

# SECTION 42A REPORT

Closing Statement

## Hearing 25: Rezoning – Rest of District

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## TABLE OF CONTENTS

1	Introduction .....	3
2	Andrew and Christine Gore [330] .....	3
3	Martin and Stephanie Lynch [161].....	3
4	Leigh Robcke on behalf of Dinah Robcke [551] .....	3
5	David Hall [103].....	4
6	Dale Pitcher [79] and Horotiu Properties Limited [397] .....	5
7	Stuart Quigley / Quigley Family Trust [947].....	5
8	Bowrock Properties Limited [393] .....	6
9	Dilworth Trust Board [577] .....	7
10	Diamond Creek Farms [387] .....	9
11	David and Barbara Yzendoorn [292.4 and 292.6].....	9
12	Ohinewai Lands Limited [428] .....	9

## 1 Introduction

This closing statement is provided as a response to the evidence presented by submitters at the Rest of District and Hamilton Fringe hearing held on the 9<sup>th</sup> and 10<sup>th</sup> of June. In this statement I have focussed on the key matters raised by some of the submitters who presented at the hearing, and confirm whether my s42a recommendations are changed or unchanged in response to these presentations.

## 2 Andrew and Christine Gore [330]

Andrew and Christine Gore both presented their submission to the Panel. The Gore's are seeking a rezone of their land to Country Living Zone with reasons outlined in the hearing being that the land is not suitable for rural production due to its fragmentation, that it is unreasonable and not an effective use for the land to be kept in a holding pattern until the land is transferred to Hamilton City (at some point between now and 2045) and that a Country Living Zoning would be consistent with the level of development in the surrounding area. This zoning would have less urbanisation than a residential zone but is more appropriate for the area as it would allow preservation of some of the special character of the land through plantings that have already occurred over the property.

Mr Fulton in questions from the Panel, noted that it was his understanding that Hamilton City Council do not want subdivision to occur on land that will be urbanised in the near future. The Gore's outlined that for them this is a critical issue as until that occurs (2045) their land is going to waste, there is no effective farming happening on their land at the moment and its use is restricted to people living on the land. Miss Gibb advised that it was her understanding that there is no set date for land to be transferred to Hamilton City Council now, rather there are trigger points to be met before a transfer occurs, this may or may not mean that urbanisation occurs sooner than originally anticipated. I confirm that this is my understanding for the HT2 Area also. I note that Hamilton City Council's presentation by Laura Galt [535 & 1379] at the hearing outlined that Hamilton City Council still seek to maintain land until comprehensive planning is undertaken. That Country Living Zone is not appropriate and that retrofitting land to an urban density if already development can be problematic.

My recommendation to reject the Gore's submission remains unchanged for the reasons already provided in my s42A Report – Rest of District Addendum (dated 23 April 2021).

## 3 Martin and Stephanie Lynch [161]

Mr Martin Lynch spoke to his submission, regarding the change in zoning of his property at 2044 River Road, from Country Living Zone under the Operative District Plan to Rural under the Proposed District Plan. Mr Lynch was pleased with the recognition that his property had been zoned in error and was therefore supportive of the recommendation to accept his submission and have his property zoned as Country Living Zone. Mr Lynch provided planning background to his property and advised that subdivision consent had been obtained last year.

I confirm that my recommendation to accept the Lynch's submission [161] has not changed.

## 4 Leigh Robcke on behalf of Dinah Robcke [551]

Mr Leigh Robcke presented on behalf of his mother and for his father's estate for the rezoning of the land at 859 Waingaro Road. Mr Robcke was pleased with the recommendation in the s42a report outlining that he considered the conclusion reached to be robust and justifiable. Mr Robcke took note of the need to provide evidence in support of a rezoning request. As such he engaged

a geotechnical engineer to assess the suitability of the site whereby the findings were that the land is able to be serviced and is suitable for rezoning to Village. He also referred to a previously commissioned Council report by Tonkin and Taylor which reached the conclusion that ecological values, flood risk, and overall development constraints on the property were low. A soils map of the property was also referred to, the soils are not Class I or II.

Mr Robcke summarised that rezoning would not be inconsistent with the RPS, would not occur over high-class soils, and was not inconsistent with the Plan or Future Proof directions. He referred to access of Wilton Collieries Road and adjacent land uses which are covered in the highlights package and overall considers that rezoning provides for a logical extension of Glen Massey and its community.

