

**BEFORE THE HEARINGS COMMISSIONERS
AT NGARUAWAHIA**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the hearing of submissions on the
Proposed Waikato District Plan

BETWEEN Andrew and Christine Gore

Submitters

AND Waikato District Council

Local Authority

**SUBMISSIONS OF COUNSEL FOR ANDREW AND CHRISTINE GORE - HEARING 25
ZONE EXTENTS**



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May it please the Commissioners

Introduction

1. These legal submissions are made on behalf of Andrew and Christine Gore (**Gores**). The Gores submitted on the proposed Waikato District Plan (**Proposed Plan**).¹
2. These submissions have been prepared in accordance with directions from the Hearing Commissioners, including special leave to file these submissions by or before 26 May 2021.
3. Additionally, and insofar as the relevant statutory framework is concerned, these submissions adopt Appendix 1 of the opening legal submissions by counsel for Waikato District Council (**Council**), dated 23 September 2019.
4. The submissions are partly structured in accordance with the legal standards arising from the Environment Court's decision of *Colonial Vineyards*:²
 - (a) Part A deals with general requirements;
 - (b) Part B deals with objectives (the section 32 test for objectives);
 - (c) Part C deals with policies, methods and rules (the section 32 test for policies and rules); and
 - (d) Part D deals with rules.

Gores' Submissions

5. The Gores' submissions included a request to re-zone land they own at 295 Kay Road, legally described as Section 1-2 Survey Office Plan 393978 (**Site**). The Site sits along the southern boundary of the Waikato district, near Hamilton City Council's (**HCC**) territory.
6. The Site is currently zoned Rural under the Operative Waikato District Plan. The Proposed Plan seeks to retain this zoning. On the basis of its size,

¹ Submission of Andrew and Christine Gore [Sub 330] dated February 2021, and Further submission of Andrew and Christine Gore [FS1062] dated 23 April 2021.

² *Colonial Vineyard Limited v Marlborough District Council* [2014] NZEnV 55, at [17].

location, and layout, the Gores have sought to re-zone the Site to Country Living.

7. Relevantly, the Site is wholly affected by the Proposed Plan's Urban Expansion Area (**UEA**). This overlay has the practical effect of limiting the Site's development potential. The Gores' request to re-zone the Site has consequential effects for the UEA overlay, which they also seek to have removed.
8. Fundamentally, the Gores object to both the Site's Rural zoning and the application of the UEA on the basis both unreasonably encumber their development rights and neither represents the efficient use or sustainable management of the Site as a land resource.
9. To that end, the Gores state that they have:
 - (a) Planted thousands of plants on the Site, including native trees and many native lower-growing shrubs.
 - (b) Fenced an acre to regenerate, and planted windbreak poplars and elders to nurture revegetation.
 - (c) Noticed an increase in the numbers of lizards, frogs, and native birds on the Site.

Supporting reports and assessments

10. As was intended by the RMA, the Gores – as lay participants – have prepared their own supporting reports and assessments. This information is informed by their personal experiences of living at the Site.
11. The level of detail provided by the Gores is commensurate with the site-specific and discrete nature of their submission. While they did attempt to engage professional support, they were unsuccessful in the time provided.

PART A: General requirements

Legal framework - discussion

12. The Council is obligated to (inter alia) establish, implement, and review planning objectives, policies, and methods to ensure sufficient development capacity exists to meet the expected demands of the district.³
13. The intention is that the Proposed Plan, once adopted, will assist Council to carry out its functions in order to achieve the object of the Resource Management Act 1991 (**RMA**) of sustainable management.
14. In preparing the Proposed Plan, Council must undertake an evaluation in accordance with section 32 of the RMA. Among other things, this requires Council to examine the extent to which the Proposed Plan is the most appropriate way to achieve the purpose of the RMA.

