

**BEFORE THE HEARINGS COMMISSIONERS
AT WAIKATO DISTRICT COUNCIL**

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 J & T QUIGLEY LIMITED (#389)
12 May 2021**

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INTRODUCTION

- 1 J & T Quigley Limited (**JTQL**) has made a submission and further submission on the Proposed Waikato District Plan (**PWDP**).
- 2 JTQL made a submission (#389) in relation to its site at 25 Tamahere Drive, Tamahere. The subject site is legally described as Section 3 Survey Office Plan 60550, comprising 19,001m².
- 3 The original submission by JTQL requested that its site is re-identified on the PWDP Planning Maps from Rural Zone to either Country Living Zone or Village Zone.
- 4 Upon receipt of the s 42A Framework Report, JTQL decided to focus on rezoning its site as Village Zone in order to ensure an efficient use of the urban land resource.

SUPPORTING REPORTS AND ASSESSMENTS

- 5 JTQL has provided several supporting documents in relation to its submission. These include the following:
 - (a) Expert planning evidence including section 32AA Report produced by Mr Leigh Shaw (Mr Shaw);
 - (b) An Agricultural Impact Assessment prepared by AgFirst which confirms that rezoning the site to Village would have no impact on future agricultural or horticultural potential;
 - (c) A preliminary assessment of on-site wastewater treatment and land disposal for the development of 25 Tamahere Drive, prepared by Ormiston Associates Limited.

STATUTORY FRAMEWORK

- 6 In respect of the statutory framework, we adopt Appendix 1 of Ms Bridget Parham's opening legal submissions on behalf of the Waikato District Council (**Council**).¹
- 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

¹ 23 September 2019.

plans and plan changes was set out in *Colonial Vineyards Limited v Marlborough District Council*.²

Part A – General Requirements

- 8 Firstly, *a territorial authority must prepare and change its district plan in accordance with*³ – and assist the territorial authority to carry out – its functions⁴ so as to achieve the purpose of the Act.⁵ The functions of a territorial authority are set out under section 31 of the Act.
- 9 The district plan (change) must be also 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.

National Policy Statement on Urban Development

- 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 authority⁶ as the district is identified as a growing region and therefore is subject to the most directive policies in the NPS-UD.
- 11 The NPS-UD requires council to remove overly restrictive rules that affect urban development outcomes, including notifying plan changes implementing intensification policies, no later than August 2022. The district plan review process is therefore an ideal time to give effect to the NPS-UD.
- 12 It is submitted that the NPS-UD is of critical importance to the requested rezoning. The rezoning proposal consolidates residential growth around an existing urbanised settlement and is consistent with a number of objectives and policies of the NPS-UD.⁷
- 13 It is submitted that Policy 2 of the NPS-UD is a key provision with which JTQL’s proposal aligns, as it directs that tier 1, 2 and 3 local authorities

² [2014] NZEnvC 55.

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

⁴ Section 31.

⁵ Sections 72 and 74(1).

⁶ National Policy Statement for Urban Development 2020, Appendix 1 – Table 1.

⁷ See Leigh Shaw’s rebuttal statement of evidence dated 3 May 2021 at [14 – 18].

must provide “at least” sufficient development capacity to meet expected demand for housing over the short term, medium term and long term.

- 14 The proposal will allow for a greater number of people to live close to a centre zone with existing community services and commercial activities (see Objective 3 and Policy 3 of the NPS-UD). JTQL’s site is:
- (a) within 200m of a regional bus stop;
 - (b) 500m of Tamahere school; and
 - (c) 800m of an existing commercial area.
- 15 There is also now a cycleway connection to both Hamilton and Cambridge. That cycleway passes opposite the site on Tamahere Drive.
- 16 It is submitted that the rural zoning of the subject site in the PWDP fails to achieve the requirements of the NPS-UD especially as the surrounding area is urbanised. It is further submitted that the requested rezoning gives effect to the NPS-UD and does not preclude integrated and strategic outcomes over time.

National Planning Standards

- 17 The National Planning Standards are not directly relevant to the rezoning request, other than the likelihood that the Zones will have more specific names under the National Planning Standards, to ensure greater clarity. Such changes are considered to be only administrative in nature, with no change in effects on the environment.

