

SECTION 42A REPORT

Rebuttal Evidence

Hearing 25: Rezoning – Thematic Issues

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I Introduction

I.1 Background

1. My full name is Jonathan Guy Cleese. I am employed by a planning and resource management consulting firm Planz Consultants Ltd, as a senior planner and urban designer.
2. I am the writer of the original s42A reports for Hearing 25: Rezoning – Thematic Issues (26 January) and Thematic Issues Part II (16 April).
3. My qualifications and experience are set out in the earlier s42A reports in section I.1, along with my agreement to comply with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014 as set out in section I.2.

2 Purpose of the report

4. In the directions of the Hearings Panel dated 26 June 2019, paragraph 18, states:

If the Council wishes to present rebuttal evidence it is to provide it to the Hearings Administrator, in writing, at least 5 working days prior to the commencement of the hearing of that topic.
5. The purpose of this report is to consider the rebuttal evidence filed by Kainga Ora [749]¹, with planning rebuttal evidence provided by Mr Philip Stickney and Urban Design evidence provided by Mr Cameron Wallace.
6. I note that the rebuttal evidence provided on behalf of both the Waikato Regional Council [81]² and the Hamilton City Council [535]³ includes support for the application of both a Future Urban Zone ('FUZ') and Medium Density Residential Zone ("MDRZ"). The rebuttal evidence of these organisations relates more to the application of these zones to specific blocks or townships, rather than providing any evidence on the zone policy or rule framework.
7. No other parties provided rebuttal evidence on my earlier s42a reports that addressed the Future Urban Zone, Medium Density Zone, and a variety of outstanding thematic matters. The evidence filed on behalf of Kainga Ora is specific to the proposed MDRZ provisions and as such they do not challenge the FUZ provisions or other thematic issues. My below response is therefore focussed on the MDRZ provisions. The Kainga Ora evidence regarding the application of the MDRZ to specific townships i.e. the location of the zone boundaries, will be addressed by the various township report authors.
8. In responding to the rebuttal evidence received from submitters I will identify where the submitter agrees with the position reached in the s42A report, where their evidence has led to me changing my recommendations, or where we simply have a difference in view and my original recommendations remain unchanged.
9. This report closes by addressing several submission points which the Council's administration team have identified as not having been addressed in earlier reports.

¹ The submission was originally lodged in the name of the Housing New Zealand Corporation

² Rebuttal evidence of Ms Marie-Louise (Miffy) Foley

³ Rebuttal evidence of Ms Laura Gault

3 Response to submitter evidence

Kainga Ora [749]

10. As noted by Mr Stickney⁴, it is worth reiterating that there is a high degree of agreement between myself and Kainga Ora's experts regarding the 'in principle' merit of adding a MDRZ to the District Plan suite of zones, along with agreement on the majority of the proposed policy and rule packages for that zone. The outstanding areas of disagreement are therefore limited to the adequacy of several discrete built form rules to deliver amenity outcomes appropriate to a medium density residential environment.
11. I confirm that I agree with the amendments proposed by Mr Stickney to the zone statement. These amendments provide more direction regarding the importance of a qualitative urban design assessment for developments of more than three units.
12. I agree with the amendments proposed by Mr Stickney to Policy 4.2A.8 regarding streetscape, yards, and outdoor living courts as providing more specific direction on amenity outcomes.
13. I note that Mr Stickney's policies do not include reference to MDRZ also being appropriate in large master-planned greenfield growth areas (as such outcomes do not form part of Kainga Ora's submission scope). In my 16th April s42a report I recommended that such outcomes be included in the policy framework in response to other submissions⁵.
14. My 16 April s42a report also included several text amendments recommended through the separate s42a report prepared by Ms Emily Buckingham regarding rezoning in Raglan. These text amendments relate to:
 - Policy 4.2A.5 (which depends on the Panel's findings as to whether the MDRZ boundary should extend over the Bankart St and Wainui areas);
 - Rule 16A.3.1 regarding urban design and whether or not an additional matter of discretion regarding the special character of Raglan is appropriate; and
 - Rule 16A.3.3 regarding height (and whether the height limit for MDRZ in Raglan should be 7.5m or 11m).
15. As set out in Mr Stickney's rebuttal evidence, Kainga Ora are opposed to these three Raglan-specific changes and therefore have not included them in their proposed text package. Ms Buckingham has recommended their retention in her rebuttal evidence dated 10th May. On the basis of Ms Buckingham's recommendations, I have reinserted them into Appendix 2 simply as a place holder pending the Panel's findings on these matters.
16. I agree with the proposed amendments proposed by Mr Wallace to the qualitative urban design rule (16A.3.1). The proposed amendments provide more specific direction as to the relevant matters for Council to consider when assessing larger developments. I agree specifically with the changes to the matters of discretion relating to outdoor living court