National planning standards – NPS-UD

15. The Proposed Plan must be prepared and changed in accordance with any national planning standards.⁴ One such standard is the National Policy Statement – Urban Development (**NPS-UD**). The Proposed Plan must give effect to the NPS-UD.
16. The NPS-UD aims to ensure that New Zealand’s towns and cities are well functioning urban environments that meet the needs of diverse communities. It took effect from 20 August 2020, after the Proposed Plan was first notified.
17. For the purposes of the NPS-UD, Council is categorised as a “Tier 1” local authority. It is therefore subject to the NPS-UD’s most directive policies insofar as urban environments are concerned.
18. “Urban environment” is defined within the NPS-UD as “...any area of land...that: (a) is, or is intended to be, predominantly urban in

³ Resource Management Act 1991, s 31.

⁴ Resource Management Act 1991, s 74(1)(ea).

character...".⁵ Although the Site is zoned Rural under the Proposed Plan, its size, location, and configuration, as well as the existence of the UEA overlay, arguably means it falls within the definition of an 'urban environment' for the purposes of the NPS-UD.

19. This being the case, Policy 3 of the NPS-UD may be relevant to any assessment of the Proposed Plan's consistency with that national planning standard. Among other things, this policy requires building heights and urban form commensurate with the relative demand for housing and business use within the relevant district, which the proposed Rural zoning does not provide for.
20. In our submission, the Gores' re-zoning request is consistent with the need to provide for urban form (particularly density) that is commensurate with the demand for housing and business use in the Waikato district. The size, layout and configuration of the Site equally supports this approach, given it cannot reasonably be used for the kinds of uses anticipated and permitted within the Rural zone.
21. We do not consider that the Gores' re-zoning request will impede any future planning potential for the area to become urban, subject to the provision of infrastructure. For example, the suburb of Rototuna in Hamilton City was zoned as Future Urban for a long time which enabled the creation of 5,000m² un-serviced lots. Once infrastructure became available, a structure plan was created, and the suburb is now almost entirely urban with approximately 20,000 residents.

Waikato Regional Policy Statement

22. The Waikato Regional Policy Statement (**WRPS**) includes policies relating to the built environment. Relevant to the Gores' submission is the need for consistency with the WRPS, particularly around the pattern of built development. The Proposed Plan must have regard to the WRPS.

⁵ National Policy Statement on Urban Development 2020, p 8.

Policy 6.14

23. Although policy 6.14(b) of the WRPS requires any new residential (including rural-residential) development to be managed in accordance with stated timeframes, its implementation methods also contemplate out-of-sequence development (or alternative land release).⁶
24. The criteria for alternative land release are set out within the WRPS at implementation method 6.14.3. This implementation method requires consideration of (inter alia) existing or planned infrastructure availability, evidence of a need for change, and consistency with the WRPS's development principles.
25. Implementation method 6.14.3 is intended by the WRPS to provide "flexibility" in the staged release of land for development. Consistency with the method requires consideration of the Site and its surrounds.
26. On the basis the Site is already fragmented (when compared with equivalent sites within the Rural zone), this flexibility should extend to out-of-sequence development of the kind sought by the Gores.

Policy 6.17

27. Policy 6.17 of the WRPS deals with rural-residential development within the "Future Proof area" (the UEA), including for land proximate to territory controlled by HCC. The Site falls into this latter category on the basis of its location and the UEA overlay.
28. To hand, policy 6.17 applies awkwardly to the Site on the basis of its existing size, layout, configuration and location. The fragmented nature of the Site is an existing feature of the surrounding environment. Re-zoning the Site from Rural to Country Living would enable development that is more in keeping with the Site's features than is presently the case.
29. Given the Site's features are existing, it is difficult to see how this could result in the adverse effects contemplated by the WRPS and policy 6.17. The Gores have proposed development controls that are sympathetic to

⁶ Waikato Regional Policy Statement, implementation methods 6.14.1 to 6.14.3 (inclusive).

the surrounding environment, and would be willing to accept additional controls beyond those provided for within the Country Living zone if required.

Conclusion

30. On balance, and in our submission, the Gores' submission to re-zone the Site is largely consistent with the WRPS. The nature of the Site and surrounding land is such that re-zoning it to Country Living and lifting the UEA represents the most efficient and sustainable use of the land resource.
31. Questions of reasonableness arise in respect of the UEA and its effects on the Site's development potential. The UEA has existed for some time, and yet the local authorities charged with its administration have still not agreed long-term urban development goals for the area which recognise the Site's (and the surrounding land's) unique characteristics.
32. The Gores believe there will not be any adverse effects from developing the Site in a manner sympathetic to its existing size, layout, configuration and location. Rather, the Gores believe that doing so achieves the purpose of the RMA on the basis it would represent sustainable management of the relevant land resource.