Regional Policy Statements

- 18 In accordance with the statutory provisions in the RMA and the criteria in *Colonial Vineyards*, when preparing its district plan (change) the territorial authority shall:
- (a) have greater regard to any proposed regional policy statement;⁸ and
 - (b) give effect to any operative regional policy statement.⁹

⁸ Section 74(2)(a)(i).

⁹ Section 75(3)(c).

Waikato Regional Policy Statement

19 It is submitted that JTQL's proposed rezoning is consistent with the relevant provisions in the Waikato Regional Policy Statement (**WRPS**). Mr Shaw's planning evidence provides an extensive analysis of the alignment between the WRPS and JTQL's proposal. 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 and planned manner which enables positive environmental, social, cultural and economic outcomes –*

The location of the site and the ability to accommodate stormwater and wastewater within the site boundaries means that the future growth of Tamahere Village can be accommodated without compromising the safe, efficient and effective operation of infrastructure corridors.

The rezoning proposal itself consolidates residential growth around an existing urban settlement as Tamahere currently comprises existing commercial and community facilities.

- (b) Policy 6.14(a) and (b) of the WRPS which 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);
- 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);

- (c) The Future Proof strategy states:¹⁰

Within the Waikato District, indicative village limits have been proposed for the villages on the Hamilton City periphery, including Taupiri, Gordonton, Whatawhata, Te Kowhai, Matangi, Tamahere and Horotiu. These are shown on Maps 1 and 2 but are still indicative and will remain so until further development analysis, for example District Plan review or structure planning has been completed. The expectation is that land within an indicative village limit may be developed to a

¹⁰ Future Proof Strategy 2017 at [6.4]

rural-residential density only unless reticulated wastewater is available, with a single commercial centre providing for the daily convenience needs of residents in the immediate area.

(d) Further:¹¹

Hamilton urban area includes the following CAU's: Gordonton, Te Kowhai, Whatawhata, Horotiu, Tamahere, Tauwhare, Matangi, and Taupiri.

The subject site is located within the urban limits and is consistent with the direction of Future Proof for urban development.

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

- (i) the rezoning will support existing urban areas as the site is located within the Hamilton urban area and is consistent with the direction for urban development;
- (ii) it will occur in a manner that provides clear delineation between urban areas and rural areas;
- (iii) will promote a compact urban form, design and location around an existing urbanised area;
- (iv) the site is not located near any significant mineral resources, natural hazard areas, energy transmission corridors or regionally significant industry;
- (v) while enabling an overt change in landscape character of the site, is appropriate because it enables the consolidation of an existing node of development in and around Tamahere.

Vision and Strategy for the Waikato River

20 The Vision and Strategy for the Waikato River was authored by the Waikato River Authority. The Authority is a statutory body formed under the several Acts¹². The Vision and Strategy is considered applicable to Matangi/Tamahere because it is located within the catchments affecting the Waikato River.

¹¹ At p.95

¹² Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2020, Nga Wai Maniapoto (Waipa River) Act 2012.

- 21 It is submitted that in the context of JTQL's proposal, the provision of a more efficient reticulated wastewater management system that is able to meet its discharge consent conditions, together with the implementation of appropriate on-site stormwater management practices, will ensure that the rezoning of the site achieves outcomes consistent with the Vision and Strategy for the Waikato River in the Waikato catchment

Management Plans and Growth Strategies

- 22 A territorial authority must also have regard to any relevant management plans and strategies. The following documents are examined as a result.

Future Proof Strategy 2017

- 23 Future Proof Strategy 2017 (**Future Proof**) is a 30-year growth management and implementation plan specific to the Hamilton, Waipa and the 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.
- 24 Section 1.3 of Future Proof outlines the applicable principles for growth management and implementation in rural areas. It is submitted that JTQL's proposal is consistent with these principles. The development of approximately 9 lots (8 additional residential lots and the existing early learning centre) at Tamahere is consistent with the Future Proof Settlement pattern. Further, Tamahere is located within the Hamilton urban area and JTQL's proposal is consistent with the direction of Future Proof for urban development. Facilitating growth within a defined area at Tamahere will reduce the demand for rural residential development elsewhere in the wider area and in doing so seek to avoid further fragmentation of rural land holdings in the Rural Zone.

