

**BEFORE THE HEARING COMMISSIONERS
OFFICE**

IN THE MATTER of the Resource Management Act 1991 (RMA)

AND

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

**SUBMISSIONS OF COUNSEL FOR DIAMOND CREEK FARM LIMITED
HEARING 25 ZONE EXTENTS
12 MAY 2021**

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INTRODUCTION

- 1 Diamond Creek Farm Limited (**DCF**) made a submission on the Proposed Waikato District Plan (**PWDP**). Glenn and Abbie Neems are both directors of DCF.
- 2 The submission (#387) made by DCF sought for its sites at Te Uku (legally described below) to be rezoned on the WPDP Planning Maps from Rural Zone to Country Living Zone:
 - (a) Part 1 Lot 1 DPS 23893 (42.418 ha)
 - (b) Allot 218 Parish of Whaingaroa (0.3715 ha)
 - (c) Lot 4 DP 437598 (0.0730ha)
- 3 DCF's proposal is to rezone approximately 43ha of its 252ha property to the north of State Highway 23 to Country Living Zone. The area proposed to be rezoned is located to the east of Te Uku village. The village has a primary school, coffee shop, church and a community hall. Te Uku is a node for a predominantly rural community and provides for rural and rural-residential activities in addition to the commercial and community activities in the village itself.
- 4 Waikato District Council encouraged DCF to explore whether a Village Zone could be established on the site, rather than Country Living Zone. On reflection and after receiving the s42A Framework Report, DCF chose to resume its pursuit of a Country Living Zone for the site.

SUPPORTING REPORTS AND ASSESSMENTS

- 5 DCF has provided several supporting documents in relation to its submission. These include the following:
 - (a) Draft Structure Plan for the site (attached as Appendix A);
 - (b) Landscape and visual assessment prepared by Mansergh Graham Landscape Architects;
 - (c) Expert landscape evidence of Mr David Mansergh (Mr Mansergh);
 - (d) Integrated Transportation Assessment prepared by CKL;
 - (e) Expert transportation evidence of Ms Judith Makinson (Ms Makinson);

- (f) Expert planning evidence including section 32AA Report produced by Bevan Houlbrooke (Mr Houlbrooke);
- (g) Agricultural Impact Assessment prepared by AgFirst;
- (h) A joint written statement of evidence prepared by Mr and Mrs Neems in support of DCF's submission; and
- (i) Geotechnical feasibility assessment prepared by Ground Consulting Limited.

STATUTORY FRAMEWORK

- 6 In respect of the statutory framework, we adopt Appendix 1 of Ms Parham's opening legal submissions on behalf of Waikato District Council (**Council**).
- 7 The Council must prepare and change its district plan in accordance with the matters listed in s 74(1). Section 75 sets out the requirements for the contents of district plans. The statutory framework for considering district plans and plan changes was set out in *Colonial Vineyards Limited v Marlborough District Council*.¹

Part A – General Requirements

- 8 Firstly, a *territorial authority must prepare and change its district plan in accordance with*² – and assist the territorial authority to carry out – its functions³ so as to achieve the purpose of the Act.⁴ The functions of a territorial authority are set out under section 31 of the Act.
- 9 The district plan (change) must also be prepared in accordance with any national policy statement, New Zealand coastal policy statement, a national planning standard, regulation(s) and any directions given by the Minister for the Environment.

¹ [2014] NZEnvC 55.

² Section 74(1) (replaced on 3 December 2013, for all purposes, by section 78 RMAA 2013).

³ Section 31.

⁴ Sections 72 and 74(1).

National Policy Statement on Urban Development 2020 (NPS-UD 2020)

- 10 The National Policy Statement on Urban Development 2020 (**NPS-UD**) is one of the documents that needs to be considered when preparing the PWDP. The Council is categorised as a Tier 1 local authority⁵ as the district is identified as a growing region and therefore is subject to the most directive policies in the NPS-UD.
- 11 However, it is noted that the NPS-UD 2020 is not considered to be of direct relevance to the rezoning proposal as the site does not qualify as an “urban environment” under the NPS-UD.

National Planning Standards

- 12 The National Planning Standards are also not considered directly relevant to the rezoning request, other than the likelihood that the Country Living Zone will transition to the Rural-lifestyle zone under the National Planning Standards.

