

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

IN THE MATTER of the Resource Management Act 1991

AND

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

**SUBMISSIONS OF COUNSEL FOR HOROTIU PROPERTIES LIMITED -
HEARING 25 ZONE EXTENTS
12 May 2021**

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INTRODUCTION

- 1 Horotiu Properties Limited (**HPL**) has made a submission and further submission on the Proposed Waikato District Plan (**PWDP**).
- 2 HPL made a submission (#397) in relation to its land at Sullivan Road, Horotiu. The subject site is legally described as Lot 5 DP 513666. The 7.5ha property is roughly rectangular in shape.
- 3 The site is bounded by Sullivan Road on its northwest boundary, River Road on its northeast boundary, Horotiu Bridge Road on its southeast boundary and three rural-residential properties on its southwest boundary. The site is a balance lot resulting from previous subdivision (under the Operative District Plan) and is HPL's only remaining landholding following the NZTA acquisition of a larger, adjacent farm block for construction of the Ngaruawahia Bypass.
- 4 The submission by HPL requested that their site at Horotiu is rezoned from Rural Zone to Country Living Zone or Village Zone. This is on the basis that the property is not considered suitable to be maintained within the Rural Zone as it is too small and does not contain appropriate infrastructure in which it could be considered a productive rural property. As mentioned above, the property is a balance lot resulting from previous subdivision with prominent physical constraints meaning it cannot grow nor support any practicable rural productive activity.
- 5 Upon receipt of the s 42A Framework Report, HPL decided to focus on pursuing a Country Living Zone for the site.

SUPPORTING REPORTS AND ASSESSMENTS

- 6 HPL has provided several supporting documents in relation to this submission. These include the following:
 - (a) Written evidence prepared by representatives of HPL outlining their knowledge of the site's history, both prior to their purchase of it and during their ownership of it;
 - (b) Expert planning evidence including a section 32AA Report produced by Ms Tracey Morse (Ms Morse);
 - (c) A Structure Plan, showing an indicative subdivision layout that broadly achieves compliance with the Country Living Zone provisions (this was attached to the original submission); and

- (d) An archaeological assessment prepared for the site in relation to a previous subdivision that created the three rural residential properties that adjoin the southern boundary of the current site.

STATUTORY FRAMEWORK

- 7 In respect of the statutory framework, we adopt Appendix 1 of Ms Parham's opening legal submissions on behalf of the Waikato District Council (**Council**).¹
- 8 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*.²

Part A - General Requirements

- 9 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.
- 10 A district plan (change) must 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.

National Policy Statement on Urban Development

- 11 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.

¹ 23 September 2019.

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

- 12 However, it is noted that the NPS-UD is not of direct relevance to HPL's rezoning proposal on the basis that the HPL site does not qualify as an "urban environment" under the NPS-UD.

National Planning Standards

- 13 The National Planning Standards are only relevant to HPL's proposal to the extent that the Country Living Zone will likely transition to the Rural-lifestyle zone under the National Planning Standards if the zoning change is approved.

Regional Policy Statements

- 14 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 regard to any proposed regional policy statement;⁷ and
 - (b) give effect to any operative regional policy statement.⁸

Waikato Regional Policy Statement

- 15 Ms Morse's evidence outlines the objectives and policies of the WRPS relevant to HPL's proposal to rezone its land. A broad range of matters were considered in a regional context. A summary of the key provisions are outlined in Ms Morse's evidence at paragraph [17]. In our submission, HPL's proposal is consistent with the WRPS for the following reasons.
- 16 Objective 3.12 of the WRPS states: *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.* In our submission the Country Living Zone for Horotiu would complement the existing local community and this rezoning would be consistent in achieving the positive environmental, social, cultural and economic outcomes which Objective 3.12 seeks to achieve. In respect of infrastructure requirements, the Country Living development is largely self-sufficient. The multiple road frontages available to the site provide a

⁷ Section 74(2)(a)(i).

⁸ Section 75(3)(c).

unique opportunity to ensure that access onto the public road network can be designed to have the best possible transportation outcome.

- 17 Those same road frontages are also relevant to the security issues raised by Ms Simpson and some of the reasons why rural use of the site is difficult.
- 18 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);
 - 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);
- 19 The subject site is not within the urban limits for Horotiu in Map 6-2 of the WRPS.
- 20 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 Horotiu (13 lots with approximately 34 residents) is anticipated to be within the expectations of Table 6-1 and the rezoning is therefore not considered to be inconsistent with Policy 6.14.
- 21 Policy 6.1.7 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 6.1.7(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 Horotiu is located within the Waikato Basin where demand for rural-residential development is strongest due to its proximity to Hamilton City. It is further submitted that the establishment of a Country Living Zone will assist with reducing demand pressures on other productive rural land in the wider

Horotiu area. Further, the rural residential lots will be largely self-sufficient in terms of 3 waters infrastructure.