⁴ Para 2.1, Rebuttal evidence of Mr Stickney, and as set out in section 7 (pg.21) of my s42a Thematic Issues report dated 28th April

⁵ Pokeno West Ltd [97]

location, landscaping, and washing lines proposed by Mr Wallace⁶, who has otherwise agreed with my earlier proposed amendments to this rule.

17. I agree with the proposed amendment to the balcony setback rule⁷ and associated discussion set out by Mr Wallace⁸. Mr Wallace agrees with the need for a greater balcony setback, provided that the rule only applies to balconies that are more than 1.5m above ground level. He also notes that such a setback should not be required for boundaries with roads or public open space which I agree with. The key issue with balconies is the overlooking of internal boundaries where they are at or above first floor level. On sloping sites, ground floor raised decks or terraces can be lifted above ground level (as the ground slopes away) to enable a logical transition from internal living areas to courtyards. Semi-basement parking can also result in low balconies associated with a raised ground floor. In the absence of a definition of 'balcony' there can be a grey area as to whether or not such raised decks should be subject to the proposed balcony setback requirement. The amendments proposed by Mr Wallace provides clarity that ground floor decks or terraces are not 'balconies'. An alternative to amending the rule would be to add a definition to the Plan for 'balconies' that specified that the term applies to structures more than 1.5m above ground level, however I consider the rule amendment to be effective in addressing this matter.
18. There remains a residual risk that a 1.5m balcony/ raised deck will still enable direct overlooking (over internal boundary fences that are typically 1.8m in height), however where the ground is sloping it is likely that the adjoining site will also be on a slope. Conversely where sites are flat there is little logical reason to elevate a ground floor deck and therefore the overlooking risk is unlikely to arise. The qualitative urban design rule provides further reassurance that acceptable outcomes can be delivered for larger developments.
19. This leaves us with two remaining areas of disagreement. The first is whether units with ground floor habitable space should be required to provide an outdoor living court, and the second is whether sites should be required to provide at least 50% of the ground floor of buildings as habitable space (rather than the alternative of just garaging). These two matters are inter-related.
20. Mr Stickney opposes the need for such requirements on the basis that in his view they limit design flexibility and stifle innovative design solutions⁹. Mr Wallace likewise considers that the proposed rule reduces design flexibility and undermines policies to provide housing choice¹⁰. In my view the same could be said for any built form rule – all rules inherently represent a trade-off between some limitation of development options (costs) in order to ensure acceptable amenity outcomes (benefits). Where the costs of the proposed regulation exceed the benefits that the regulation delivers, it would usually be concluded that the proposed rule is an ineffective and inefficient solution to the issue it is meant to resolve.
21. In terms of the requirement for ground floor courtyards, I can confirm that my intention is that where a courtyard is provided, a balcony is only required if the unit's Principal Living Area is at first floor level. Where the Principal Living Area is at ground floor then upper

⁶ Paras. 2.5-2.8, Rebuttal evidence of Mr Wallace

⁷ Rule 16A.3.9.1(P1)(a)(iv)

⁸ Para 2.10, *ibid*

⁹ Para 4.15-4.17, Mr Stickney's evidence

¹⁰ Para 2.12, Mr Wallace's evidence

level balconies are not required, however developers are free to provide a balcony to bedrooms if they wish.

