now, in circumstances where it could compromise future development and intensification of the settlement. There are a number of sites zoned Residential around the centre of Matangi, and that factor along with the likelihood of reticulated wastewater servicing sets it apart from other areas seeking to be zoned as Village Zone. We consider the Village Zone enables a higher level of development while resulting in sites that are large enough to be further developed to urban densities if / when reticulated wastewater is available. We consider this approach will enable Matangi to grow and transition logically into a more urbanised centre.
- 9.2 It seems to us that the centre of Matangi is the intersection of Tauwhare and Matangi Roads and is framed by the Matangi Dairy Factory site and the commercial area on opposite corners of that intersection. Urban development has occurred only on the western side of the railway line, and we consider the railway line is an appropriate (and defensible) boundary. There is land zoned Residential on Taplin Road and Good Street and we see no reason why the land in between should remain as the Rural Zone. We consider that zoning the properties at 436A and 436B Tauwhare Road as Village Zone will enable a large lot residential form of development that will lend itself to a more intensive urban zone if / when reticulated wastewater is available. We also consider that the rezoning of these two properties will continue to focus residential development around the intersection of Tauwhare and Matangi Roads, rather than letting development sprawl. We further consider that the rezoning of these sites will address some of the reverse sensitivity issues that were raised in evidence by the submitters.
- 9.3 We have rejected all of the other submissions received from landowners in Matangi as they will undermine the compact form of the village as they do not give effect to the RPS or achieve the PDP objectives. Having considered the options open to us and the costs and benefits, we consider the rezoning of the properties at 436A and 436B Tauwhare Road will give effect to the RPS and more appropriately achieve the PDP objectives in accordance with section 32AA of the RMA.



Figure 9: Zoning of 436A and 436B Tauwhare Road

10 Glen Massey

- 10.1 The nineteen submissions requesting rezoning of land within Glen Massey related to two large sites located at 233 Wilton Collieries Road and 859 Waingaro Road. Addressing the site at 859 Waingaro Road first, we are aware that the PDP reduced the extent of the Country Living Zone for this site from 31ha to 48ha, as in the ODP. Having considered Mr Robcke’s planning evidence and the technical assessments, we agree that the 31ha of land at 859 Waingaro Road is more appropriately zoned as the Village Zone. We consider this will enable consistency with the existing Village Zoning and pattern of development on the southern side of Wilton Collieries Road / Waingaro Road.

We consider that the extent of the zone as notified in the PDP is appropriate given the topography of the site and distance from the Glen Massey School. We are also cognisant of Mr Robcke's comments at the hearing about the marginal ability to provide appropriate access to the more southern portion of the site (that is zoned Country Living Zone in the ODP). We consider that a Village Zone at the northern-most portion of the site, immediately adjacent to the existing village, will enable Glen Massey to grow in a sustainable way. This area was identified for future residential growth in the Glen Massey Structure Plan and, after considering all the alternatives open to us, we consider the rezoning of this site is an appropriate method to achieve the relevant objectives in the PDP. We therefore accept the submission.