Future Proof 2017

33. While largely imbued within the WRPS, Future Proof 2017 includes guiding principles in section 1.3 relevant to development of the Site. Among these principles is the need for rural-residential development that is adjacent to urban settlements to occur in a sustainable way. The Proposed Plan must have regard to Future Proof 2017.
34. As previously submitted, the Gores believe re-zoning the Site for Country Living represents a more sustainable use than the retention of its existing Rural zoning ever could. Re-zoning the Site would allow it to be used efficiently, having regard to the existing environment, and its size, layout, configuration and location.

35. The Site cannot easily be used for Rural activities and therefore the protections afforded to versatile lands within Future Proof 2017 apply only awkwardly. In particular, re-zoning the Site would not result in the “loss” of productive land (the Site is not presently used, nor could it reasonably be used, for productive purposes).
36. Accordingly, we submit the Gores’ submission is generally consistent with Future Proof 2017, to the extent it is a standalone guiding document.
37. For completeness, we record that Council is currently undertaking work to develop its own Waikato District growth strategy, a proposed blueprint for development within the next 50 years. The details of this proposed growth strategy is not yet known.

Waikato 2070

38. The Waikato District Council Growth & Economic Development Strategy (**Waikato 2070**) is a guidance document used by Council to inform how, where, and when growth occurs within the district. Waikato 2070 identifies opportunities relevant to the Gores’ submission. The Proposed Plan must have regard to Waikato 2070.
39. Opportunity 02.5 within Waikato 2070 deals with the Rural environment and calls for the protection of the productive values of the rural land resource, as well as the need to carefully manage rural-residential development (so-called “lifestyle opportunities”).
40. The extent to which re-zoning the Site will result in adverse effects has been addressed previously; the Gores believe it cannot result in adverse effects on the basis of the Site’s existing features. To that end, and to the extent applicable, we submit the Gores’ submission is consistent with Waikato 2070.
41. This is particularly the case when the focus areas identified within Waikato 2070 are read alongside its opportunities. Among other things, these focus areas include growing communities by promoting sustainable and cost-effective development and land use patterns, as well as attracting new business to the district.

Waikato-Tainui Environmental Plan

42. The discrete and site-specific nature of the Gores' submission has meant they have not consulted with Waikato-Tainui. That notwithstanding, the Gores believe that re-zoning the Site will be consistent with the overarching purpose of the Waikato-Tainui Environmental Plan (**W-TEP**), as well as its relevant issues, objectives, policies, and methods. The Proposed Plan must take into account the W-TEP.
43. More particularly, the Gores believe re-zoning the Site will be generally consistent with the W-TEP's objectives around land use planning, and particularly those dealing with the need to protect the rural land resource. Again, this is on the basis of the Site's existing features and characteristics, which mean the re-zoning will not result in the loss of productive land and consequential adverse effects.
44. Accordingly, we submit the Gores' submission is consistent with sections 25.2.1 to 25.2.9 (inclusive) of the W-TEP.

PART B: Objectives

Proposed Plan's objectives

45. In respect of the Site, the Proposed Plan's objectives for the Rural zone are not the most appropriate way to achieve the purpose of the Act. The Gores believe the Proposed Plan's objectives for the Country Living zone are more appropriate in this regard.
46. The Proposed Plan's objectives are largely grouped within Section 5, which deals with the "Rural Environment", and which includes Rural and Country Living zoned land as well as reference to the UEA.
47. We have identified the following relevant objectives from Section 5 in Table 1 below, which includes commentary on consistency with each:

Table 1: Proposed Plan's objectives

Objective	Comment
<p>Objective 5.1.1</p> <p><i>Subdivision, use and development within the rural environment where...high class soils are protected for productive rural activities;...urban subdivision, use and development in the rural environment is avoided.</i></p>	<p>Objective 5.1.1 is a strategic objective within the Proposed Plan and has primacy over all other objectives in Section 5.</p> <p>The Gores' submission is generally consistent with this objective, taking into account the existing effects of the Site's size and physical characteristics.</p> <p>There is a technical inconsistency with objective 5.1.1(a)(i) which requires that high class soils are protected for productive rural activities.</p> <p>Council's section 32 evaluation report for the Rural zone identifies the irreversible loss of high class soils as a resource management issue within the district.</p> <p>In so doing, the report recognises the importance of these soils to the productive values of the resource, particularly to the primary sector.</p> <p>The extent to which the submission is technically inconsistent with this sub-objective is relative to its existing size, layout, and configuration.</p> <p>These factors limit the Site's potential to be used efficiently for productive rural activities in the manner anticipated by the evaluation report.</p> <p>Taking into account the objective's intention overall, re-zoning the Site Country Living would enable its efficient use, thereby avoiding inappropriate urban subdivision.</p>

<p>Objective 5.2.1</p> <p><i>Maintain or enhance (inter alia) the...capacity and versatility of soils, [particularly] high class soils.</i></p>	<p>The Gores' submission is generally consistent with this objective, taking into account the existing effects of the Site's size and physical characteristics.</p> <p>The Gores believe the Site cannot be reasonably used for rural activities, particularly those which require high class soils. This objective is therefore not an appropriate way to achieve the purpose of the RMA.</p>
<p>Objective 5.3.1</p> <p><i>Rural character and amenity are maintained.</i></p>	<p>The Gores' submission will maintain rural character and amenity, taking into account anticipated development within the Country Living zone, which in their view is the most appropriate zoning for the Site.</p>
<p>Objective 5.5.1</p> <p><i>Protect land within Hamilton's Urban Expansion Area for future urban development</i></p>	<p>The Gores' submission will protect the Site for future urban development.</p>

PARTS C and D: Policies, rules and methods

Proposed Plan's policies and rules

48. Taking the above into account, the Gores' submission is that policies aligned to objectives specific to the Rural zone are not the most appropriate way to achieve the purpose of the RMA.
49. The Proposed Plan's policies relating to the protection of the productive rural resource (policies 5.2.2 and 5.2.3), and particularly the protection of high class soils from the adverse effects of subdivision and development do not easily apply to the Site.
50. For example, policy 5.2.3 aims to minimise the fragmentation of productive rural land, where the Site is already "fragmented" such that it is smaller in size than anticipated lot density within the Rural zone.

51. In other respects, re-zoning the Site to Country Living would be consistent with the Proposed Plan's other relevant Section 5 policies. In particular, adopting policies specific to the Country Living zone would help to maintain existing character and amenity values.
52. Insofar as the policies specific to the UEA are concerned, the Gores believe that re-zoning the Site to Country Living would maintain or enhance the amenity values of the surrounding area, which is relevant to those policies specific to that zone, and particularly policy 5.6.2.

Section 42A reports

Catherine Boulton report

53. The Gores' submission was dealt with in an addendum to the primary section 42A report dealing with "Rest of District" zone extents. The amended report was prepared by Catherine Boulton and is dated 23 April 2021.
54. Ms Boulton recommends the Gores' submission (and the re-zoning request) be rejected. She cites the evidence of HCC, as well as the request's inconsistency with the WRPS and Future Proof 2017 as principal reasons for this position.
55. Respectfully, the Gores disagree with Ms Boulton's recommendation. They believe the re-zoning request is consistent with relevant national and district-wide planning and guidance documents for the reasons outlined in their own reporting and in these submissions.
56. Neither the RMA nor any of the other planning or guidance documents referred to in these submissions promote an inflexible approach to land development. Jointly, these documents seek to avoid unplanned and inappropriate development which may result in adverse effects.
57. The nature of the Site is relevant to any assessment of the potential for adverse effects to arise from its re-zoning and future development. The constraints presented by the Site's existing size, layout and location have been well-canvassed in these submissions and need not be repeated.

58. Suffice it to say, the Gores believe re-zoning the Site will not result in the loss of productive land, and will not lead to unplanned and inappropriate development. Rather, re-zoning the Site will recognise these existing characteristics and will represent a more efficient and sustainable use of the land resource.