22. The rule package put forward in my earlier s42a report is intended to ensure that ground floor areas of developments are not dominated solely by garaging and driveways, that reasonable separation is provided around buildings (through the placement of courtyards), and that the reasonable outdoor amenity requirements of future occupants are able to be met.
23. Mr Stickney observes that *“given the building coverage limit of 45% proposed for the zone, I consider it highly likely that the majority of development would utilise building setbacks and landscape/ permeable areas for ground floor outdoor living opportunities and therefore the scenario Mr Cleese paints [of sites dominated by parking and with massing close to internal boundaries] is unlikely to arise in the majority of cases”*¹¹.
24. If this is indeed the case, then the costs of my proposed requirement for courtyards is minimal. In my view there is a real risk of poor outcomes if such a rule is not in place and the solution is not particularly onerous (unless a developer wished to design a site dominated by ground level parking). As such, the proposed rule is effective in mitigating potentially significant adverse effects with little costs to the majority of cases. Where there are site-specific issues in play that would support an alternative design or layout, such as the site being located adjacent to public open space where balcony-only solutions might be more acceptable, then a restricted discretionary consent pathway is available with matters of discretion that enable consideration of site-specific contexts or mitigation.
25. The requirement to provide ground floor internal habitable space likewise helps to drive acceptable outcomes at ground level, which is the level that developments are experienced by pedestrians. The only typology that the rule ‘straight jackets’¹² is developments that only provide parking and driveways at ground level. All other typologies, including stand-alone dwellings, duplexes, terraced townhouses, and low-rise apartments or three storey townhouses (where up to half the ground floor is used for garaging) are permitted. Again, for the minority of instances where the proposed rule is triggered, there remains a restricted discretionary resource consent pathway where site-specific contextual factors can be considered and innovative design responses (and their associated effects) assessed.
26. I remain of the opinion that a rule requiring a proportion of ground floor space to be habitable, combined with a requirement to provide an outdoor courtyard for units with a ground floor habitable space, provides important benefits for achieving acceptable medium-density appropriate amenity outcomes, whilst placing relatively few costs on the majority of development scenarios. As such I continue to prefer the rule package recommended in my 16 April report on these discrete matters to those sought by the submitter.

Submission points not explicitly addressed in earlier s42a reports

27. Waikato Council’s administration team have identified several discrete submission points relating to the medium density topic that did not receive an explicit recommendation in the earlier s.42a Thematic Issues reports.

¹¹ Para 4.13, Mr Stickney’s evidence

¹² Para 4.15 *ibid*

28. Hamilton City Council [FSI379.299] were a further submitter in opposition to the primary submission made by Chanel Hargrave and Travis Miller [751.58]. This submission was addressed in my 26 January 2021 Thematic Report¹³. My recommendations table in Appendix I simply included the wrong reference number to HCC's further submission. In accordance with my recommendations in that earlier report, it is recommended that FSI379.299 be accepted in part.
29. The Surveying Company [746.103] was also assessed in the 26 January 2021 report. Havelock Village Ltd [FSI377.253] were a further submitter in support. My Appendix I recommendations table provided a recommendation on FSI377 however mislabelled the submission point as just [FSI377] rather than [FSI377.253]. In accordance with my earlier recommendation, it is recommended that FSI377.253 be accepted.
30. The Waikato District Health Board [923.1] submission was considered in my second Thematic Report dated 16 April. I assessed this submission and made a recommendation on it. The Appendix I recommendations table however mislabelled the submission point as [931.100] rather than [931.1]. For clarity, in accordance with my earlier recommendations on this submission point it is recommended that [931.1] is accepted in part.
31. In addition to the above typographical errors, the below submission and associated further submissions were not specifically addressed. The submission is of direct relevance to the assessment of the merit of a Future Urban Zone.

