

**WAIKATO DISTRICT PLAN REVIEW
KONING FAMILY TRUST SUBMITTER 658
EXTENT OF RESIDENTIAL ZONING AT RAGLAN**

**SUBMISSIONS OF COUNSEL FOR THE KONING FAMILY TRUST AND M
KONING (SUBMITTERS 658)**

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Essential elements of the Submitter's case

1. The submitter's case is based on the following propositions:
 - (a) There is a need for zoning of further Residential land at Raglan to meet the short, medium and long term demands for residential growth.
 - (b) There is a need for greater competition and choice in the Residential land market for ongoing growth at Raglan.
 - (c) The Koning land is the most appropriate location and the only available location for an additional substantial supply of Residential land in the short and medium term.
 - (d) The proposed change of zoning for the Koning land to Residential will not cause any servicing or infrastructure issue that does not already exist.
 - (e) Where there is uncertainty about the timing of upgrades/expansions to Raglan's residential infrastructure, the most appropriate approach is to rezone the Koning land to Residential and thus enable additional residential land to become available without the need for a further RMA Schedule 1 process.
 - (f) The combination of proposed Structure Plan, existing District Plan provisions and proposed additional District Plan provisions will provide for orderly and well guided residential development of the Koning site.
2. The way in which these various factors fit into the process for evaluating District Plan changes is set out in the following parts of these submissions.

Legal requirements for consideration of a plan change under Schedule 1 RMA

3. The most recent statement of the legal requirements is in *Colonial Vineyard Limited v Marlborough District Council* decision [2014] NZEnvC 55 at paragraphs 17 and 18. A copy of that decision is lodged with these submissions.
4. As demonstrated at paragraph 22 of the *Colonial Vineyard* decision, the primary questions to be answered, in the context of that legal structure, can be identified and can be the focus of the determination for a particular proposal in a District Plan review.
5. In the present case, the following issues are suggested as the primary ones to be determined in relation to the Koning submission:
 - (a) What are the relevant provisions in the National Policy Statement for Urban Development 2020 (“NPS-UD”) that must be given effect to and how would the Koning proposal assist in giving effect to them?
 - (b) What are the relevant provisions in the Waikato Regional Policy Statement that must be given effect to and how would the Koning proposal assist in giving effect to them?
 - (c) What are the relevant settled objectives in the Operative District Plan and the Proposed District Plan for residential growth at Raglan?
 - (d) What are the relevant provisions of the Future Proof subregional planning strategy in relation to residential growth provision at Raglan and how does the Koning proposal relate to those provisions?
 - (e) What is the likely demand for residential land at Raglan for the short, medium and long term as defined in the NPS-UD?

- (f) What is the current zoned supply of residential land at Raglan and what are the options for additional residential growth, as proposed and submitted for under the PDP?
- (g) What is the most appropriate way of ensuring that the District Plan zonings for residential growth make adequate provision for that growth in terms of the NPS-UD, RPS and District Plan objectives?
- (h) Are the proposed rezoning, inclusion of the Structure Plan and amendment to District Plan rules proposed by the Konings appropriate provisions for inclusion in the District Plan, to effectively and efficiently manage actual and potential effects on the environment of subdivision of the Koning land?

Implementation of the NPS-UD

The most relevant objectives and policies in the Raglan context

- 6. Objective 2: *planning decisions improve housing affordability by supporting competitive land and development markets.*
- 7. Objective 3(c): *District Plans enable more people to live in...areas of an urban environment in which...(c) there is high demand for housing, relative to other areas within the urban environment.*
- 8. Objective 6: *Local authority decisions on urban development that affect urban environments are...(a) integrated with infrastructure planning and funding decisions; and (c) responsive, particularly in relation to proposals that would supply significant development capacity.*

Policies

9. Policy 1(d): *Support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets.*
10. Policy 2: *Tier 1, 2 and 3 local authorities, at all times, provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term, and long term.*
11. Policy 8: *local authority decisions affecting urban environments are responsive to plan changes that would add significantly to development capacity and contribute to well-functioning urban environments, even if the development capacity is:*
 - (a) *Unanticipated by RMA planning documents; or*
 - (b) *Out of sequence with planned land release.*