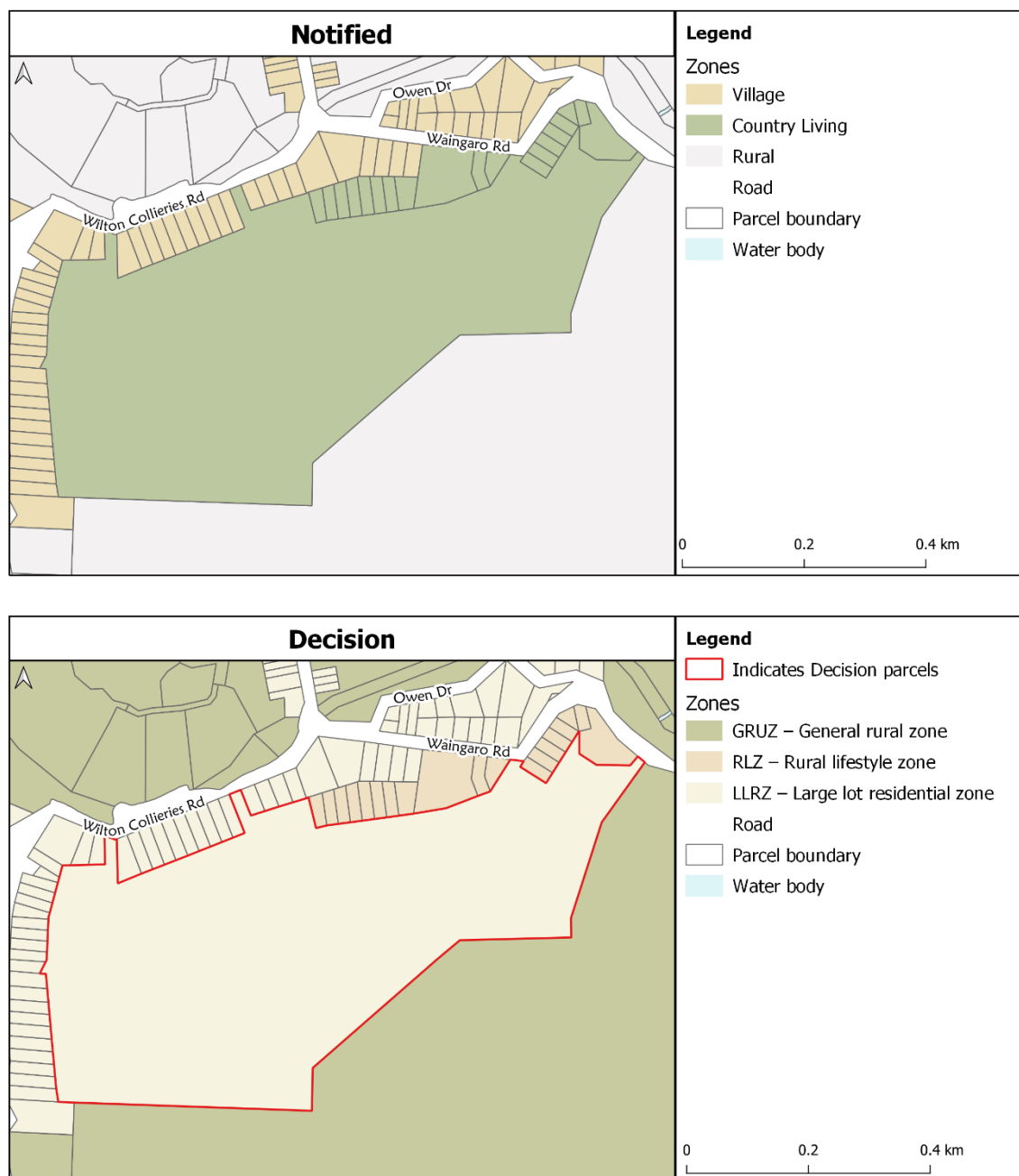


Figure 10: Zoning of 859 Waingaro Road

10.2 Turning to the 28.996 ha site located at 233 Wilton Collieries Road, the submissions received sought the land be zoned as both the Country Living Zone and the Village Zone. While we are aware that an 18 lot staged subdivision consent has previously been approved for this property and that 2 lots have already been created, we were not persuaded by the evidence presented to us. We do not consider this property to be suitable for rezoning, for the reasons set out in the section 42A report, which we adopt.

11 Te Uku

11.1 DCFL sought rezoning of a 43ha rural property on State Highway 23 from Rural Zone to Country Living Zone, however we do not consider the rezoning to be appropriate. This is a substantial development that is not located within an indicative urban or village limit identified in Future Proof 2017, nor is it in Waikato 2070. We agree with the following observations of Ms Boulton in her section 42A report:⁵²

- a) Te Uku is a small rural settlement rather than an existing urban area. The rezoning request therefore does not support an existing urban area, rather the submission seeks to create a new one.
- b) The Landscape and Visual Assessment concludes that the rezoning will affect existing rural character and amenity by enabling greater density of development than that which can be achieved through the Rural Zone rules.
- c) The rezoning request does not promote compact urban form, design and location. While the structure plan provided for the request shows pedestrian walkways and cycleways throughout the site, and a footpath may be located across the frontage of the site as part of a subdivision, there are no connections beyond this for walking and cycling at this time.
- d) The likelihood of reverse sensitivity effects.
- e) The likelihood of positive social consequences in creating more of a community and growing the school in this location.
- f) The property is a productive farm with high class soils.
- g) In terms of Policy 6.17 of the RPS (Rural-residential development in Future Proof), the rezoning request will contribute to pressure to fragment the rural land resource. At Te Uku, this will occur over an area of the rural resource which has not been identified for future urban growth. This therefore creates a pressure to fragment the rural land resource rather than manage it.
- h) This rezoning request does not make use of an opportunity for urban intensification and redevelopment to minimise the need for urban development in greenfield areas.

11.2 We consider that increasing the density to the scale sought would substantially change the rural character and, most significantly, would effectively create a new settlement that would not give effect to the RPS or achieve the objectives of the PDP. For these reasons, we have rejected the submission of DCFL.

⁵² Section 42A report Hearing 25 Zone Extents - Rest of District, Catherine Boulton, Paragraphs 123-124, dated March 2021.

12 Horotiu

- 12.1 Mr Pitcher sought that the property at 20 Horotiu Bridge Road be zoned as the Country Living Zone, while HPL sought that the adjoining property at 27 Sullivan Road be similarly rezoned to the Country Living Zone. Given the proximity to existing land zoned as the Country Living Zone immediately across Horotiu Bridge Road to the east; we consider that the rezoning of both sites to the Country Living Zone will result in an efficient use of land and a consistent character / pattern of development. While we understand the concerns of Ms Galt on behalf of HCC, HT1 is a significant area of land and we do not consider that the development of these sites will undermine the ability to urbanise in the future (if deemed appropriate for this area).
- 12.2 We agree with Ms Morse's assessment that Horotiu is an appropriate location for a (modestly sized) Country Living Zone as it will enable the consolidation of an existing node and offer an alternative to further fragmentation in the Rural Zone. We further agree that the proposal is generally consistent with achieving the outcomes sought in the higher-level planning instruments and, most notably, is consistent with the general and rural-residential development principles listed in Section 6A of the RPS. We found the evidence of Ms Simpson helpful for understanding the history of the site at 27 Sullivan Road and the reason for the lake in the middle of the site. Having considered the options available to us, we consider that the rezoning of the sites will achieve the objectives in the PDP and better reflect the characteristics of the sites. Based on the evidence presented to us by submitters, we accept the submission of Mr and Mrs Pitcher and HPL and rezone both properties as Country Living Zone.