In response to a question by Ms Sedgwick, Mr Robcke outlined that rezoning the land to Village would provide for approximately 70 additional lots. This is similar to the number of lots that could be subdivided under the Operative District Plan provisions over the larger (currently undeveloped) area which is zoned Country Living.

Mr Fulton asked where access into the site would be likely to go and was advised that as there is a gully running through the middle of the submission site, it is anticipated that two village areas would be developed. Access for the eastern village area could come from at least 3 locations off Waingaro Road and for the western village area, there would be two logical access points. For Wilton Collieries Road it was confirmed that these access points would be at the tarsealed portion of the road.

Mr Mitchell asked whether the submitters were content with the recommended rezone area - that the southern portion would be returned from Country Living to Rural and that the notified Country Living Zone area be rezoned to Village. Mr Robcke advised that he is happy with the recommendation, and that it makes sense. He has had surveyors look at the suitability of land in the southern portion for rezoning but because of the cost of getting access over this land and the low density of development that would be suitable over this land he believes that achieving a higher density of development over a smaller area of land (as recommended) is acceptable.

As there is agreement between myself and Mr Robcke my s42a recommendation for submission site [551] remains unchanged.

## 5 David Hall [103]

Mr Hall spoke to his submission where he is seeking the rezoning of O'Brien Road. I note that at the hearing Mr Hall specifically presented with respect to his own property (32 O'Brien Road which has an approximate area of 8.09ha) where he reiterated his Country Living Zone aspirations for his site, and not the road, as was sought in the submission. No technical evidence was provided by Mr Hall. Mr Hall advised that he has family members wanting to get on the property market and he sees further development being allowed on his land as a solution to this also outlining that the land could be self-serviced and further development will not create additional traffic. He outlined that given the current Rural Zoning he cannot subdivide or put any more residential dwellings on his property.

Ms Gibb questioned how many more sites could be subdivided if the land were zoned Country Living to which Mr Hall advised two further sites would be subdivided for family (although I note that Country Living Zoning would enable a greater number of allotments – up to 16) and that for other properties along the road maybe two or three more sites could be subdivided.

As noted in my s42a report, O'Brien Road is not identified in any higher order documents. It is likewise inconsistent with the Waikato Regional Policy Statement (“WRPS”) directions which

seek to limit further lifestyle block development, especially in close proximity to Hamilton. I also note that no neighbours submitted on the PWDP for a change in zoning at their properties and no further submissions from neighbours in support of Mr Hall's original submission were received.

I confirm my earlier recommendation that this site retain its Rural Zoning for the reasons given in my s42a report.

## 6 Dale Pitcher [79] and Horotiu Properties Limited [397]

Submissions [79] and [397] were not heard together but relate to properties which are adjoining at 20 Horotiu Bridge Road and 27 Sullivan Road respectively. Both submitters are seeking to rezone their property from Rural to Country Living Zoning.

Mr Pitcher outlined that 20 Horotiu Road has a size of 1.5ha and they want to be able to subdivide the site so that they can create one site of 5000m<sup>2</sup> and one of 1ha. On questioning by the panel, Mr Pitcher outlined that while it would be possible to subdivide down to three sites if zoned Country Living Zone it is not their current intention. To do so would require some strategic work around the placement of additional housing due to the topography of the land. Mr Pitcher outlined that the site is well located for additional development and is adjacent (across Horotiu Bridge Road) to Country Living Zoned land at Piriti Lane.

For Horotiu Properties Ltd [397] it was identified that the 7.5ha property has the potential for 13 lots at 5000m<sup>2</sup> but at its current size the property is too small for productive farm use.

I confirm my earlier recommendation to reject these rezoning requests and that the land remain Rural Zone.

## 7 Stuart Quigley / Quigley Family Trust [947]

Submission [947] sought to have the land at 233 Wilton Collieries Road rezoned from Rural to Country Living or Village Zone. At the hearing, the submitters decided to focus on Country Living Zone as the preferred outcome, with this zoning resulting in a similar nature and scale of development to that which was consented under the now lapsed subdivision consent for the site. The submitters were represented at the hearing by Dr Forret and Ms Kaur (legal), Ms Morse (planning) and Ms Makinson (transport).