Waikato 2070

- 25 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.
- 26 It is submitted that JTQL's proposal is consistent with Opportunity 02.2 of Part 02.0 of Waikato 2070, which generally confines areas for future

development in and around existing settlements and directs that consideration needs to be given to more compact growth patterns in the future. Opportunity 02.5 relates to the rural environment and notes that rural villages will continue to be a primary focus and integral part of the district. While 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. JTQL has obtained evidence from experts which suggests that rezoning of the site is appropriate.

- 27 It is further 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.
- 28 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.”*
- 29 As identified in the preliminary assessment of on-site wastewater treatment and land disposal potential for the site by Ormiston Associates Limited, the potential development is able to be adequately serviced via a decentralised on-site wastewater treatment and disposal system, subject to a detailed design and assessment of effects to support resource consent applications. As a result and despite the fact that Tamahere has not been identified as a growth area in Part 04.0 of Waikato 2070, it is submitted that it is still suitable for the subject site to be assigned as Village Zone because of the overall consistency with the principles of Waikato 2070 and other planning documents.

Waikato-Tainui Environmental Plan

- 30 As outlined in *Colonial Vineyards* and s 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.

- 31 It is expected that resource management of the site, if rezoned, will align with the relevant sections of the Plan. This includes:
- (a) appropriate management of waahi tapu and waahi tupuna sites, particularly through ensuring appropriate guidelines are in place for taonga discovery, archaeological sites and sites of significance;
 - (b) utilising an opportunity to enhance fresh water quality through retiring poorly drained soils from productive farming;
 - (c) appropriate and effective management of soil erosion and land contamination through appropriate sediment control measures.

Part B – Objectives [Section 32 test for objectives]

- 32 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 against the extent to which it is the most appropriate way to achieve the purpose of the Act.¹³
- 33 In his evidence Mr Shaw undertakes a comprehensive review of JTQL's proposal in relation to the relevant objectives and policies in the PWDP. The objectives and policies that Mr Shaw examines are those that were identified within the matrix in Appendix 2 to the s 42A Framework Report.
- 34 Counsel does not wish to repeat that extensive analysis in these submissions, however recognises Mr Shaw's conclusion that the rezoning proposal is supported by the objectives and policies in the PWDP that identify, in general, the suitable locations for urban growth. As previously mentioned in these submissions, the site is directly adjacent to an existing urban development and JTQL's proposal will further promote a compact urban form.
- 35 The proposal is inconsistent with Objective 5.1.1(a)(i) of the WPDP which states that subdivision, use and development within the rural environment

¹³ Section 74(1) and section 32(1)(a).

should occur in such way that high class soils are protected for productive rural activities. It is submitted that it is inconsistent merely on an individual site perspective in terms of protecting high class soils but consistent in the wider context for the District. AgFirst's report concludes there are significant limitations to agricultural options and productivity. The subject site is not being used for rural productive activities at present. There is an existing early childcare centre (commercial activity) operating from the site. It is submitted that simply rejecting the proposal to protect high class soils (which are not being used for primary production activities on this site anyway) is unlikely to achieve the NPS-UD requirements to enable development capacity more than the anticipated demand. It is further submitted that it would be impractical for all high class soils to be protected as per Objective 5.1.1(a)(i) while also meeting the NPS-UD requirements.

- 36 As a result, while the rezoning is inconsistent with Objective 5.1.1(a)(i), the consistency of the proposal with the provisions in the higher order planning documents still suggest that JTQL's proposal is appropriate.

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

- 37 Part C of the criteria outlined in *Colonial Vineyards* considers the s 32 test for policies and methods (including rules). Policies are to implement the objectives and the rules are to implement the policies.¹⁴ 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.¹⁵ This includes assessing the efficiency and effectiveness of the provisions in achieving the objectives.¹⁶

- 38 JTQL seeks that:

- (a) the site be zoned "Village" on the planning maps;
- (b) *Rule 24.4.2 Subdivision* be amended to include reference to Tamahere and that, accordingly, a new restricted discretionary rule (*RD3*) be introduced to allow for subdivision at Tamahere pursuant

¹⁴ Section 75(1)(b) and (c).