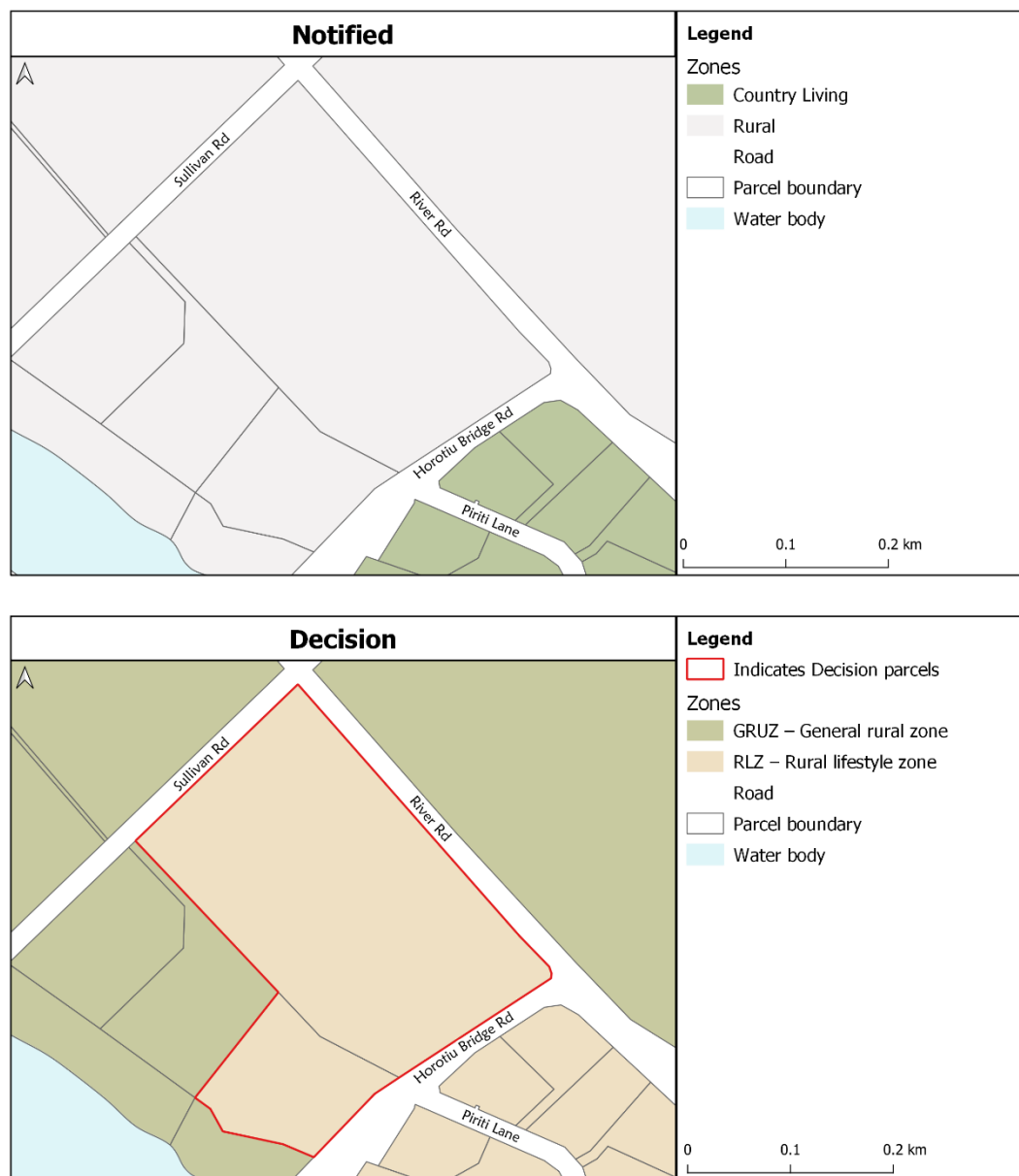


Figure 11: Zoning 20 Horotiu Bridge Road and 27 Sullivan Road

13 Rotokauri

- 13.1 While we had some sympathy for Mr Hall who sought rezoning of land at O'Brien Road from the Rural Zone to the Country Living Zone, this would result in a spot zoning. We agree with Ms Boulton's assessment that the rezoning request is inconsistent with Objective 3.12 and Policy 6.17 of the RPS. We consider that management of rural residential development needs to recognise the pressures from, and the adverse effects of, rural residential development, particularly within close proximity to Hamilton City, as well as the potential for adverse effects, conflicts between activities, servicing demands and cross-territorial boundary effects. Additionally, Policy 6.17 states that regard is to be had to the principles listed in Section 6A of the RPS.

- 13.2 In this particular case, we agree with WRC and HCC that the Country Living Zone is not appropriate and therefore reject Mr Hall's submission.

