

**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 STUART AND KATRINA QUIGLEY AND
QUIGLEY FAMILY TRUST
1 June 2021**

Next Event Date: 10 June 2021

Harkness Henry
SPECIALIST LAWYERS

www.harknesshenry.co.nz

Phone (07) 838 2399
Fax (07) 839 4043
Address Level 8, KPMG Centre,
85 Alexandra Street, Hamilton 3204
Mail Private Bag 3077, Hamilton 3240,
New Zealand, DX GP 20015

Submitters Solicitor:
Dr J B Forret
(joan.forret@harkness.co.nz)

Counsel Acting:
P Kaur
(pervinder.kaur@harkness.co.nz)

EXECUTIVE SUMMARY

- 1 Stuart and Katrina Quigley (#947, #955) and Quigley Family Trust (#989) (**Submitters**) have made a submission and further submission on the Proposed Waikato District Plan (**PWDP**).
- 2 The submission relates to their property at 233 Wilton Collieries Road, Glen Massey. The subject site is legally described as Lot 20 DP 431591 (29.0021 ha).
- 3 The original submission by Submitters requested that their property 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, the Submitters decided to focus on rezoning their property as Country Living Zone in order to ensure an efficient use of the land resource.
- 5 It is submitted that the Submitters' proposal will support an existing village by concentrating appropriate residential development and is a better option for those seeking a rural lifestyle than allowing for ad hoc and scattered subdivision throughout the rural zone. The existing village has both Country Living zone and Village zone.
- 6 It is also submitted that Glen Massey 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. Establishment of a Country Living Zone will assist with reducing demand pressures on other rural land in the wider Ngaruawahia area.
- 7 It is also relevant that a subdivision consent has previously been approved for the subject site which has subsequently lapsed (Council reference SUB0226/06). Key features of the previously-approved subdivision were as follows:
 - (a) Approval to create 18 lots over 5 stages, including associated earthworks and works within road reserve. Of these 18 lots, 2 were given effect to and obtained title prior to the resource consent lapsing.
 - (b) Internal access via three right of ways accesses providing access to developable areas.

SUPPORTING REPORTS AND ASSESSMENTS

- 8 The Submitters have provided several supporting documents in relation to their submission. These include the following:
- (a) Expert planning evidence including section 32AA Report produced by Ms Tracey Morse;
 - (b) An Integrated Transportation Assessment prepared by CKL;
 - (c) An Agricultural Impact Assessment prepared by AgFirst which confirms that the subject site is comprised solely of low class (Class 6) soils and that the contour of the site also renders the site unsuitable for horticultural activities.

STATUTORY FRAMEWORK

- 9 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
- 10 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

- 11 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.
- 12 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.

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).

National Policy Statement on Urban Development

- 13 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.
- 14 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.
- 15 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

- 16 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

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

Waikato Regional Policy Statement

- 18 In terms of the Waikato Regional Policy Statement (**WRPS**) the Panel’s comments in Ohinewai zone decision are noted:⁹
- ...but we note that the RPS is well out of date in terms of providing for growth (particularly given the National Policy Statement for Urban

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

⁷ Section 74(2)(a)(i).

⁸ Section 75(3)(c).

⁹ Ohinewai zone decision 24 May 2021 at [110].

Development), and even Future Proof 2009 that is embedded in the RPS has been superseded by a 2017 revision

- 19 Ms Morse's planning evidence provides an extensive analysis of the key objectives and policies of the WRPS that are relevant to the Submitters' submission. From this analysis, it is evident that the Submitters' proposal aligns with the WRPS.
- 20 A Country Living Zone is the preferred form for Glen Massey in order to complement the existing local community. Such an approach would be consistent with the positive environmental, social, cultural and economic outcomes which Objective 3.12 seeks to achieve.¹⁰
- 21 Further, in terms of Objective 3.12(a) and (b) the potential exists for positive biodiversity outcomes to be achieved and for natural character to be maintained through the slope stabilisation revegetation plantings. Country Living development is largely self-sufficient in terms of infrastructure requirements. The extensive road frontage available to the site provide a unique opportunity to ensure that access onto the public road network can be designed to have the best possible transportation outcome.
- 22 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);
- 23 It is submitted that there are no urban limits for Glen Massey in Map 6.2 of the WRPS.
- 24 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

¹⁰ See Ms Morse's Statement of Evidence dated 17 February 2021 at [22].

proposed at Glen Massey (20 lots with approx. 52 residents) is anticipated to be within the expectations of Table 6-1.

- 25 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 on the basis that Glen Massey 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. Establishment of a Country Living Zone will assist with reducing demand pressures on other rural land in the wider Ngaruawahia area.
- 26 The rural residential lots will be largely self-sufficient in terms of 3 waters infrastructure. Shared access lots will be provided by the developer at the time of development. Glen Massey village provides existing infrastructure/amenities such as a school.
- 27 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.
- 28 The proposal also aligns with the principles in Section 6A (*New Development Principles*) of the WRPS on the basis that:
- (a) Glen Massey is an existing urban area, consisting of a primary school and is adjacent to Glen Massey village. Therefore, it will be connected to existing development and social infrastructure by road. Future development will be self-sufficient with regards to three waters services.
 - (b) the rezoning will not compromise the safe, efficient and effective operation of Wilton Collieries Road. There is sufficient capacity within the road formation to accommodate current vehicle movements as well as the additional demand associated with Country Living development of the site.
 - (c) water requirements for a future subdivision of the site will most likely be met by rainwater harvesting on a lot-by-lot basis.
 - (d) a Country Living zoning would promote a compact urban form, design and location.