¹⁵ Section 32(1)(b).

¹⁶ Section 32(1)(b)(ii).

to “Village” zoning requirements applicable to other areas in the District; and

- (c) any further and consequential amendments to the provisions, including any cross-references in other chapters, to give effect to the relief sought.

39 It is submitted that these amendments are the most appropriate ways to achieve the objectives of the PWDP, which is a mandatory consideration pursuant to section 32(1)(b).

SECTION 42A REPORT

40 The s 42A report by Ms Tait has recommended that JTQL’s submission be rejected and that the Rural zone be retained.

41 Mr Shaw has filed a rebuttal statement of evidence responding to the matters raised in the s 42A report.

42 For completeness, we note that these submissions have addressed the relevant statutory framework (above) and the proposal is generally consistent and in line with the higher order documents.

43 We disagree with the conclusions in Ms Tait’s rebuttal evidence¹⁷ that rezoning 25 Tamahere Drive would constitute unplanned and uncoordinated growth. It is difficult to see any real difference between the rezoning opportunity at 25 Tamahere Drive and the recommended rezoning at Yumelody Lane. We acknowledge that there are further properties to the south of the Quigley land however those landowners have not sought to have their land rezoned and their land still lies within the northern boundary of Southern Links. To that extent the Quigley land is part of a parcel that is analogous to the Yumelody Lane block and is closer to Tamahere Village.

44 For the reasons set out in Mr Quigley and Mr Shaw’s evidence and those set out in paragraph 27 of Ms Tait’s rebuttal evidence, we consider that rezoning this land is the most appropriate way to achieve the relevant strategic objectives of the PWDP.

¹⁷ Paragraphs 39 and 40.

- 45 For completeness, we add that zoning requests that are well supported with expert evidence and a s 32AA report do not necessarily constitute unplanned or uncoordinated growth for the purposes of the NPS-UD. Planned growth, in our submission, is not limited to growth anticipated in the notified version of Proposed District Plan, particularly where that Proposed Plan was not informed by a comprehensive growth strategy analysis. We acknowledge that a retrospective growth strategy process has been undertaken, however the outcomes of that process appear to coincide with the growth initiatives in the PWDP and cannot be taken to have informed those initiatives in the first place.

SUBMISSIONS IN SUPPORT AND/OR OPPOSITION

- 46 The s 42A report notes that the Hamilton City Council [#1379] is a key submitter opposing the majority of submissions to rezone in Tamahere. We note the further submission from HCC had been overlooked in Mr Shaw's rebuttal evidence. The opposition from HCC is based on cross-boundary impacts that further subdivision is likely to have on the infrastructure within Hamilton, namely transport, 3 waters and social infrastructure. It further says that "*the key purpose of the Rural Zone is to protect the productive nature of the land and to ensure non-rural activities are more appropriately directed to towns and other areas identified for growth.*"¹⁸ It is submitted the opposition fails to note that the subject site is located within the urban limits and is consistent with the direction of Future Proof for urban development. The site is not being used for rural activities at present (as an early childcare centre operates from the site) and therefore the key purpose of the Rural zone is not being achieved in any event.
- 47 The only further submission was from Mercury NZ Limited [#FS1388.91] in opposition. It is noted that Mercury NZ has opposed several submissions due to the potential for flood hazard risk in areas proposed to be intensified. It is submitted that the subject site is not subject to the potential hazard risk identified by Mercury NZ.

¹⁸ Hamilton City Council further submission at p.9

RELIEF SOUGHT

48 In conclusion, the submitter seeks that its site at 25 Tamahere Drive, Tamahere is rezoned to Village Zone as that will ensure an efficient use of the urban land resource.

EVIDENCE

49 Following people will be giving evidence on behalf of the submitter:

- (a) Mr Jonathan Quigley;
- (b) Mr Leigh Shaw (planning expert);
- (c) Ms Trish Simonson, wastewater specialist; and
- (d) Mr Dave Miller, agricultural specialist.

Date: 12 May 2021

A handwritten signature in blue ink, appearing to be 'J B Forret', written over a horizontal line.

Dr J B Forret/P Kaur
Counsel for J & T Quigley Limited