14 Horsham Downs

- 14.1 Peter Pavich and Debbie McPherson sought to have their 23ha site at 41 Ormsby Rd rezoned from the Rural Zone to the Country Living Zone. Similarly, Ian and Helen Gavin sought that their property at 474 Boyd Road be rezoned to the Country Living Zone. We have rejected these submissions on the basis that they would result in spot zonings that are not contiguous with any other similar zoning or development. We agree with Ms Boulton's assessment that the rezoning requests are inconsistent with RPS Objective 3.12 and consider that they are also inconsistent with the principles listed in Section 6A of the RPS.
- 14.2 The Village Church Trust sought to amend the zoning of properties on the southern side of Martin Lane from the Rural Zone to the Village Zone (or a suitable equivalent zone). We are aware from Mr Olliver's memorandum that the Village Church Trust is satisfied that its submission can be addressed through the Rural Zone provisions which would allow expansion of the Church as a restricted discretionary activity. This seems to us to be a pragmatic solution, rather than rezoning the property which would result in a spot zoning that would not give effect to the RPS or achieve the objectives of the PDP.
- 14.3 Turning to the submission from Mr and Mrs Gore who sought rezoning of the property at 295 Kay Road from the Rural Zone to the Country Living Zone, this site is in the Urban Expansion Area. We are aware that this overlay identifies those areas which will ultimately transfer from the Waikato District to form part of Hamilton City's territorial boundary. The proposed policy framework for the UEA is as follows:
- 5.5.1 Objective – Hamilton's Urban Expansion Area*
(a) Protect land within Hamilton's Urban Expansion Area for future urban development.
- 14.4 We consider that enabling the Country Living Zone in this location will compromise the ability to develop the adjacent area in a well-planned and integrated way. While we acknowledge their past challenges in dealing with the development of the Waikato Expressway, we do not consider the Country Living Zone to be appropriate. We agree with, and adopt, the reasoning in the section 42A report and therefore reject the submission.
- 14.5 Geotec Low Limited and Martin Lynch sought rezoning of the property at 2044 River Road to the Country Living Zone in order to make it the same as it currently is zoned in the ODP. We are satisfied that there was an error in the PDP mapping and consider that the property should revert to the Country Living Zone.



Figure 12: Zoning of 2044 River Road

15 Whatawhata

- 15.1 Stuart Seath sought to have the 44.6ha property located at 679 Whatawhata Road rezoned as the Country Living Zone. We consider that this would result in a spot zoning and we agree with, and adopt, Ms Boulton's assessment that the rezoning request does not give effect to the RPS. We therefore reject the submission from Mr Seath.
- 15.2 GW and PJ Thomson and the Thomson Family Trust sought to amend the zoning of the properties at 111 and 117 Mason Road from the Rural Zone to the Industrial Zone. We are aware that the site is located in relatively close proximity to existing urban zoning, but is separated from it by Rural Zoned land. We have rejected this submission as we

consider that rezoning this land would result in an isolated pocket of land that, at this time, does not form part of a consolidated extension to the existing urban zoned area. We consider a more appropriate approach is to consider this site as part of the wider urban growth considerations for the area as shown in Map 6C of the RPS.

16 Gordonton

- 16.1 David and Barbara Yzendoorn sought to rezone the properties at 1002 and 1012 Gordonton Road from the Rural Zone to a Residential Zone. We agree with Mr Robb that the rezoning is appropriate as the site is relatively small, already developed, abuts Residential Zoned sites, is of a similar size to these abutting sites, and can serve no productive rural purpose. While we note the physical constraints to development of the larger rear site of 1012 Gordonton Road due to low lying wet areas; we consider that the zoning of these two sites will complement the urban development that already exists on either side of the Yzendoorn sites. We also consider that the Residential Zoning will achieve the objectives of the PDP, and give effect to the general development principles listed in Section 6A of the RPS.



Figure 13: Zoning of 1002 and 1012 Gordonton Road to Residential Zone

17 Extensions to existing settlements

17.1 The following submissions sought an extension of the Village Zone within the specific settlements listed:

- Neil and Suzanne Cummings sought rezoning of their property at 1474 Kaiaua Road, Mangatangi;
- Maoro Property Limited sought to rezone the property at 77 Maoro Road, Otua from the Business Zone to the Village Zone; and
- Three submissions were received on the same area at Pukekawa:

- (i) Joanna Clark sought to amend the zoning of the front section (near the road) of the property at 730 State Highway 22, Pukekawa from the Rural Zone to the Village Zone; and
- (ii) Ngati Tamaoho Trust and Ngati Te Ata both sought to amend planning maps for Pukekawa to remove the area included in Plan Change 14. This was so that development was not able to be “up the sides” of the Hill around Pukekawa Pa.

17.2 The sites at Mangatangi and Pukekawa listed above are of a significantly larger scale than the smaller existing settlement properties which they adjoin and as a result, their rezoning would significantly increase the sizes of the settlements. These villages also have not been identified as growth areas through Future Proof 2017, the RPS or Waikato 2070. We have therefore rejected the submissions of Neil and Suzanne Cummings, and Joanna Clark.

17.3 In terms of the extension of Pukekawa up the sides of Pukekawa Pa, we do not consider this is appropriate. We consider that retaining the existing Rural Zone will achieve the PDP objectives more appropriately than allowing increased development on this culturally important site (which is identified in the PDP as a Maaori Site of Significance).

17.4 The request for rezoning of the property at 77 Maioro Road (listed above) is a different situation in that the site is already zoned as Business Zone. We are aware that this site is not currently being used for commercial purposes, and we consider that a Village Zone is more suited to the Otatau settlement. It seems to us that a settlement of the size of Otatau does not need a large area of Business Zoned land, particularly when it is not being used for commercial purposes. Having considered the options and the costs and benefits in accordance with section 32AA of the RMA, we consider that rezoning the site to Village Zone is the most appropriate way to achieve the objectives of the PDP. Overall, rezoning of the site would not result in a degree of change to the community which would then cause significant benefits or costs from an environmental, social, economic, employment and cultural perspective. We therefore accept the submission from Maioro Property Limited and have changed the zone from the Business Zone to the Village Zone.



Figure 14: Zoning of 77 Maoro Road

17.5 Peter Thomson requested that Council consider the rezoning of the township of Maramarua to encourage its development as a service centre for State Highway 2. While the submission may have merit, we have rejected it due to the lack of information or evidence provided. It is for similar reasons that we have rejected the submission from Shelley Munro who sought to extend the urban growth area in the north all the way along State Highway 2.