- 22 It is also submitted that HPL's proposal is consistent with the "General development principles" in Section 6A of the WRPS. General development principles say that new development should "*support existing urban areas in preference to creating new ones*".⁹ HPL's proposal is consistent on the basis that Horotiu is an existing urban area, consisting of a primary school, general store, gift shop and industrial activities.
- 23 It is further submitted that HPL's proposal is consistent with general development principle (b), which states that new development should "*occur in a manner that provides clear delineation between urban areas and rural areas*". As HPL seeks rezoning of its land to Country Living Zone, the proposed zone boundary will provide a clear delineation between rural residential and rural areas. This is because the boundary aligns with physical features on all 4 boundaries.
- 24 It is submitted that allowing for development in this area will release pressure on surrounding rural areas, which will help preserve wider surrounding rural character values and primary production. Further, the rezoning will not conflict with the foreseeable long term needs for expansion of Horotiu.¹⁰

Vision and Strategy for the Waikato River

- 25 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 Acts¹¹. The Vision and Strategy is applicable to Horotiu because it is located within the catchments affecting the Waikato River.
- 26 In our submission, the provision of appropriate per lot wastewater management and 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 River catchment.

⁹ General development principles (a) - 6A – Development Principles, Waikato Regional Policy Statement

¹⁰ See Statement of Evidence of Tracey Morse at p.19.

¹¹ 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.

Management Plans and Growth Strategies

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

Future Proof 2017

28 The Future Proof Strategy is a 30-year growth management and implementation plan specific to the Waikato 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.

29 Section 1.3 of Future Proof outlines the applicable principles for growth management and implementation in rural areas. It is submitted that HPL's proposal is consistent with these principles. The proposal is not of a scale or location that will compromise the Future Proof settlement plan. It is also noted that Horotiu Village is located on the periphery of Hamilton city and as such has village limits identified in Future Proof. However, the subject site is outside of the village limit. Therefore, it is relevant that specific residential growth requests are considered through the relevant district plan change processes.

30 As set out in Ms Morse's rebuttal evidence, indicative village limits in Future Proof do not apply outside of the Hamilton Periphery and the HPL site falls outside that periphery. Future Proof itself acknowledges that there needs to be a flexible and responsive approach to managing growth, with the guiding principles being the relevant foundations for growth and development. As above, rezoning the HPL small and unproductive site will not compromise any of those guiding principles and will give effect to Principles 2 (diverse centres linked to thriving towns and rural communities) and 5 (sustainable resource use).

31 Further, it is anticipated that facilitating growth within a defined area at Horotiu will reduce the demand for rural residential development elsewhere in the wider Horotiu area and in doing so, avoid the further fragmentation of rural land holdings in the Rural Zone.

Waikato 2070

32 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.

- 33 Part 04.0 of Waikato 2070 identifies where and when growth can occur for residential and employment activities that align to the focus areas. It is submitted that growth in the rural environment for Horotiu has been recognised but does not include the subject site.
- 34 Notwithstanding this, it is submitted that HPL's proposal generally aligns with the opportunities and focus areas identified in Waikato 2070.
- 35 As is identified in Ms Morse's evidence, future development at the subject 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

- 36 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.
- 37 HPL recognises that its rezoning proposal would be subject to various sections in the Plan and HPL is therefore committed to ensuring that the proposal is executed in a way which is consistent with the development principles recognised in the Plan, which encourage positive environmental, cultural, spiritual and social outcomes.

Part B – Objectives [section 32 test for objectives]

- 38 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.¹²
- 39 In her evidence Ms Morse undertakes a comprehensive review of HPL's proposal in relation to the objectives and policies in the PWDP. In doing

¹² Section 74(1) and section 32(1)(a).

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.