The Quigley's are seeking to have their land rezoned to Country Living essentially to be able to undertake a level of development the same/similar to the subdivision consent, which has now lapsed. Subdivision was approved for 18 lots over 5 stages at their property but only 2 lots were completed and obtained title before the subdivision consent lapsed. The Panel were advised that the receiving environment has not had a lot of change since the subdivision consent was granted in 2007 but that the planning environment has changed. It was outlined that the site which is currently zoned Rural under the Operative Plan has previously been zoned Rural Residential Zone (I have not looked back to see whether the Country Living Zoning applied over all or part of the submission site).

The submitter's representatives consider that the proposal aligns with higher order documents, with specific detail provided in the hearing about how provisions of these higher order documents are met. Further outlining that that none of the provisions in the RMA, RPS or Future Proof intend on an inflexible approach rather it is the interpretation and application of those provisions to avoid unplanned and inappropriate development. In my opinion, the changed planning environment is a critical issue as while I appreciate that at a point in time Council determined the subdivision of the property to be appropriate, the planning direction for the area has since

changed. For the reasons provided in my s42a Report I still consider that the rezoning request does not give effect to the higher order documents.

I also note that my s42 recommendation in relation to 859 Waingaroa Road [551] was raised whereby the Panel advised that they had heard Mr Robcke's presentation on behalf of his mother on the first day of the hearing. It was presented that rezoning could be similarly applied at 233 Wilton Collieries Road given that there is an approved subdivision consent. I reiterate that there is no approved subdivision consent as it has long since lapsed but I also consider that there are several differentiating factors for that submission (such as, but not limited to its current Country Living Zoning rather than rural zoning, proximity to Glen Massey village and identification within the Glen Massey Structure Plan) which have led me to recommending that submission be accepted but do not also apply to the submission to rezone 233 Wilton Collieries Road. I therefore consider that it is inappropriate to similarly rezone this submission site.

The Panel questioned the capacity of the road to take more traffic. The Quigley's and Ms Makinson provided some detail with Ms Makinson stating that in her opinion the road is suitable to contain traffic resulting from subdivision and the road would not need to be tar-sealed.

Mr Cooney asked how the submission site at 233 Wilton Collieries Road fits with the Robcke's land and submission [551] to rezone. The presenters outlined that rezoning this land would be complementary to the existing Glen Massey village supporting existing infrastructure there such as the school. The Panel were advised that the requested rezone would not create a sense of sprawl of the village given the topography of the land. I note that currently the submission site is connected to the village by Wilton Collieries Road, there is no suggestion that there would be connection to the submission site [551] by a walkway/cycleway and this would require approval from the adjoining landowner.

Overall, my recommendation to reject the submissions relating to the rezoning of 233 Wilton Collieries Road remains unchanged.

## 8 Bowrock Properties Limited [393]

Bowrock Properties Limited sought to have their submission site rezoned from Rural to Country Living Zone outlining that the Country Living Zone would result in the best and highest use of the site. The site is approximately 20ha in size. It adjoins Glen Ida Estate on its eastern boundary which is Country Living Zoned land but at all other boundaries, the land is zoned Rural. Some of the adjoining land parcels to the north and east are smaller and generally have a size more consistent with a Country Living Zoned site than a Rural Zoned site. The key issues raised by the submitters at the hearing was that the surrounding land pattern has seen the submitter's land over time become sandwiched between rural lifestyle sites meaning that it is difficult to productively farm the land with specific mention of reverse sensitivity effects being made.

I understand that the submitter and their representatives were generally in agreement with my conclusion that if the land were to be rezoned, the effects of development would not be insurmountable. However, the key point of contention raised by the submitter relates to the weight I place on the higher order documents in forming my recommendation to reject the submission. They advised the Panel that they consider my strict reliance on Future Proof as being somewhat flawed and that it is intended to be used more flexibly and responsively. While I do agree that Future Proof does provide some flexibility I think this needs to be considered in the context of the wider growth management outcomes Future Proof is trying to achieve. For this rezoning request I note that Future Proof generally directs that rural residential development is not the preferred urban growth solution and its occurrence and location should be restricted.

For the reasons provided in my s42a amendment I still consider that this rezoning request should be rejected.

Furthermore, this rezoning request is similar to others made in Rest of District so for the Panel to accept this rezoning request, it is considered that others could similarly follow (such as the Diamond Creek Limited and Quigley's rezoning request at 233 Wilton Collieries Road). If all were to be accepted this could have the effect of compromising the wider growth outcomes sought in the higher order documents for the District.