18 Isolated Rural Zoned Land

18.1 Three submissions sought, what amounts to, spot rezoning from the Rural Zone to the Village Zone for sites that are unconnected to any other Village Zone, namely:

- a) Ben Young for Madsen Lawrie Consultants Limited in relation to the property at 598 Kohanga Road, Onewhero; and
- b) Ben Young for Madsen Lawrie Consultants Limited who sought rezoning of both sides of McKenzie Road, Mangatawhiri; and
- c) Linda Young who sought rezoning of the properties at 2621 and 2619 River Road.

18.2 We have rejected all of these requests and agree with, and adopt, Ms Boulton's assessment that the proposals do not give effect to the RPS, nor achieve the objectives of the PDP. We wish to draw Ms Young's attention to our decision to delete the indicative walkway, cycleway and bridleway notation from the PDP which may address some of her concerns that a reserve may be created which devalues her property.

19 Te Hoe

19.1 Will Phelps sought to amend the zoning of the properties located at 5, 9, 11, 15 and 17 Mangatea Road, Te Hoe so that they retain the ODP zoning of the Living Zone, rather than the proposed Village Zone. We agree with Ms Boulton's assessment that these properties are most appropriately zoned as Village Zone. This area is not serviced for reticulated wastewater, and we consider that the Village Zone reflects the character and realistic development potential for the properties more accurately. We therefore reject the submission from Mr Phelps.

20 Maoro Mining Zone

- 2. New Zealand Steel Holdings Limited sought to rezone the North Head mine site at Port Waikato as the Maoro Mining Zone. It seems that our choices are to either:
 - a) Have a bespoke Maoro Mining Zone (as requested by the submitter); or
 - b) Adopt the PDP approach that applies an "Aggregate Extraction Area" overlay to the site.
- 20.1 We agree with Ms Boulton's assessment in her section 42A report and consider that an Aggregate Extraction Area overlay is a more efficient approach which can be applied to other quarry / mining sites within the Waikato District, while still recognising the significant mining activities that occur on the Port Waikato site. We therefore reject the submission from New Zealand Steel Holdings Limited.

21 Ohinewai

21.1 While the future zoning of Ohinewai was the subject of its own hearing, we chose to focus that decision on the submission from APL,⁵³ simply because we needed to consider the other submissions seeking zones such as the Country Living Zone and the Residential Zone in the wider context of future growth throughout the District. In drafting this decision on the balance of the submissions addressing zoning at Ohinewai, we have also considered the evidence that was presented to us in Hearing 19. This means that we are yet to decide on the following submissions which sought amendments to the zoning near Ohinewai:

- a) Shand Properties Limited;
- b) OLL;
- c) Ohinewai Area Committee;
- d) PLB Construction; and
- e) Ribbonwood Family Trust.

21.2 We now address each of these submissions in turn.

21.3 OLL sought that a further growth area be signalled within the Ohinewai Structure Plan proposed by APL. With respect to this submission, we received considerable evidence on the area to the south of Tahuna Road, but very little information on the Balemi Road site. Based on the information available to us, we agree that the site to the south of Tahuna Road should be zoned as Future Urban Zone, but consider that the site south of Balemi Road should remain as the Rural Zone. We agree with Mr Twose that the change to the Future Urban Zone gives effect to Policy 8 of the NPS-UD and is consistent with the Waikato 2070 strategy. We also agree that the physical characteristics of the land to the south of Tahuna Road are well suited to be zoned Residential in the future, in conjunction with the land areas proposed by APL. However, based on the evidence presented by APL, as well as others, we consider that the extent of the Industrial Precinct identified in our decision on the APL proposal is sufficient at this time and there is no need to identify more on Balemi Road. We again note we received very little evidence for the Balemi Road site in comparison with the Tahuna Road site and in addition to this, we are concerned about the potential flooding of the Balemi Road site given its proximity to Lake Rotokawau.

21.4 While NZTA opposed OLL's submission on the basis that the request was inconsistent with the approved Future Proof settlement pattern and because the submission did not consider the adverse effects on the transport network; we consider that road design can

⁵³ Report and Decisions of the Waikato District Plan Hearings Panel – Report 2 Ohinewai Rezoning, dated 24 May 2021.

be considered at the time of rezoning and/or the subsequent subdivision. From the evidence presented at Hearing 19 Ohinewai Rezoning, it was apparent to us that the Waikato Expressway has the capacity for this.