- 40 Counsel does not wish to repeat at length the evidence of Ms Morse in this respect, however notes that the relevant objectives, policies and strategic direction are consistent with HPL's rezoning proposal:
- (a) 1.5.2(a) *Growth occurs in defined areas* – Horotiu is an existing rural node. The purpose of 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* – The subject site of the rezoning request includes a pond that formed as a result of a natural spring. The proposed structure plan for the site would ensure that the pond is protected from development. Further, the area could be enhanced by planting and public access opportunities. The proposal therefore presents enhancement opportunities;
 - (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 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* – Horotiu 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;

(g) 5.1.1(a) *Subdivision, use and development within the rural environment where:*

- (i) *high class soils are protected for productive rural activities;*
- (ii) *productive rural activities are supported, while maintaining or enhancing the rural environment;*
- (iii) *urban subdivision, use and development in the rural environment is avoided –*

The area subject to the rezoning proposal consists of degraded soils as a result of historic sand mining activity. As a result, the site is not suitable for use for productive rural activities.

41 As stated earlier in these submissions, the rezoning proposal is considered to be generally consistent with achieving the relevant objectives of the PWDP.

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

42 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.¹³ 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.¹⁴ This includes assessing the efficiency and effectiveness of the provisions in achieving the objectives.¹⁵

43 The rezoning proposal seeks for HPL's site at Horotiu to be amended on the Planning Maps from Rural Zone to Country Living Zone. It is submitted that this amendment is the best way to achieve the objectives in the PWDP and this is illustrated through the analysis under Part B of the *Colonial Vineyards* criteria above.

¹³ Section 75(1)(b) and (c).

¹⁴ Section 32(1)(b).

¹⁵ Section 32(1)(b)(ii).

SECTION 42A REPORT

- 44 Section 42A report by Ms Boulton has recommended that the HPL's submission be rejected and the Rural Zone is retained. This recommendation has been made on the basis that the HPL site is not located within:
- (a) an indicative urban or village limit identified in Future Proof;
 - (b) the current WRPS urban limits; and
 - (c) the growth area identified in Waikato 2070.
- 45 For completeness, we note that these submissions have addressed relevant statutory framework (above) and the proposal is generally consistent and in line with the higher order documents.
- 46 Ms Morse has filed a rebuttal statement of evidence responding to the matters raised in the s 42A report.

SUBMISSIONS IN SUPPORT AND/OR OPPOSITION

- 47 Waka Kotahi #742 initially opposed HPL's submission based on inconsistency with the approved settlement pattern for the Future Proof sub-region. However, Mr Wood's evidence in chief dated 10 March 2021 adopted a neutral position in regard to HPL's submission. Waka Kotahi has amended its position on the basis that the rezoning request is of a small scale and there is a reduced potential for transportation effects to arise. The proposal's relevancy with the Future Proof has been discussed elsewhere in these submissions (see paragraphs 26 and 27).
- 48 There is nothing specific in the WRC's evidence filed by Ms Foley dated 10 March 2021 in respect of HPL submission beyond a reference within Attachment Two which lists Rural Residential submissions that WRC provided further submissions to. 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. There is no reference to the HPL submission #397 in Table 3.1 either in the Horotiu or Rest of District sections.
- 49 Hamilton City Council maintains its opposition to the establishment of any additional CLZ within the Hamilton Area of Interest (AOI), particularly in the Hamilton's Urban Expansion Area (UEA). In respect of the HPL's

submission, the only reference is within Table 2. This table incorrectly identifies the HPL site as being located within the HCC's AOI¹⁶ and reconfirms HCC's opposition to the rezoning request. It is submitted that the HPL site is located outside the AOI¹⁷ and therefore HCC's opposition is irrelevant as it is based on incorrect information. Ms Morse has identified the AOI from the Gazette Notice and will provide a copy of that Notice and maps at the hearing (or before if requested).

RELIEF SOUGHT

50 In conclusion, HPL seeks that its site at Horotiu is rezoned from Rural Zone to Country Living Zone.

PLANNING EVIDENCE

51 Ms Morse will give planning evidence at the hearing.

52 Mr Robert Simpson will appear on behalf of HPL in place of Ms Andrea Simpson who is on maternity leave. Mr Simpson is a past owner of the land in question and can assist with answering any questions the panel may have.

Date: 12 May 2021



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¹⁶[https://www.dia.govt.nz//Pubforms.nsf/NZGZT/NZGazette76Jun11.pdf/\\$file/NZGazette76Jun11.pdf#page=53](https://www.dia.govt.nz//Pubforms.nsf/NZGZT/NZGazette76Jun11.pdf/$file/NZGazette76Jun11.pdf#page=53) the HPL site is just beyond the top of the area shown on page 1804.

¹⁷ See Rebuttal statement of evidence of Tracey Morse for HPL, at [19].