## 9 Dilworth Trust Board [577]

The Dilworth Trust Board, represented by Mr Arbuthnot, seeks to have Dilworth School specifically recognised through area specific provisions in the District Plan. Mr Arbuthnot was generally in agreement with the recommendations reached in my s42a report but noted that the key area of contention remains at the level of building coverage permitted on the site. Dilworth were seeking that provision be made for 10% of the site to be covered in buildings, whereas my recommendation was that any further increase in net floor area would require resource consent for a Restricted Discretionary Activity. 10% of the maximum site area would equate to approximately 15,231m<sup>2</sup> and I have been advised that the existing building coverage is approximately 8,500m<sup>2</sup> to 8,600m<sup>2</sup> which equates to 5.6%. I note that Dilworth's submitter evidence was for a specific set of provisions to be provided under '22.9 Specific Area – Dilworth School – Rural Campus'

The Panel were clear that they were wanting to see some flexibility given in the rule to enable Dilworth to be able to undertake some additions and alterations without requiring resource consent and therefore Mr Arbuthnot (on behalf of Dilworth) and myself were asked to resolve this matter between ourselves before coming back to the Panel. While Mr Arbuthnot has set out specific area provisions for Dilworth's Rural Campus under '22.9 Specific Area – Dilworth School – Rural Campus' which was provided as submitter evidence I have set out the specific area provisions to be embedded within the Rural Zone provisions and in this way my recommendation differs from the relief sought by Dilworth School. However, Mr Arbuthnot and myself have been in discussion and are now in agreement over the key area of contention, being the building coverage area. We are in agreement that a 10,000m<sup>2</sup> maximum building coverage is appropriate. This figure allows 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. Formatting the rule as a building area maximum rather than a site coverage percentage was considered to give greater certainty and ease of use of the rule. In terms of building setback from any site boundary I consider that a 12m setback is appropriate, there is agreement over this provision.

My recommendation in my s42a Final Addendum was that a specific rule be provided within the Rural Zone provisions rather than through a number of specific area provisions but I did note that with the Panel's benefit of oversight in the hearings that they might see it as appropriate to include Specific Area Provisions. My recommended changes to Rural Zone provisions specifically relate to the specific activity (Land Use – Effects rules in Rule 22.1) and building rules (Land Use – Buildings rules in Rule 22.3). These recommended amendments have been formed from the Rural Zone provisions recommended in Mr Jonathan Cleese's Section 42A Rebuttal Evidence for hearing 18: Rural Zone – Landuse.

### **Rule 22.1.2 – Permitted Activities**

(1) The following activities are permitted activities if they meet all the following:

(a) Activity-specific conditions:

~~(a)~~(b) Land Use – Effects rules in Rule 22.2 (unless the activity rule and/or ~~activity-specific~~ conditions identify a condition(s) that does not apply);

(b)~~(c)~~ Land Use – Building rules in Rule 22.3 (unless the activity rule and/or ~~activity-specific~~ conditions identify a condition(s) that does not apply);

<b>Activity</b>	<b>Activity specific conditions</b>
P20 <u>Maintenance, operation, and alterations to:</u> (a) <u>Dilworth School (legal description):</u>	(a) <u>Land Use - Effects in Rule 22.2;</u> (b) Land Use – Building in Rule 22.3, except: (i) Rule 22.3.1 Number of dwellings within a lot; (ii) Rule 22.3.2 Minor dwelling;

### 22.3.6 Building coverage

P1	(a) The total building coverage, in areas not identified in P2 below, must not exceed <del>the larger of:</del> (i) <del>42%</del> of the site area <u>for sites smaller than 10ha</u> ; or (ii) <del>5000</del> m <sup>2</sup> for sites <u>larger than 10ha</u> . (b) <u>No site coverage limit applies to Artificial Crop Protection Structures that meet the following conditions:</u> (i) <u>Green or black cloth shall be used on vertical faces within 30m of the site boundary;</u> (ii) <u>Green, black or white cloth shall be used on horizontal surfaces.</u>
P2	<u>The total building coverage at Dilworth School Rural Campus must not exceed 10,000m<sup>2</sup>.</u>
D1	A building that does not comply with Rule 22.3.6 P1 or P2.