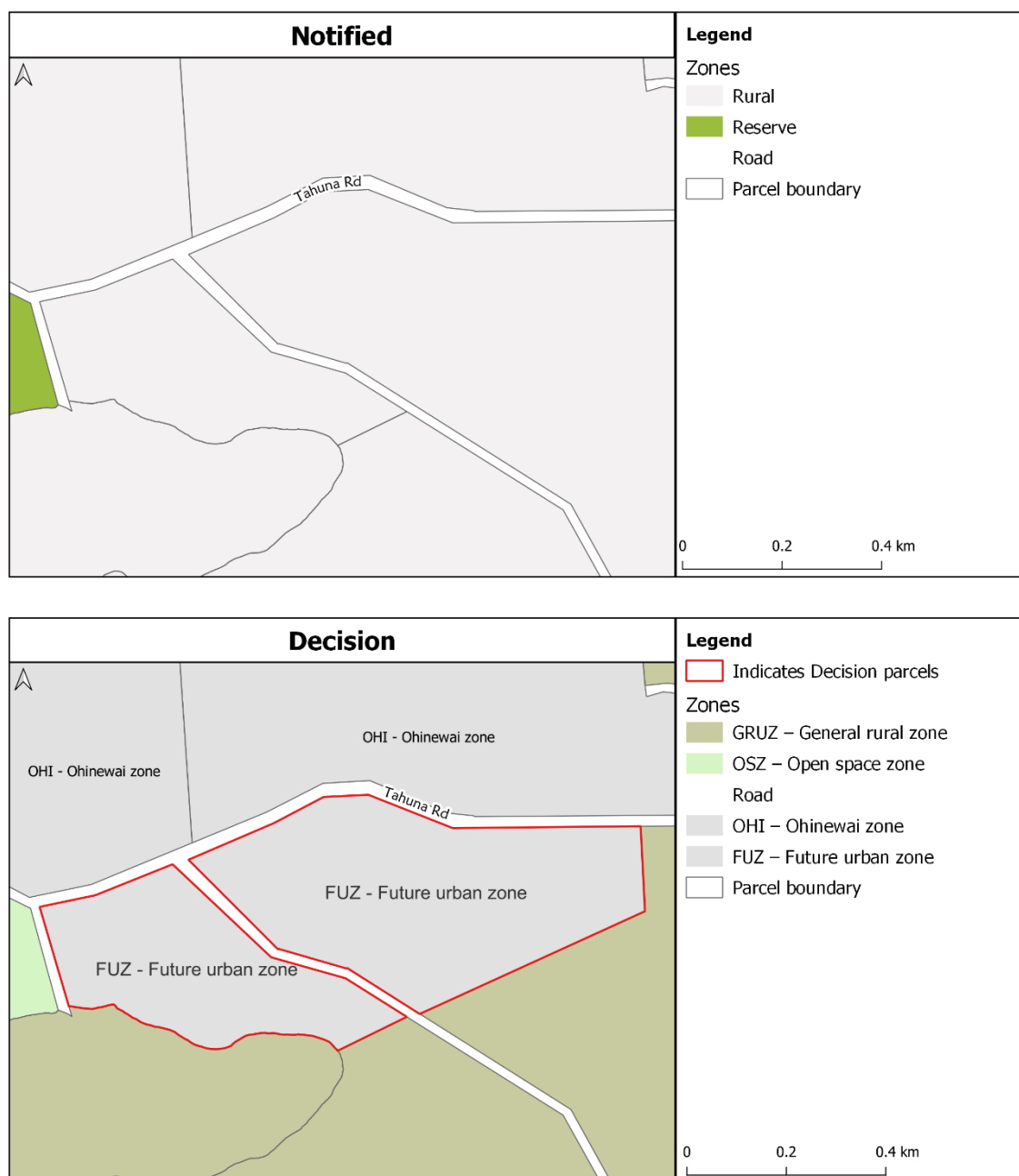


Figure 15: Zoning for the site on Tahuna Road

21.5 Shand Properties and Ribbonwood Family Trust sought that land on the western side of State Highway 1 be rezoned as the Country Living Zone, rather than the Rural Zone. We heard no evidence to support the proposed rezoning of either of these sites, although the submission from Shand Properties did include a number of technical assessments. The further submission received from Future Proof explains why the

Country Living rezoning requests are considered to be inconsistent with the Future Proof settlement pattern and the RPS. In particular, the submission notes that the requests are outside of the indicative growth limits around town centres and villages on Map 6.2 and are contrary to the requirements of RPS Policy 6.17. We agree. In addition to this, this form of development was not envisaged by Waikato 2070 despite the industrial and residential uses being identified on the eastern side of the Waikato Expressway. We are concerned that rezoning on the western side of the Waikato Expressway will result in somewhat of an isolated spot zoning and further spread the development of Ohinewai spatially. Having considered the statutory tests, we reject the submissions from Shand Properties and Ribbonwood Family Trust.

- 21.6 The Ohinewai Area Committee sought rezoning of five properties (being 10, 12, 14, 16 and 18 Ohinewai North Road), from the Business Zone to the Residential Zone in order to reflect current land use. Given we did not hear from the landowners, we are cautious about the rezoning. In addition, given that these sites are not serviced for reticulated wastewater in particular, we do not consider the Residential Zone to be appropriate. Given the type of commercial activities that are likely to develop on the eastern side of Waikato Expressway, we consider that the western side may need some small scale commercial activities to complement it. We agree with Ms Trenouth who considered that the subject land is in a prime location on the main street, and that this land might be best kept as a Business Zone if Ohinewai was to develop in the future into more of an urban centre. For these reasons, we reject the submission from the Ohinewai Area Committee.
- 21.7 The submission from PLB Construction did not explicitly seek rezoning of land, although it did seek amendments to the PDP to indicate that land to the north of Huntly (in and surrounding the Ohinewai area) possesses suitable qualities for it to be rezoned to the Industrial Zone (e.g. its location adjacent to State Highway 1 for transport purposes, the flat topography and being that it is sparsely populated). We consider our decision to include a new Ohinewai Zone in the PDP, and the comprehensive suite of provisions for such a zone, adequately addresses this submission therefore no further amendments are necessary.