Regional Policy Statements

- 13 In accordance with the statutory provisions in the RMA and the criteria in *Colonial Vineyards*, when preparing its district plan (change) a territorial authority shall:
- (a) have regard to any proposed regional policy statement;⁶ and
 - (b) give effect to any operative regional policy statement.⁷

Waikato Regional Policy Statement

- 14 Mr Houlbrooke’s planning evidence provides an extensive analysis of the key objectives and policies of the Waikato Regional Policy Statement (**WRPS**) that are relevant to DCF’s submission. From this analysis, it is evident that the submitter’s proposal aligns with the WRPS. Key points include:
- (a) Objective 3.1.2 – *Development of the built environment (including transport and other infrastructure) and associated land use occurs in an integrated, sustainable ad planner manner which enables positive environmental, social, cultural and economic outcomes –*

⁵ National Policy Statement for Urban Development 2020, Appendix 1 – Table 1

⁶ Section 74(2)(a)(i).

⁷ Section 75(3)(c).

The Landscape and Visual Assessment prepared by MGLA shows that the CLZ is the preferred form for Te Uku in order to create a strong local community. Further, the potential exists for positive biodiversity outcomes to be achieved and for natural character to be maintained in the area through the creation of a network reserve adjoining the Matakotea Stream and gullies.

(b) Policy 6.14(a) and (b) of the WRPS states that:

Within the Future Proof area:

- a. new urban development within Hamilton City, Cambridge, Te Awamutu/Kihikihi, Pirongia, Huntly, Ngaruawahia, Raglan, Te Kauwhata, Meremere, Taupiri, Horotiu, Matangi, Gordonton, Rukuhia, Te Kowhai and Whatawhata shall occur within the Urban Limits indicated on Map 6.2 (section 6C); HPL's land is not located within the urban limits for Horotiu in Map 6.2 of the WRPS.
- b. new residential (including rural-residential) development shall be managed in accordance with the timing and population for growth areas in Table 6-1 (section 6D);

It is submitted that there are no urban limits for Te Uku in Map 6.2 of the WRPS.

It is further submitted that table 6-1 sets out the Future Proof residential growth allocation and staging between 2006 and 2061. Allocated growth for "Waikato Rural Villages" is from 6,725 residents in 2006 to 15,775 residents in 2061. It is submitted that the modest residential growth proposed at Te Uku (54 lots with approx. 140 residents) is anticipated to be within the expectations of Table 6-1.

(c) Policy 6.17 states that "management of rural-residential development in the Future Proof area will recognise the particular pressure from, and address the adverse effects of, rural-residential development in parts of the sub-region, and particularly in areas within easy commuting distance of Hamilton". Policy 6.17(a) states that management of rural-residential development in the Future Proof area should recognise the potential adverse effects from the high demand for rural-residential development. It is submitted that the proposal is consistent with this Policy as Te Uku is located outside of the Waikato Basin where demand for rural residential development is strongest due to its proximity to Hamilton City and easy commuting distances. It is further submitted that the

establishment of a Country Living Zone will assist with reducing demand pressures on other rural land in the wider Raglan area.

It is also noted that the Policy 6.17 does not prevent further rural residential development. Rather, it requires consideration of the matters set out.

(d) The proposal also aligns with the principles in Section 6A (*New Development principles*) of the WRPS as:

- (i) in respect of a CLZ, the site will provide a clear delineation between rural residential and rural areas. This is because the boundary aligns with two physical features, being State Highway 23 and the Matakotea Stream;
- (ii) the rezoning, although adjacent to State Highway 23, will not compromise the safe, efficient and effective operation of the road. Waka Kotahi/NZTA has been consulted and is not opposed to the rezoning subject to certain conditions being met;
- (iii) the site is adjacent to Te Uku village and will be connected to existing development and social infrastructure by road, cycleway and footpaths;
- (iv) the site is not located in close proximity to any significant mineral resources, natural hazard areas, energy and transmission corridors or regionally significant industry;
- (v) landscape values will be maintained - from a landscape and urban planning perspective, the change in zoning is appropriate because it enables the consolidation of an existing node of development in and around Te Uku. Further, the rezoning will not conflict with the foreseeable long terms needs for expansion of Te Uku.

15 In accordance with Mr Houlbrooke's evidence, it is further submitted that DCF's proposal is consistent with the development principles for new rural-residential development in Section 6A of the WRPS.

Management Plans and Growth Strategies

- 16 A territorial authority must also have regard to any relevant management plans and strategies.