### 22.3.7 Building setbacks

- (a) Rules 22.3.7.1 to 22.3.7.4 provide the permitted building setback distances for buildings from site boundaries, specific land use activities and environmental features.
- (b) Rule 22.7.1 Building setbacks – all boundaries provides permitted building setback distances from all boundaries on any site within the Rural Zone. Different setback distances are applied based on the type of building ~~and~~, the site area and for buildings at Dilworth School Rural Campus
- (c) Rule 22.3.7.2 Building setback - sensitive land use provides permitted setback distances for any building containing a sensitive land use from specified land use activities.
- (d) Rule 22.3.7.3 Building setback – water bodies provides permitted setback distances from lakes, wetlands, rivers and the coast.
- (e) Rule 22.3.7.4 Building setback - Environmental Protection Area provide specific setback distances from specified environmental features.

P5	Any building <u>at Dilworth School Rural Campus</u> must be set back a minimum of <del>7m</del> <u>12m</u> from any site boundary
RDI	(a) A building that does not comply with Rule 22.9.5 P1. (b) Council's discretion is restricted to the following matters: (i) amenity values; (ii) <u>transport network safety and efficiency;</u> (iii) reverse sensitivity; <del>effects on neighbouring properties.</del>

(iv) <u>where the road boundary is with an unformed paper road the likelihood of the road being formed or readily utilised by the public.</u>
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## 10 Diamond Creek Farms [387]

Evidence was prepared by Dr Forret (legal), Glenn and Abby Neems (property owners), Mr Dave Mansergh (landscape architect), Judith Makinson (transport engineer) and Mr Bevan Houlbrook (Planner). Mr Houlbrook outlined 4 main areas of contention with my recommendation to reject the rezoning request. These were:

- a. Village Limits
- b. High class soil and fragmentation
- c. Availability of services
- d. WRPS Schedule 6

Overall, my recommendation remains unchanged from my s42a report, that is that this rezoning request be rejected. Similar to my comments outlined above for the Bowrock rezoning request, rural-residential type development is not the preferred growth solution, this land falls outside of an identified growth area (which I recognise is a point of contention raised by the presenters) and this land cannot be serviced by Council reticulated infrastructure. This rezoning request is not too dissimilar to the Bowrock request considered above, therefore if the Panel were to accept one it would need to consider how accepting all similar requests could compromise the wider growth outcomes sought by the higher order documents within the district.

## 11 David and Barbara Yzendoorn [292.4 and 292.6]

Jacob Robb presented on behalf of the Yzendoorn's who submitted to rezone their properties at 1002 [292.4] and 1012 [292.6] Gordonton Road. I recommended that the rezone request be accepted for Submission [292.4] as this site is already representative and developed to a level consistent with the adjoining Residential Zone. I also set out in my s42a report that I was open to the rezoning of 1012 Gordonton Road [292.6] in principle but at the time of my recommendation there was a level of detail that was lacking and therefore I recommended that the submission be rejected. After listening to Mr Jacob Robb and the Yzendoorn's present at the hearing I still consider that there is limited evidence but given the site is located adjacent to a residential zone and is sufficiently small so that matters of detail can be resolved through a subdivision consent process I therefore change my recommendation so that the rezoning request 292.6 is accepted.

## 12 Ohinewai Lands Limited [428]

Ohinewai Lands Limited are seeking to have 39ha of land identified as a Future Urban Zone south of Tahuna Road and north of Lake Ohinewai (the Southern property). This land is to comprise approximately 23 hectares of residential land and approximately 16ha of open space. 80 hectares of land located on Balemi Road immediately north of the Ambury landholdings (the Northern property) is also sought to be identified as a Future Urban Zone.

A Future Urban Zone is sought given that Ohinewai Lands Limited do not intend to develop the land in the short term. The identification of this land as Future Urban Zone was contingent on the Ambury Properties Limited rezone being accepted, which I note it was, in a decision released

on 24 May 2021. The decision on Hearing 19 has been appealed by Waka Kotahi, the Waikato Regional Council, Ambury Properties Limited and Ralph Estates.

Whether the land is identified as a Future Urban Zone is also contingent on the Panel's decision on whether to accept the concept of a Future Urban Zone, with a decision still pending on this.

Information presented at the hearing has not altered my recommendation for submission 428 which was that a Future Urban Zone be identified for the southern property but that the northern property not be identified as a Future Urban Zone.