Part 3 implementation

Sub part 1 – providing development capacity

12. 3.2 – Sufficient capacity for housing
 - (1) *Every tier 1, 2 and 3 local authority must provide at least sufficient development capacity in its regional district to meet expected demand for housing, in existing and in new urban areas,....and in the short term, medium term and long term.*
 - (2) *In order to be sufficient to meet expected demand for housing, the development capacity must be:*
 - (a) *Plan enabled;*
 - (b) *Infrastructure ready;*
 - (c) *Feasible and reasonably expected to be realised;*

(d) *For tier 1 and tier 2 local authorities, meet the expected demand plus the appropriate competitiveness margin;*

13. 3.4 – *to be plan enabled, provision for short term must be in an Operative District Plan. In relation to medium term, in an Operative or Proposed District Plan. In relation to long term, on land identified for future urban use or urban intensification in an FDS, or other relevant plan or strategy.*
14. 3.4(3) – *development capacity is infrastructure ready, i.e. adequate existing development infrastructure in relation to short term, there is adequate existing development infrastructure; in relation to medium term either existing development infrastructure or funding for it is identified in the long term plan. In relation to long term either existing, long term plan funded or identified in the local authority infrastructure strategy.*

Application to the present case

Objective 2 and Policy 1(d)

15. The encouragement of a competitive residential land market is an important factor in this case. For Raglan, the Council has so far adopted the approach of placing very substantial reliance on the Residential zoned Rangitahi peninsula as the main, and the only substantial, greenfield growth area for the town. That cannot be a viable strategy under the NPS-UD, or in exercising any planning function for an identified an growth area.
16. There needs to be another substantial option for competing residential land supply during the coming planning period, without reliance on a schedule 1 RMA process which would be likely to attract opposition for monopoly protection purposes. Failure to provide any substantial competition for residential land would be unlikely to assist in achieving

Objective 2 and Policy 1(d) of the NPS-UD. Mr Colegrave's evidence addresses this issue.¹

17. The Court decisions about the definition of "trade competition" in the land zoning context make the validity of submissions by competing land developers unclear. However, the risks inherent in reliance on a further Schedule 1 process to provide a responsive land development market are very clear.
18. The Koning proposal for a live residential zoning is the only option that is available to the Commissioners through this plan review process, to ensure that there is a truly competitive market in place for greenfield residential development. There is no other substantial greenfield residential area proposed at Raglan in the notified version of the PDP or through submissions.

Providing development capacity

19. Mr Colegrave's evidence discloses short term, medium term and long term insufficiency of residential development capacity at Raglan. That assessment was, in principle, accepted by reporting planners as recently as the Raglan-specific s42A report dated 14 April 2021². A different approach has been taken in the Supplementary Evidence of Mr Davey dated 28 April 2021. Mr Colegrave will respond to that in his rebuttal evidence.
20. If the Commissioners conclude that there is insufficient development capacity at Raglan in the short or medium term, there is an obligation to make sufficient provision, through the decision on these submissions, to add "live" Residential zoning(s) to enable development without the need for a further schedule 1 RMA process³.

¹ Colegrave Statement of Evidence 17 February 2021, paragraph 51

² S42A report hearing 25 E Buckingham 14 April 2021, paragraph 42

³ Implementation 3.4

21. Parallel obligations are placed on the Council to ensure that the additional infrastructure to service the development capacity is likely to be available and is infrastructure ready as defined in NPS Implementation 3.4(3).⁴
22. If there is a need for further Residential zoning to meet residential demand, the Council does not have the option of deferring further “live” Residential zoning because the necessary infrastructure is not currently available and its timing is uncertain. The need for upgrades to key items of infrastructure i.e. widening of the one lane bridge, upgrade of the WWTP and upgrade of the water supply are all matters that the Council currently faces, to cater for residential growth. (Evidence C Fokianos pages 2 and 6, Rebuttal Evidence para 11 and confirmation from Watercare that the current proposal for upgrade of the WWTP will cater to all growth under Waikato 2070)
23. Put another way, the infrastructure upgrades are required and will be implemented in any event. The additional planning provisions for residential growth are to be established in the District Plan so that new development can be consented when the infrastructure is available, without the need for a further Schedule 1 RMA process.
24. The objectives and policies of the NPS-UD make it clear that the obligation of territorial and regional local authorities is to make planning and infrastructural provision for growth demand, rather than choosing to avoid further planning for growth because the infrastructure is not yet available.