Future Proof 2017

- 17 Future Proof is a 30-year growth management and implementation plan specific to the Hamilton, Waipa and Waikato sub-region. The Future Proof Strategy (2009 version) is embedded in the Regional Policy Statement and through that reference district plans are required to give effect to it.
- 18 Section 1.3 of Future Proof outlines the applicable principles for growth management and implementation in rural areas. It is submitted that DCF's proposal is consistent with these principles. The development of approximately 54 rural residential lots at Te Uku under a Country Living Zone is not of a scale or location that will compromise the Future Proof settlement pattern. Further, the separation of urban areas will be maintained by virtue of the distance of Te Uku from the two closest urban areas, Raglan (10km) and Hamilton (30km). The area around Te Uku and between Raglan and Hamilton would remain with a rural zoning. Allowing for growth within a defined area at Te Uku will reduce the demand for rural residential development elsewhere in the wider Raglan area and in doing so, seek to avoid further fragmentation of rural land holdings in the Rural Zone.

Waikato 2070

- 19 The Waikato District Council Growth & Economic Development Strategy (Waikato 2070) was developed to provide guidance on appropriate growth and economic development that will support the wellbeing of the district and was adopted by Council on 19 May 2020.
- 20 Opportunity 02.5 of Waikato 2070 relates to the rural environment and notes that rural villages will continue to be a primary focus and integral part of the district. Although lifestyle opportunities should be provided for in the rural environment, these should be carefully managed with an evidence-based approach to help maintain and sustain the rural environment. The submitter has obtained evidence from experts to suggest that there is an evidential basis that rezoning of the site is appropriate.

- 21 Further, it is submitted that the proposal aligns with the directions (and the corresponding implementation methods) in Part 03.0 Focus Area 03.1 of Waikato 2070 to deliver well-planned and people friendly communities and also the direction to promote sustainable and cost-effective land use patterns.
- 22 Part 04.0 of Waikato 2070 identifies where and when growth can occur for residential and employment activities that align with the focus areas in Waikato 2070. Although the subject site has not been identified as one of these areas, Part 01.5 of Waikato 2070 does specifically state that growth areas which are identified are subject to further investigation and feasibility studies. This is confirmed again in Part 04.0 which states that “it is important to note that growth areas are subject to further investigations, which will analyse the funding servicing and infrastructure provision required to support the growth areas identified.”
- 23 As identified in Mr Houlbrooke’s evidence, future development at the site is capable of being serviced onsite by water and wastewater services. It is therefore submitted that it is still suitable for the subject site to be assigned Country Living Zone, because of the overall consistency with the principles of Waikato 2070 and other planning documents.

Waikato-Tainui Environmental Plan

- 24 As outlined in *Colonial Vineyards* and section 74(2A) of the RMA, a territorial authority must also take into account any relevant planning document recognised by an iwi authority. The Waikato-Tainui Environmental Plan outlines a Waikato-Tainui perspective on the management of effects associated with natural resources and environmental management across the Waikato-Tainui rohe/tribal boundaries.
- 25 Consultation with the relevant iwi representative has been initiated as outlined in the statement of evidence of Abbie and Glenn Neems. The submitter anticipates that resource management of the site, if rezoned, will align with relevant sections of the Waikato-Tainui Environmental Plan. This includes that access to Matakoea Stream for iwi to undertake customary activities will be enhanced through the creation of esplanade reserves and that there will be management of waahi tapu and waahi tupuna sites, through ensuring appropriate guidelines and protocols are

in place for taonga discovery, archaeological sites and sites of significance.

Part B – Objectives [Section 32 test for objectives]

- 26 The second part of the checklist in *Colonial Vineyards* refers to the need for each proposed objective in a district plan (change) to be evaluated by the extent to which it is the most appropriate way to achieve the purpose of the Act.⁸
- 27 In his evidence Mr Houlbrooke undertakes a comprehensive review of DCF's proposal in relation to the objectives and policies in the PWDP. In doing so, the submitter does not question the objectives and policies in the PWDP, but rather asserts that its proposal is consistent with the objectives and policies that have been identified with the relevant provisions in the PWDP.
- 28 Counsel does not wish to repeat the evidence of Mr Houlbrooke in this respect, however notes the relevant objectives, policies and strategic direction are consistent with DCF's rezoning proposal:
- (a) 1.5.2(a) *Growth occurs in defined areas* – Te Uku is an existing rural node and the purpose of the Country Living Zone is for a planned encroachment into rural land for rural-residential development;
 - (b) 1.12.8(b)(vi) *Protect and enhance green open space, outstanding natural landscapes, and areas of ecological, historic and environmental significance* – There are enhancement opportunities for the Matakoea Stream and gullies;
 - (c) 1.5.1(b) *Urban forms of residential, industrial, and commercial growth in the district will be focused primarily into towns and villages, with rural-residential development occurring in Country Living Zones* – Rezoning will encourage rural residential development in the Country Living Zone adjacent to an existing rural village;
 - (d) 1.12.3(a) *A district which provides a wide variety of housing forms which reflect the demands of its ageing population and increases the accessibility to employment and community facilities, while*