22 Mangatawhiri

- 22.1 The Dilworth Trust Board sought rezoning of the property at 500 Lyons Road, Mangatawhiri through the creation of “Specific Area” provisions for the activities and facilities of the Dilworth School. During the hearing, we indicated that we wanted to see some flexibility given in the corresponding rule to enable Dilworth to be able to undertake some additions and alterations to the school without requiring resource consent and asked Mr Arbuthnot to liaise with Ms Boulton. The solution they developed included a permitted activity in the Rural Zone for maintenance, operation, and alterations to Dilworth School, and a maximum total building coverage for the school of 10,000m² (rather than the normal percentage allowance). Mr Arbuthnot and Ms Boulton also agreed on a specific setback for the school of 12m from any site boundary. We agree that this is a pragmatic solution to the issue, and will allow for some further built development to occur on the site, but at a scale which is anticipated to be commensurate with the surrounding rural environment. We consider this approach will provide certainty

for the school, while still achieving the objectives for the Rural Zone. Because we have opted for tailoring the Rural Zone provisions for the school site rather than rezoning, we have accepted the submission from the Dilworth Trust Board in part.

23 Tauwhare

- 23.1 A number of submitters sought that the properties on Scotsman Valley Road be rezoned to the Country Living Zone to match the zoning in the ODP. It was clear to us that a mapping error has occurred whereby the existing Country Living Zone, which is located over sites from 311A – 491 Scotsman Valley Road and 3-24 Scotsvale Drive, Tauwhare, has not been carried over into the notified PDP. We therefore have reinstated the Country Living Zone for these properties.



Figure 16: Zoning of Scotsman Valley Road

23.2 Bowrock Properties Limited sought to rezone 20ha of land on Tauwhare Road from the Rural Zone to the Country Living Zone. We agree with Ms Palmer that rezoning this site would be a natural extension of the Country Living Zone, given that the sites on the adjoining eastern boundary are already zoned as Country Living Zone and have been developed accordingly. Given the length of boundary shared with rural-residential properties, we believe that the site will not be able to be used sustainably for primary production. We agree with Ms Palmer that the rezoning to the Country Living Zone is a pragmatic outcome which will achieve the objectives in the PDP and satisfy the principles listed in Section 6A of the RPS. We therefore accept the submission from Bowrock Properties Limited and have rezoned the site as Country Living Zone.



Figure 17: Zoning Tauwhare Road

24 Waiuku

- 24.1 Khushwin Limited sought to rezone the property at 135 Hull Road, Waiuku from the Rural Zone to the Living Zone or the Country Living Zone. While we appreciate that the site is adjoining a large lot zoned Residential – Large Lot under the Auckland Unitary Plan, the site does contain high quality soils. We are therefore required by section 75(3)(c) of the RMA to give effect to the RPS, which (amongst other things) seeks, in Policy 14.2, to avoid a decline in the availability of high class soils. We agree with, and adopt, the reasoning in the section 42A report and consider that enabling development on this site will not give effect to the RPS, nor achieve the objectives in the PDP (particularly Objective 5.1.1). We therefore reject the submission from Khushwin Limited.

25 Onewhero

- 25.1 Roger and Bronwyn Crawford sought to rezone an additional 6,210m² of their land at 34 Wairamarama Onewhero Road, Onewhero as the Village Zone. They also sought to amend the zoning of a portion of the site which did not retain the ODP's Village Zoning in the notified PDP planning maps. We are aware from Ms Boulton's section 42A report that the submitters do not wish to pursue the more substantive Village Zoning for the site, but still wish the error to be remedied. We agree.