Relevant RPS provisions

25. The original statement of evidence of Konings’ planning witness Mr Kirkby-McLeod addresses the relevant RPS provisions⁵. Mr Kirkby-McLeod draws the ultimate conclusion that the Koning rezoning proposal is considered to be generally aligned with, and not contrary

⁴ Implementation 3.2, 3.4(3) and 3.5

⁵ Statement of Evidence of Aiden Kirkby-McLeod dated 17 February 2021, pages 21-28

to, the objectives and policies of the RPS. In reaching that conclusion Mr Kirkby-McLeod considered the Future Proof indicative urban limits that have been adopted in the RPS. He refers to the fact that the RPS document includes a plan at figure 6 that shows the 2009 indicative urban limit locations, but there was a Future Proof revision of the indicative urban limits for Raglan in 2017. He notes that the 2017 indicative urban limits include most of the Koning land that is proposed for rezoning, with the exclusion of one title that is in different ownership, but within the same family.

26. It is significant in relation to this issue that the RPS has not yet been updated in response to the NPS-UD 2020 nor to adopt the Future Proof 2017 amendment to the indicative urban limits.
27. It is clear from policy 6.14 in the RPS, dealing with the indicative urban limits, that this section of the RPS is intended to adopt the Future Proof land use pattern and apply the Future Proof indicative urban limits.
28. Where the RPS has not been amended to implement the NPS-UD, the relevant objectives, policies and implementation provisions of the NPS-UD should be referred to as the guiding planning instrument.
29. The RPS issues identified in the s42A report rebuttal evidence of E Buckingham dated 10 May 2021 include comments on some of the RPS s6A development principles:
 - (c) *Not compromise the safe, efficient and effective operation and use of existing and planned infrastructure, including transport infrastructure, and show allow for future infrastructure needs, including maintenance and upgrading where these can be anticipated.*

It has now been accepted by Ms Buckingham that the proposed provision requiring an Integrated Transport Assessment to be

prepared at the time of subdivision consent would be sufficient for this policy.

- (e) *Connect well with existing and planned development and infrastructure.*

The s42A report still considers it to be preferable to position the main east-west collector road intersection with Te Hutewai Road further south on the Structure Plan map. The location is indicative and can be addressed the time of subdivision consent.

- (f) *Identify water requirements necessary to support development and ensure the availability of the volumes required.*

The s42A report includes the view that the requirement for a report confirming the availability of water supply must be submitted with any resource consent application does not ensure appropriate water can be provided at the present time.

Regardless of the location of any additional residential development at Raglan, the need to make improved provision for peak daily water supply during the busiest times of the year is the critical factor that must be resolved. Regardless of whether any further growth occurs at the Rangitahi peninsula, greenfield or infill town locations, or at the Koning site, the need to provide greater peak daily water supply is a live issue for the Council that must be resolved. This is not a reason to prevent live residential zoning of the Koning site.

- (m) *Avoid as far as practicable adverse effects on natural hydrological characteristics and process.*

The requirement for a Stormwater Management Plan to be prepared prior to subdivision and development is adequate to ensure that there

are not adverse effects on natural hydrological characteristics. The issue can be addressed at subdivision stage.

(o) *Not result in incompatible adjacent land uses.*

The issue is the existence of a waste transfer station at the southern boundary of the Koning site. The Konings proposal is for a 5 metre wide landscaping strip and 50 metre setback of dwellings from the boundary. If there is additional evidence available at subdivision stage to demonstrate that a better solution should be adopted, that can be addressed at subdivision stage.

(q) *Consider effects on the unique Tangata Te Whenua relationships, values, aspirations, roles and responsibilities.*

The s42A response is that Mana Whenua consultation is still in process and feedback is yet to be received or addressed. This is not a reason to avoid a live residential zoning of this site. Appropriate efforts have been made to identify Mana Whenua views and issues.

30. The overall comment on current alignment of the koning proposal with RPS development principles, at paragraph 13 of the most recent s42A report, is:

As a result, my view is that the amended Koning proposal is more consistent with the development principles, but still not entirely consistent, and overall does not give effect to WRPS policies 6.1 and 6.14.

With respect, entire consistency with all development principles is not required. They are principles. Most of the issues raised are matters that can and should be addressed at subdivision stage rather than at the zoning stage. Adequate provision is made in the District Plan provisions and the Structure Plan that have been proposed by the

submitter. The identified RPS policies will be given effect to by zoning of this land subject to the controls that are available at the subdivision stage.

