

# **SECTION 42A REPORT**

Closing Statement

## **Hearing 25: Rezoning – Rest of District – Hamilton Fringe**

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## I Introduction

1. This closing statement is provided as a response to the evidence presented by submitters and the questions raised at the hearing held 9<sup>th</sup> and 10<sup>th</sup> June relating to the rezoning of land in the Hamilton Fringe. In this statement I have focussed on the key matters raised by submitters and the Panel. As such it represents an evolution of my original s42A report and subsequent rebuttal statement. Where my recommendations have not changed, these earlier reports are relied upon, and I have avoided simply repeating the same arguments.
2. The Rest of District hearings covered submissions addressed by both the Rest of District reports (prepared by Ms Boulton) and the Rest of District – Hamilton Fringe reports (prepared by myself). For clarity, the following submitters that were considered as part of my reporting attended the hearing:
  - Submitter 398, Ian Thomas – represented by Mr Andrew Wood (planner)
  - Submitter 272, Mark Smith – representing themselves
  - Submitter 185, Grant and Merelina Burnett – represented by Stephen Bigwood (planner)
  - Submitter 977, Amy and Andrew de Langen – representing themselves
  - Submitter 389, J and T Quigley – represented by Mr Leigh Shaw (planner), Ms Pervinder Kaur (counsel), Ms Trisha Simonson (engineer), Mr Dave Miller (agricultural specialist)
  - Submitter 672, Ian and Darienne Voyle – represented by Mr Leigh Shaw (planner)
  - Submitter 422, Malcolm McDonald (Callum Bray Trust) – represented by Ms Tracey Morse (planner) and Dr Joan Forret (counsel)
  - Further submitter 1164/1165/1166, Tamara and Jarod Huaki – representing themselves
  - Submitter 742 and further submitter 1202, NZTA, represented by Mr Mike Wood (planner)
  - Submitter 535 and further submitter 1379, HCC, represented by Ms Laura Galt (planner)

## 2 Applicability of the NPS and RPS

3. The Panel, in particular Mr Cooney, asked questions of both myself and Henry Harkness (responded to by Dr Forret) as to the applicability of the NPS-UD to the Country Living and Village Zones.
4. In addition to my comments at the hearing, I note that the focus of the NPS is on delivering capacity through well-functioning urban environments. Large areas of Country Living or Village Zone will not generally deliver such outcomes as the permitted density is low and servicing is not required and is therefore not well-functioning. Accordingly, the NPS-UD is against lifestyle blocks where they are used as an urban growth solution around towns.
5. With respect to the RPS, I acknowledge that the policy focus is not to ‘avoid’ rural residential development, but to ‘manage’ it (Policy 6.17), with a particular focus on limiting such development in the Hamilton Fringe. As noted in my rebuttal, managing something does entitle, in this case the Council, to ultimately prevent development at a point where the effects are unacceptable, including the cumulative effects (Policy 6.17(a)). I consider that the effects of the proliferation of rural residential development in the Hamilton Fringe have now tipped.

On an individual basis, each rezoning request may seem inconsequential, but cumulatively they add to an already unfettered situation. Furthermore, the submissions before the Panel are effectively seeking similar outcomes with very little to differentiate them from each other (physical constraints, locational benefits). Accordingly, for the Panel to accept some then they really need to accept most, and to accept most will not be giving effect to a WRPS policy direction to limit such forms.

6. Lastly, having regard to *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited & Ors* - [2014] NZSC 38, and the policy directions of the NPS and RPS with respect to urban growth and high class soils, I do not consider that the Panel has recourse to Part 2 of the RMA to consider the merits of the rezoning submissions.

### 3 Unplanned or out of sequence development

7. As noted by the Panel and acknowledged in my reports (with respect to Pukataha and Ruakura), both the NPS (at Objective 6(a), Policy 8 and Clause 3.8) and the RPS (at Policy 6.14(g) and Implementation Method 6.14.3) provide for out of sequence development, being residential and industrial development not anticipated by Councils or the community. In the case of the Waikato District, this would be development that is not consistent with settlement pattern identified in Future Proof.
8. I note that it is incumbent on the proponent to advance a suitable assessment of the relevant provisions to justify their rezoning request, but I make the following points:
  - a. Unplanned development must be consistent with the principles of the Future Proof land use pattern<sup>1</sup> (see also Section 5 below).
  - b. The Council has demonstrated that they have sufficiently zoned land to meet growth demands in line with the NPS requirements<sup>2</sup>.
  - c. My assessment of the rural residential principles in section 6A of the RPS determined that the rezoning requests were largely inconsistent<sup>3</sup>.
  - d. The NPS directs that out of sequence development may be considered where they add significant development capacity<sup>4</sup>.
  - e. Significant capacity is not defined by the NPS; however, with the exception of submissions [341], [344] and [371], I do not consider that any of the submissions add significant capacity as intended by the NPS. I note that insufficient evidence was provided by submitters [341], [344] and [371] to consider the effects of rezoning as requested.
  - f. The NPS requires any development that may add significant capacity to also be well functioning<sup>5</sup>. Well-functioning is defined in Policy I of the NPS as:

*Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:*

- a. *have or enable a variety of homes that:*
  - i. *meet the needs, in terms of type, price, and location, of different households; and*
  - ii. *enable Māori to express their cultural traditions and norms; and*

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<sup>1</sup> RPS, Policy 6.14(g), page 6-20

<sup>2</sup> RPS, Implementation Method 6.14.3(c), page 6-21

<sup>3</sup> RPS, Implementation Method 6.14.3(d), page 6-21

<sup>4</sup> NPS, Objective 6(c)

<sup>5</sup> NPS, Policy 8

- b. *have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and*
- c. *have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and*
- d. *support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and*
- e. *support reductions in greenhouse gas emissions; and*
- f. *are resilient to the likely current and future effects of climate change.*

None of the submitters have provided a suitable assessment of Policy 1 to confirm that their rezoning request contributes to a well-functioning urban environment.

## 4 High class soils

- 9. To the best of my knowledge, all of the rezoning submissions sit on high class soils. None of the submitters provided technical evidence to the contrary.
- 10. In support of their submissions, many submitters argued that the use of their land for rural purposes was no longer economic. While this is an unfortunate position for the individual submitter, I note that the relevant objectives and policies of the RPS do not support the rezoning of land on the basis that a landowner is unable to achieve an economic return on the land. As I noted at the hearing, there are opportunities for smaller rural landholdings, including hobby farms or gardens or leasing land (either to someone else to add to their landholding, or from someone else to add to the small landholding to increase productive capacity), the fact the individual submitters have no interest in such pursuits should have no bearing on the decision to rezone the land.
- 11. The provisions of chapters 6 and 14 of the RPS are relevant to the rezoning requests in the Hamilton Fringe. Across both of these chapters, there are three relevant 'avoid' policies: two of these are Section 6A principles and state:
  - c. *avoid open landscapes largely free of urban and rural-residential development;*
  - d. *avoid ribbon development and, where practicable, the need for additional access points and upgrades, along significant transport corridors and other arterial routes;*

While Policy 14.2 is the final 'avoid' policy and states:

*Avoid a decline in the availability of high class soils for primary production due to inappropriate subdivision, use or development.*

- 12. As set out by *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited & Ors - [2014] NZSC 38*, 'avoid' policies are a directive and carry more weight than those policies that are less directive. There is an obligation to implement such policies.
- 13. I do not consider that the issues being managed by Principles 6A(c) and (d), and Policy 14.2 are conflicting, meaning that the directives of all three clauses can be achieved without having to take an overall judgement approach. Policy 14.2 directs that a decline in the availability of high class soils as a result of inappropriate subdivision, development and use should be avoided. As noted in my earlier reports, when considered in the context of Policy 6.1, it is a reasonable conclusion that 'inappropriate' would be any unplanned or uncoordinated subdivision, development or use.
- 14. I consider that Principles 6A(c) and (d) would come into play on lesser class soils where rural residential development could possibly be more appropriate and it is appropriate to direct the location and form of such development.

## 5 Futureproof

15. Mr Cooney questioned the extent to which Future Proof provides for rural residential development and sited the following passage:

*The growth of rural towns and villages should be supported within indicative urban and village limits. Rural residential living is best located in and around existing towns, villages and rural-residential nodes, and should not result in fragmentation of high class soils.*

16. However, there is a broader Future Proof context to the consideration of rural residential development, largely encapsulated by the Guiding Principles. Having considered Future Proof as a whole, I acknowledge that it does not create an absolute ban on rural residential development, but I consider that Future Proof generally directs that rural residential development:
- a. Is not the preferred urban outcome and that its occurrence and location should be severely restricted.
  - b. Occurs within urban limits.
  - c. Does not compromise the Future Proof settlement pattern.
  - d. Avoids fragmenting high class soils.
  - e. Is limited around existing towns and villages to protect farmland for productive purposes.
  - f. Reduces dependency on motor vehicles.
  - g. Does not create demand for urban services.