⁸ Section 74(1) and section 32(1)(a).

offering a range of affordable options – Rezoning will provide additional housing options accessible to employment and community facilities;

- (e) 4.1.2(a) *Future settlement pattern is consolidated in and around existing towns and villages in the district* – Te Uku is an existing rural village;
- (f) 5.3.8(e) *Ensure subdivision, use and development minimises the effects of ribbon development* – Ribbon development will not occur and the proposed structure plan for the area subject to rezoning shows how a subdivision could be achieved that avoids ribbon development;
- (g) 5.3.8(f) *Subdivision, use and development ensures the effects on public infrastructure are minimised* – Lots and development in the Country Living zone at Te Uku would be self-sufficient in terms of three waters infrastructure. Waka Kotahi/NZTA has been consulted and is not opposed to a connection to State Highway 23 subject to a number of conditions being met.

Part C – Policies and methods (including rules) [the Section 32 test for policies and rules]

- 29 Part C of the criteria outlined in *Colonial Vineyards* considers the section 32 test for policies and methods (including rules). Policies are to implement the objectives and the rules are to implement the policies.⁹ Further, each proposed policy or method (including each rule) is to be examined, as to whether it is the most appropriate method for achieving the objectives of the district plan.¹⁰ This includes assessing the efficiency and effectiveness of the provisions in achieving the objectives.¹¹
- 30 The rezoning proposal seeks for DCF’s site to be amended on the Planning Maps from Rural Zone to Country Living Zone. The proposal therefore intends to provide for planned rural residential development around an existing village that, as per the analysis above, would be

⁹ Section 75(1)(b) and (c).

¹⁰ Section 32(1)(b).

¹¹ Section 32(1)(b)(ii).

consistent with the objectives in the PWDP and other higher-order planning documents such as the WRPS.

SECTION 42A REPORT

- 31 Council's reporting officer Ms Boulton has recommended that DCF's submission is rejected and the Rural Zone is retained.
- 32 We disagree with the recommendations in the s 42A report and instead rely on the expert assessment of criteria summarised in the *Colonial Vineyards* decision.
- 33 Mr Houlbrooke has filed a rebuttal statement of evidence responding to the matters raised in the s 42A report.
- 34 In our submission, none of the provisions in the RMA, the WRPS, or Futureproof intend an inflexible approach to rezoning and/or residential development including rural-residential development. Rather it is the interpretation and application of those provisions to avoid unplanned and inappropriate rural-residential development that is stifling villages in the district such as Te Uku. There is still a place for planned and appropriate rural-residential development in the district.
- 35 The DCF proposal will support an existing village by concentrating appropriate residential development on land that is difficult to integrate into the larger farm unit and is a better option for those seeking a rural lifestyle than allowing for ad hoc and scattered subdivision throughout the rural zone.

SUBMISSIONS IN SUPPORT AND/OR OPPOSITION

- 36 Waikato Regional Council (#FS1277.76) and Mercury NZ Limited (#FS1388.87) opposed the requested rezoning.
- 37 There is nothing specific in the WRC evidence filed by Ms Foley in respect of DCF's submission, beyond a reference within Attachment Two which lists WRC further submissions. The WRC statement of evidence retains broad opposition to all rezoning requests that seek rezoning from Rural to Country Living in areas outside of those identified within Future Proof for urban expansion. Essentially, WRC has taken the approach that any rezoning will be contrary to the WRPS Policy 6.17 and method 6.1.5. We

have discussed Policy 6.17 elsewhere in these submissions and submit that the proposal is consistent with the Policy. It is also noted that there are other policies that contemplate increased residential development in the region in a planned way, such as Policy 6.1.7.