Susannah Tait report

59. The Gores' submission is also referred to in the section 42A report dealing with the "Hamilton Fringe" topic prepared by Susannah Tait on 10 May 2021. This report was made after Ms Boulton's report.
60. Unlike Ms Boulton, Ms Tait recommends the Gores' submission be accepted and the Site be re-zoned as Country Living. Her reasoning largely echoes the submissions advanced by the Gores, specifically:
- (a) The affected sites are effective "islands" of Rural zoned land, with a number of factors contributing to their rural residential character, including size and use; and
 - (b) Specific locational constraints apply to the land in question (proximate Country Living zone and arterial road infrastructure).
61. Ms Tait makes her recommendation notwithstanding the urban limits identified within Future Proof 2017. Nevertheless, she considers re-zoning in these circumstances to be an "appropriate planning response" that would avoid precedent effects and urban creep.
62. There are differences between the land Ms Tait identifies in her report and the Site; namely, the land Ms Tait refers to falls outside of the UEPA (but is apparently still subject to the strategic agreement between Council and HCC).
63. The Gores agree with Ms Tait's recommendation, for the reasons she herself identifies.

Submissions in Opposition

Hamilton City Council

64. Evidence for HCC by Laura Galt refers to the Gores' submission. Ms Galt's evidence "maintains [HCC's] opposition to the establishment of any additional [Country Living zone] within the AOI, particularly in the [UEPA]."⁷
65. Ms Galt considers that "a comprehensive planning analysis of land in the [UEPA] needs to be undertaken, including the location of significant sub-regional infrastructure." She goes on to say that "until such planning analysis has been undertaken, taking a precautionary approach through retaining the Rural Zone ensures the irreversible effects of land fragmentation, which will be detrimental to longer-term urban development, are avoided."
66. Respectfully, the Gores disagree with Ms Galt's assessment. The Site and surrounding land are already fragmented, and represent parcels that are smaller than what may be expected of Rural zoned land. Avoiding land fragmentation is not a reasonable justification for opposing re-zoning where that fragmentation has already occurred.
67. Furthermore, HCC and Council have yet to undertake the strategic analysis Ms Galt refers to, despite the longevity of the UEA. This overlay places the Gores in planning limbo, and prevents them from using their land in a sustainable and efficient manner that is consistent with the object of the RMA. In our submission, this is an unreasonable encumbrance.
68. The section 32 evaluation report by Council for the Rural zone indicates the UEA (HT1) will be transferred to HCC in 2045. This means the restrictions will last into further iterations of the district plan for Waikato.

⁷ Statement of evidence of Laura Jane Galt on behalf of HCC, dated 10 March 2021 at [43] – [45].

Waikato Regional Council

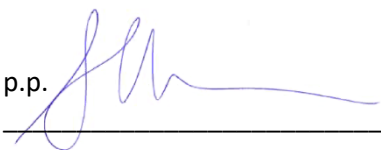
69. Waikato Regional Council (**WRC**) also provided evidence that opposed the expansion of the Country Living zone within the UEPA.⁸ On behalf of WRC, Marie-Louise Foley states she believes further rural lifestyle development should be directed away from high-class soils, and considers it appropriate that urbanisations and further fragmentation of Rural zoned land should be subject to the strategic planning processes provided for within the WRPS.
70. The Gores respectfully disagree with this assessment, at least insofar as it applies to the Site. The size, layout and location of the Site makes it unsuitable for most anticipated rural uses, lessening its reliance on high-class soils, and resulting in existing land fragmentation. Re-zoning the Site to Country Living will not result in the adverse effects contemplated by Ms Foley.

Relief sought

71. The Gores respectfully request the re-zoning of the Site from Rural to Country Living and the lifting of the UEPA overlay.
72. The Gores are open to accepting such other controls beyond those already provided for within the Proposed Plan and applying to the Country Living zone as may allay any additional concerns around integrated management and infrastructure capacity.

Evidence

73. The Gores will be available to give evidence at the hearing.

p.p. 

R L M Davies
Counsel for Andrew and Christine Gore

⁸ Statement of evidence of Marie-Louise Foley for the Waikato Regional Council, dated 10 March 2021, at 17.1 and 17.6-17.7.