Private contribution to residential servicing

31. An issue has been raised about the certainty and detail of options for private developer contribution to services that may not otherwise be fully available. (S42A Report Rebuttal Evidence 10 May, paragraphs 14 and 15) In order to achieve appropriate servicing of a proposed subdivision within the new zone, the developer can reach agreement with the Council for private or shared funding of any upgrade works that may be required ahead of Council's funding programme. Alternatively provision may be made for shorter term mitigation works such as traffic lights at the bridge, wastewater detention facilities or water supply storage. If fully upgraded Council services are not available and if private funding/services arrangements of this type cannot be provided, there would be no reason for a developer to expect a grant of subdivision consent.
32. At paragraph 19 of the latest s42A Report Supplementary Evidence dated 10 May, there is an expressed concern that the live residential zoning ahead of required water and wastewater infrastructure *may create an unreasonable expectation that development can occur immediately*. There is no foundation for that concern. No developer would expect to receive a resource consent if there is inadequate water supply or wastewater servicing.

Waikato 2070

33. This document includes recognition of the Koning land as a residential growth area, in addition to the Rangitahi South site. The projected timing of development of those areas is shown in the Waikato 2070 document, but without explanation of why those timing notations are included. The Rangitahi South area is noted for development in the

medium term 10 to 20 years. Te Hutewai (Koning) is noted as being in the 30 years plus timeframe.

34. Obviously the Waikato 2070 document could not take account of the outcome of the District Plan Review process, in which the Rangitahi South area is not proposed for a live Residential zoning, but the Koning (Te Hutewai) location is proposed for that live zoning. If the Commissioners agree that there is a short to medium term deficiency in development capacity at Raglan and that a further live zoning should be applied in the southern part of Raglan, that should be, and can only be, at the Koning property.

Relevant objectives of the Operative and Proposed District Plans

35. The Operative District Plan provisions are less relevant in this situation than they otherwise might be, as the NPS-UD has appeared on the development planning landscape. Also the Proposed District Plan Objectives are subject to the submission process and are uncertain. Consideration of the NPS and RPS provisions provide better guidance on the PDP approach to zoning than the District Plan objectives do.

Future Proof subregional planning

36. Future Proof has been considered above in the context of the RPS. The principles and approach to development contained in Future Proof remain valid despite the intervention of the NPS-UD, however the numerical “allocations” of growth to various locations should be given low weight when compared with the provisions of the NPS-UD.
37. The recognition in Future Proof of the majority of the proposed Koning Residential Zone land as being within the indicative urban limit for Raglan is a matter that can be given substantial weight, as there is no reason why the NPS-UD should displace or amend that type of non-quantitative spatial planning recognition.

Residential land supply and demand

38. This issue has been addressed to some degree above and will be addressed in later submission following the lodgement of Mr Colegrave's rebuttal evidence.

The most appropriate way of ensuring appropriate District Plan zonings for residential growth

39. As discussed above, the predominant "vibe" of the NPS-UD is that local authorities shall make adequate planning provision for residential growth to meet predicted demand. If it is accepted that there is a need for additional supply at Raglan in the short to medium term, there is support for the Koning location with its proximity to the WWTP, its location near to the current Rangitahi peninsula development, its scale and the availability of a willing owner/developer. The ownership distinction between the Koning land and the Rangitahi development areas is a further competition benefit.
40. The application of a residential zoning now has the benefit of allowing a nimble response to ongoing demand and the coming upgrades of infrastructure. Reliance on further Schedule 1 processes would not have the versatility that the live zoning of this land would provided.

Appropriateness of the proposed zoning, District Plan provisions and Structure Plan

41. The proposed Structure Plan for the site provides a good guidance platform for future subdivision and development. The combination of the graphic Structure Plan and the Structure Plan text is a familiar technique found in other development planning provisions in District Plans.

42. The planned avoidance of sensitive parts of the site, requirements for development to respect the sites attributes and potential wider connections are appropriate and helpful.

43. The submissions suggesting further delay and a further Schedule 1 process to first provide a broader spatial planning process are unlikely to provide material assistance in developing this land. Its integration into the surrounding environment is adequately addressed through the submitter's proposals.

Dated: 12 May 2021

A handwritten signature in blue ink, consisting of a large, stylized loop with a small upward tick at the top, positioned above a horizontal dotted line.

P Lang

Counsel for the Submitter