- 38 In our submission, WRC should be most concerned at the lack of planning for rural residential development in the district as part of the PWDP, which instead allows for haphazard creation of 8000m² lots wherever there are lower quality soils and older titles.
- 39 Mr Houlbrooke's rebuttal evidence¹² references the WRPS explanation to Policy 14.2 which specifically notes that neither the Policy (which prioritises productive use of high class soils) nor its methods are intended to prevent all urban development. Rather, the aim is for planned growth as part of district plan reviews so that development is the subject of a comprehensive planning process. That is the approach that has been adopted by DCF but which, in our submission, is missing from the PWDP as notified.
- 40 WRC also opposes submissions that propose introducing transferable development rights into the PWDP. That opposition points to a blanket opposition to any form of increased rural residential development in the district and blindness to the fragmentation that can occur with the rules as they exist at present. WRC cannot ignore the predicted growth figures for the region or the fact that people do and will continue to want opportunities for rural lifestyle living within commuting distance from their workplaces. In our submission it is better to plan for that rather than allowing it to occur randomly.
- 41 The Mercury NZ further submission is one of 489 opposing various proposals by submitters. It is remarkable that Mercury managed to find any submissions to support and that list is considerably shorter. The list of submission points opposed by Mercury includes 481 submission points from WDC alone.
- 42 It appears that Mercury opposes the PWDP process for lack of natural hazard assessment generally and opposes any intensification of use in particular. There is no obvious reason why the site should be subject to a natural hazard. It is not close to the sea or a significant watercourse. It is

¹² Houlbrooke rebuttal paragraph 13.

relatively flat and any potential for liquefaction would be identified and can be accommodated with building design controls.

43 Mercury NZ did not file any further evidence regarding its initial opposition.

44 There is a submission from Sharp Planning Solutions Ltd (submitter 695) requesting that an area of land be re-zoned to Village Zone at Te Uku. DCF did not make a further submission in respect of the Sharp submission but considers that Te Uku is more appropriate for rural residential lifestyle development given the character of the existing environment. Sharp has not made a further submission in respect of DCF.

45 Ms Vera van der Voorden's (submitter #802) submission is relevant as it says:¹³

It is time for WDC to look at areas like Te Uku which is sited along State Highway 23. It has huge tracts of flat land that would lend itself well and more easily and therefore cheaper to develop infrastructure. It would be a great place to allow for affordable housing projects. It already has a school and general store with a second primary school not far away at Waitetuna. Small cluster villages could be Raglan's solution to the affordable housing issue faced by tourist meccas like Queenstown.

46 It is also noted that the proposal has been comprehensively considered by Waka Kotahi who have provided a written response confirming no opposition to the proposal.

RELIEF SOUGHT

47 This is a proposal that has been subject to a comprehensive planning assessment with Structure Plan and significant support from the local community. The submitters have spoken with as many members of the village and surrounds as they could and their proposal has general support as offering benefits to the community as a whole.

48 It is rare to see a rural-residential rezoning proposal that involves a new connection to a State Highway that is not opposed by Waka Kotahi and in our submission, that reflects the degree of planning and consideration that has been given to the various transportation impacts that could arise.

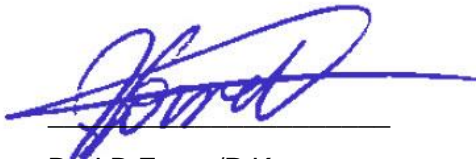
¹³ See Submission 802 at p.4

- 49 The PWDP as notified allows for increased urbanisation around the existing towns. The land proposed for that residential development is, in some cases, zoned for Country Living under the OWDP. There does not seem to be an equivalent release of new CLZ/Rural-residential zoned land to satisfy the demand for that type of land package and in our submission, that omission will result in continued fragmentation of larger blocks which enable unproductive parcels of 8000m² to be subdivided from various types of title. The outcome will not enhance rural communities and is likely to contribute to reverse sensitivity issues.
- 50 A decision to rezone the DCF land to CLZ will be consistent with most, if not all of the relevant planning objectives and policies and will deliver positive outcomes that are supported by the community. That is also a good planning outcome.

EXPERT EVIDENCE

- 51 DCF will have following expert witnesses available to give evidence at the hearing:
- (a) Mr David Mansergh in relation to landscape evidence;
 - (b) Ms Judith Makinson regarding transportation assessment; and
 - (c) Mr Bevan Houlbrooke will provide planning evidence.

Date: 12 **May 2021**



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