Submission point	Submitter	Decision requested
493.17	Jackie Colliar	Amend the Proposed District Plan to reinstate deferred zoning to a point in time when Waikato District Council have clarity around their infrastructure and how the areas will be serviced.
<i>FSI035.70</i>	<i>Pareoranga Te Kata</i>	<i>Support</i>
<i>FSI176.95</i>	<i>Watercare Service Ltd</i>	<i>Support</i>
<i>FSI261.37</i>	<i>Annie Chen</i>	<i>Oppose</i>
<i>FSI297.47</i>	<i>CSL Trust & Top End Properties Limited</i>	<i>Oppose</i>
<i>FSI108.120</i>	<i>Te Whakakitenga o Waikato Incorporated (Waikato-Tainui)</i>	<i>Support</i>
<i>FSI139.108</i>	<i>Turangawaewae Trust Board</i>	<i>Support</i>

32. The submission by Ms Colliar raises concerns that the Proposed Plan 'live zones' areas of land that were previously Rural or Deferred Zones and that in her view for most of this land there is uncertainty around infrastructure timing and funding and structure planning is yet to be undertaken. The submitter is concerned that live zoning will create an expectation of development rights and that the Waikato River will absorb greater volumes of wastewater and stormwater discharge in a manner that does not give effect to the Vision and Strategy for the Waikato River.

¹³ Section 4.2 assessing the MDRZ concept, s42a report – Zone Extents – FUZ & MDRZ,

33. Whilst Ms Colliar's specific submission point was not assessed in my earlier thematic reports, the issues raised by Ms Colliar were central to the discussion on the merit of introducing a Future Urban Zone to the suite of zoning options available. A key driver for the FUZ provisions was to provide a method by which land that is suitable in principle for urbanisation could be identified so as to ensure long-term infrastructure planning and to enable delivery of infrastructure and if necessary structure planning to be secured in advance of 'live zoning'. My earlier reports recommended the introduction of a FUZ and set out a proposed policy and rule framework.
34. The authors of a number of the township-based s42a reports on rezoning have made use of the FUZ concept in their recommendations for various growth areas where infrastructure certainty is not currently available (along with other matters that require further investigation prior to live zoning).
35. As such it is recommended that submission 493.17 be accepted along with the further submissions in support, and that the further submissions in opposition be rejected.

Appendix I Recommendations

Submission point	Submitter	Decision requested	Recommendation
493.17	Jackie Colliar	Amend the Proposed District Plan to reinstate deferred zoning to a point in time when Waikato District Council have clarity around their infrastructure and how the areas will be serviced.	Accept
FS1035.70	Pareoranga Te Kata	Support	Accept
FS1176.95	Watercare Service	Support	Accept
FS1261.37	Annie Chen	Oppose	Reject
FS1297.47	CSL Trust & Top End Properties Limited	Oppose	Reject
FS1108.120	Te Whakakitenga o Waikato Incorporated (Waikato-Tainui)	Support	Accept
FS1139.108	Turangawaewae Trust Board	Support	Accept
751.58	Chanel Hargrave and Travis Miller	No decision sought, but submission supports growth in existing centres of Pokeno, Tuakau, Ngaruawahia and Huntly and the rezoning of greenfield on the edge of the existing centres.	Accept in Part ¹⁴
FS1379.299	Hamilton City Council	Oppose	Accept in Part
746.103	The Surveying Company	Add a new residential zone to the Proposed District Plan, separating the residential zone into two zones to support intensification and compact growth within existing town centres and future public transport stations. A zone similar to the mixed housing zone used in the Auckland Unitary Plan or the medium density zone as defined in the Draft National Planning Standards would be suitable.	Accept ¹⁵
FS1377.253	Havelock Village Ltd	Support	Accept
923.100	Waikato District Health Board	Provide for more intensive and diverse housing options	Accept in Part ¹⁶

¹⁴ Submission 751.58 was addressed in my First s42a Thematic Report, 26 January 2021. The Further Submission by HCC included the wrong reference number which is corrected in this recommendation table

¹⁵ Submission 746.103 was addressed in my First s42a Thematic Report, 26 January 2021. The Further Submission by HCC included the wrong reference number which is corrected in this recommendation table

¹⁶ Submission 923.100 was considered in my second Thematic Report dated 16 April, however it was incorrectly referenced as 923.1

Appendix 2 – Recommended Text Amendments