

**BEFORE AN INDEPENDENT HEARINGS PANEL**

**THE PROPOSED WAIKATO DISTRICT PLAN (STAGE 1)**

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

**IN THE MATTER**  
**OF** Hearing 25: Zone Extents

**PARTIES REPRESENTED** Bowrock Properties Ltd (393)

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**MEMORANDUM REGARDING PRE-HEARING CONFERENCING ON LEGAL AND  
PLANNING PROCEDURAL ISSUES WITH THE S24A FRAMEWORK REPORT**

**DATED 9 MARCH 2021**

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## **1. INTRODUCTION**

- 1.1 This memorandum prepared on behalf of Bowrock Properties Ltd (BPL) is to outline support for the memorandum (dated 4<sup>th</sup> March 2021) prepared by Peter Fuller, legal counsel on behalf of Pokeno West Limited, CSL Trust and Top End Properties, regarding legal and planning procedural issues relating to the s42A Framework Report for Hearing 25 – Zone Extents.
- 1.2 My full name is Hannah Olivia Palmer, and I am the Planner acting on behalf of BPL. Planning evidence was submitted in relation to BPL’s submission for both Hearing 12 – Country Living Zone, and the impending Hearing 25 – Zone Extents. It is understood that Hearing 25 will be our primary hearing. As such the evidence package for this hearing has included a Section 32AA Further Evaluation Report demonstrating the suitability of the subject site for re-zoning from Rural to Country Living and outlining that the proposal is in accordance with the purpose and principles of Part 2 of the Resource Management Act 1991.

## **2. CONCERNS REGARDING THE THREE-LENS ASSESSMENT APPROACH IN THE S42A FRAMEWORK REPORT**

- 2.1 In respect of the concerns raised in Mr Fuller’s memorandum regarding the three-lens test for determining recommendations on submissions, I agree with the conclusions Mr Fuller has presented.
- 2.2 It is my view that Lens 1 should be subordinate to Lens 2 given the hierarchy of statutory documents, and that the correct statutory tests as mentioned in Mr Fuller’s memorandum be applied in consideration of submissions.
- 2.3 The site owned by BPL sits outside of an identified growth area, and for this reason the hierarchical lens test presented some difficulty in assessment of the proposal. This is because the proposed policy direction presented in Objective 5.1.1 (iii) of the proposed Waikato District Plan is very directive and has been in effect treated as operative in the s42A planners assessment.
- 2.4 If taking the s42A approach, BPL’s proposal runs contrary to Lens 1 despite meeting the purpose of the Act and higher order planning documents, as well as re-zoning being supported by the S32AA Further Evaluation undertaken at the request of the Hearings Panel. Having Lens 1 as the first ‘test’ in my view does not allow for adequate consideration of submissions where it is demonstrated that proposals for re-zoning meet the relevant statutory tests. I agree with Mr Fuller that if a Lens test approach is to be maintained, greater emphasis should be placed on Lens 2 (higher order planning documents) as the first consideration.

- 2.5 Further, I agree with Mr Fuller that maintaining the three-lens test as currently outlined in the s42A Framework Report risks submissions that otherwise meet the Purpose of the Act being rejected for failure to meet Lens 1.
- 2.6 In addition, the procedural approach as outlined in the s42A Framework Report does not allow for due consideration of proposals for re-zoning where the subject site is now too small to be utilised for the purposes set out in the rural zone as a result of legacy planning decisions. Reasons for the site being too small for productive use has been expanded on in my planning evidence for Hearing 25, and I believe consideration of such submissions under the correct statutory process as outlined by Mr Fuller in his memorandum would be the appropriate approach.
- 2.7 I request an invitation to participate in the discussion regarding the above with the Hearings Panel, and to hear legal views in conferencing around the correct legal approach to take regarding consideration of submissions for re-zoning.

**DATED at HAMILTON** this 9<sup>th</sup> day of March 2021



**Hannah Palmer – Planner on behalf of Bowrock Properties Limited**