

**BEFORE THE HEARING COMMISSIONERS  
AT WAIKATO DISTRICT COUNCIL**

**IN THE MATTER** of the Resource Management Act 1991 (RMA)

**AND**

**IN THE MATTER** of submissions and further submissions on the Proposed  
District Plan

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**MEMORANDUM OF COUNSEL REGARDING FRAMEWORK REPORT  
RELATING TO HEARING 25 - ZONE EXTENTS  
8 March 2021**

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**MAY IT PLEASE THE PANEL**

- 1 This memorandum is filed on behalf of the following submitters:
  - (a) Diamond Creek Farm Limited (#387);
  - (b) Mr Ian McAlley (Te Kauwhata Land Limited) (#368); and
  - (c) Horotiu Properties Limited (#397).
- 2 This memorandum is in response to the Panel's directions in response to Mr Peter Fuller's memorandum.
- 3 Counsel support the argument in Mr Fuller's memorandum and submit that neither the 3 lens approach nor the hierarchy within those lenses is supported in the RMA or in the applicable case law.
- 4 Lens 1 is already assessed via the *Long Bay-Okura Great Park Soc Inc v North Shore*<sup>1</sup> (*Long Bay*) approach with local planning documents being a subset of the planning documents that a change needs to be consistent with. The hierarchy effectively allows for double counting.
- 5 Paragraph 46 of the Framework Report notes:<sup>2</sup>

If the overall determination is that the submission(s) is considered inconsistent, then the s42A author's recommendation should be to reject. If the submission(s) is considered consistent with the intent of the PWDP, the assessment can proceed to consider the Lens 3 criteria before a final recommendation can be made on the submission(s).
- 6 This direction to the individual s 42A planners regarding the hierarchy amounts to predetermination of outcome and ignores that any rezoning request, either as part of the PDP or by way of submission is likely to be inconsistent with at least some objectives and policies in the PDP by virtue of being an amendment not originally included.

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<sup>1</sup> *Long Bay-Okura Great Park Soc Inc v North Shore* CC EnvC A078/08

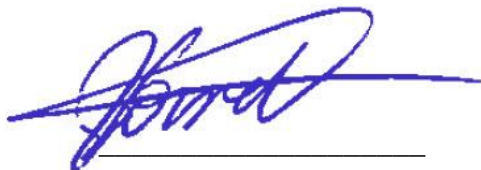
<sup>2</sup> Section 42A Framework Report at [46].

- 7 The Framework Report has relied on the framework of the PWDP to set the parameters for any further rezoning except in relation to Country Living Zone where the placement of that Zone within the Rural section of the PWDP is treated as an anomaly that should be interpreted as residential for the purposes of any rezoning requests. The net result (with reference to later paragraphs also) seems to be an overall conclusion that any rezoning to provide for further residential development, including large lot residential, is necessarily inconsistent with Lens 1 unless it is within one of the areas identified in the PWDP.
- 8 Our planning witnesses have attempted to mould their s 32AA reports to fit the lenses in order to avoid an automatic rejection under the Lens 1 assessment. There is a fear that the full s 32AA report and supporting documents may not have even been read or considered by the reporting planner if the proposal failed Lens 1.
- 9 The 3 lens approach has resulted in the Diamond Creek (#387) proposal being framed for closest consistency with Lens 1 rather than according to what might be the best planning outcome. The submitters reverted to a Country Living proposal (rather than Village Zone) because there is arguably more scope to find consistency with Lens 1 as the Country Living Zone falls within the Rural section of the PDP and could escape being described as urban development for the purposes of Objective 5.1.1. We note the Framework Report argues that is an anomaly and that Country Living development is really urban, as defined in the RPS. The conclusion drawn is that Country Living development not already identified in the PWDP will therefore also fail the first lens.
- 10 The 3 lens approach has also meant that the normal process of being able to liaise with the s 42A writer to ensure that they have the information they need in order to complete their report has not happened. The individual writers instead have urged our submitters to try and demonstrate how the 3 lenses are met. That does not result in the best opportunity for either submitters or the s 42A writer to ensure that the effects assessment is as full as it could be for the purposes of the second *Long Bay* requirement.
- 11 We note that both the Framework Report and the Peer Review of that report both highlight deficiencies in the PWDP with respect to giving effect

to the NPS-UD and the RPS as they apply to urban development capacity. In our submission the process to be followed should be the one that best addresses those deficiencies to ensure those higher order documents are given effect as they reflect national and regional policy.

- 12 In terms of outcome, counsel suggest that the focus should instead be on the *Long Bay* criteria and that the s 42A writers should have the opportunity to indicate to submitters whether there is further information that would assist them in completing their assessments for the sites using that approach. We recognise that there is a time constraint on the Panel and those participating in this hearing and we do not wish to compromise that process continuing within the present timeframe.

**Dated** 8 March 2021

A handwritten signature in blue ink, appearing to read 'J B Forret / P Kaur', written over a horizontal line.

**Dr J B Forret / P Kaur**  
**Counsel for submitters**