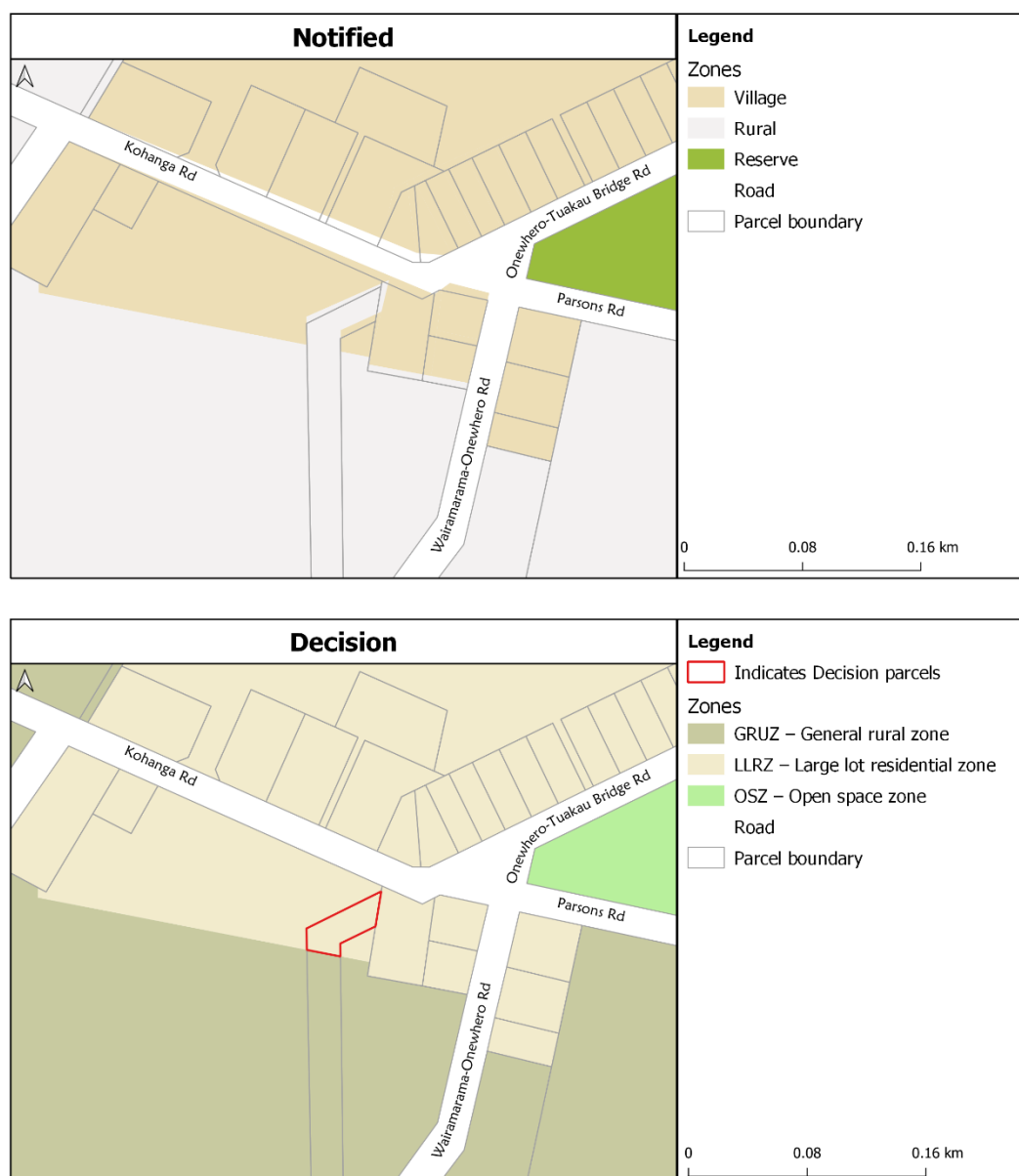


Figure 18: Zoning of Wairamarama Onewhero Road

26 Designated Rail Corridor

- 26.1 KiwiRail New Zealand sought that the zoning which underlies its designations be changed from the Rural Zone to 'unzoned'. It also sought a new condition be added to its existing designations specifying that where designated land is un-zoned, activities not covered by the designation will be subject to the rules of the adjacent zone. KiwiRail clarified that if there are two different zones, the adjacent zone extends to the centre line of the designated land. Mr Clease considered this request in his section 42A report, and we agree with his analysis that an 'un-zoned' approach for roads and rail corridors is not consistent with the National Planning Standards direction.
- 26.2 Our choices regarding this submission are therefore to either create a Special Purpose Zone for the transport corridors, or to determine what the most appropriate alternative zone is from the existing suite of zones available. We agree with Mr Clease's recommendation to zone the rail corridor to whatever the adjacent zone is, measured to the centreline of the corridor in instances where there are different zones on either side of that corridor. We consider that this is a clearer approach than that sought by KiwiRail, but one which will have a similar effect. We further consider that this approach will ensure the effects of new activities associated with rail on larger areas within the rail corridor are able to be considered in relation to the adjoining zone. We have therefore amended the planning maps accordingly.

27 Retention of notified zones

- 27.1 Seven submissions sought retention of zones as notified in the PDP. We accept the following submissions for the reasons outlined in Ms Boulton's section 42A report and consider that the zones for each site are appropriate:
- a) Bruce and Dorothy Chipman who sought that the property at 1689 Miranda Road, Mangatangi remain in the Rural Zone;
 - b) RM and CA Peart who sought that the properties at 224 and 223 Okete Road, Raglan remain in the Rural Zone;
 - c) Gerard Willis who sought that the property at 18 Clark and Denize Road, Pukekawa remain in the Village Zone;
 - d) Livestock Improvement Corporation and Dairy NZ Incorporated who sought that the "Agricultural Research Centre LIC" and the Agricultural Research Centre LIC/DairyNZ Campus remain in the Rural Zone;
 - e) Lyndendale Farms Limited who sought that the property at 180 Horsham Downs Road, Horsham Downs remain in the Rural Zone;
 - f) Holcim (New Zealand) Limited who sought that the property at 611 Ridge Road, Bombay remain in the Industrial Zone; and

- g) Leigh Shaw and Bradley Hall who sought that the property at 58 Puketutu Road remain in the Rural Zone.

28 Conclusion

- 28.1 We accept the section 42A report and the evidence filed by the submitters which collectively form the section 32AA assessment that informed this decision.
- 28.2 Overall, we are satisfied that the zoning pattern in the rural areas of the Waikato District (and the activities / development enabled by those zones) will provide a suitable framework for managing the rural resources for the lifespan of the PDP.

For the Hearings Panel



Dr Phil Mitchell, Chair

Dated: 17 January 2022

Decision Report 280: Zoning – Rest of District

Report and Decisions of the Waikato District Plan Hearings Panel

Attachment 1: New Motorway Service Centre control to be added to COMZ – Commercial Zone

COMZ-R18	Commercial activities within the Motorway service centre specific control
<p>(1) Activity status: RDIS</p> <p><u>Activity-specific standards:</u></p> <p><u>Nil.</u></p> <p><u>Council's discretion is restricted to the following matters:</u></p> <ul style="list-style-type: none"> (a) <u>Effects on amenity of the locality;</u> (b) <u>Landscaping;</u> (c) <u>Design and layout;</u> (d) <u>Effects on efficiency and safety of the land transport network, including the Waikato Expressway;</u> (e) <u>Access design; and</u> (f) <u>Potential reverse sensitivity effects.</u> 	<p>(2) Activity status: NC</p> <p><u>Where:</u></p> <ul style="list-style-type: none"> (a) <u>Any other activity within the Motorway service centre specific control area.</u> <p><u>Advice note: The other land-use activities listed within the COMZ – Commercial zone do not apply to the Motorway service centre specific control area, however the land-use effects and land-use standards do apply.</u></p>