(e) by concentrating development in this location, pressure is reduced on surrounding rural areas, which help preserve wider surrounding rural character values.

29 It is relevant to note the “*directive at the start of the list that “new development should.”*”¹¹

30 It is also relevant that the Glen Massey Village has both Village Zone and Country Living Zone land.

Management Plans and Growth Strategies

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

Future Proof 2017

32 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.

33 Section 1.3 of Future Proof outlines the applicable principles for growth management and implementation in rural areas. It is submitted that the Submitters’ proposal is consistent with these principles. The development of approximately 20 rural residential lots at Glen Massey 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 Glen Massey from the two closest urban areas, Ngarauwahia (11.4km) and Hamilton (21km).

Waikato 2070

34 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.

35 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

¹¹ Ohinewai zone decision report 24 May 2021 at [104].

evidence-based approach to help maintain and sustain the rural environment.

- 36 The Submitters have obtained evidence from experts to suggest that there is an evidential basis that rezoning of the site is appropriate in particular in light of a previously approved subdivision consent.
- 37 Ms Morse's evidence covers the discussion around the implementation methods relevant to the rezoning proposal.

Waikato-Tainui Environmental Plan

- 38 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.
- 39 The Submitters' anticipates that resource management of the site, if rezoned, will align with relevant sections of the Waikato-Tainui Environmental Plan.

Part B – Objectives [Section 32 test for objectives]

- 40 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
- 41 Counsel does not wish to repeat the evidence of Ms Morse in which she undertakes a comprehensive review of the Submitters' 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.

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

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 the Submitters' 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 and in the expert evidence, would be consistent with the objectives in the PWDP and other higher-order planning documents such as the WRPS.

SECTION 42A REPORT

- 44 Council's reporting officer Ms Boulton has recommended that the Submitters' submission is rejected and the Rural Zone is retained.
- 45 We also note that the s 42A report, although rejecting the Submitters' submission to rezoning their land to Country Living, recommends altering the notified PWDP zoning for part of Glen Massey (submission #551 – 859 Waingaro Road, Glen Massey) from Country Living Zone to Village Zone. This recommendation has been made on the basis that "*the rezoning will not result in a substantial change to the zoning framework contained in the PWDP given that the area sought to be rezoned is already identified under the Operative Plan and PWDP for rural-residential development.*" It is submitted that the reporting officer's reasoning can similarly be applied to the Submitters' rezoning proposal given there was an approved subdivision consent which recognised that the land will be used for rural-residential activity.

¹³ Section 75(1)(b) and (c).

¹⁴ Section 32(1)(b).

¹⁵ Section 32(1)(b)(ii).

46 Ms Boulton's recommendation regarding rezoning 859 Waingaro Road to Village zone is also contrary to her comments at paragraph 68 of her report where she says:

Glen Massey is not deemed to be an "urban environment" as defined under the NPS-UD and is not programmed to be serviced with reticulated infrastructure. As such it is not capable of providing significant development capacity.

47 However, she goes on to recommend Village Zone, which is considered to be an urban zone, for an area which is *not capable of providing significant development capacity* and all the while rejects Country Living zone which provides for rural lifestyle living. It is respectfully submitted that if Ms Boulton's recommendations regarding submission 551 are accepted then the Submitters' proposal to rezone their property to Country Living would certainly align with the surrounding environment and the rural character of the area.

48 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.

49 It is also submitted that the s 42A report fails to note various submissions and further submissions (from #949 to #959) supporting the Submitters' rezoning proposal. The s 42A report also fails to note that the submitter #551 has also supported the Submitters' rezoning proposal.

50 Ms Morse has filed a rebuttal statement of evidence responding to the matters raised in the s 42A report.

51 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. There is still a place for planned and appropriate rural-residential development in the district.

52 The Submitters' proposal will support an existing village by concentrating appropriate residential development on land which has previously been approved for subdivision of 18 lots and is a better option for those seeking a rural lifestyle than allowing for ad hoc and scattered subdivision

throughout the rural zone. It is submitted that nothing has changed in the receiving environment since the previously approved consent in 2007.

SUBMISSIONS IN SUPPORT AND/OR OPPOSITION

- 53 A number of submissions and further submissions (from #949 to #959) support the rezoning sought by the Submitters.¹⁶
- 54 The further submission from WRC has opposed the rezoning proposal. 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.
- 55 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.

RELIEF SOUGHT

- 56 In conclusion, the Submitters seek that their property at 233 Wilton Collieries Road, Glen Massey be rezoned to Country Living Zone as that will ensure an efficient use of the land resource.

EVIDENCE

- 57 Following people will be giving evidence on behalf of the submitter:
- (a) Stuart and Katrina Quigley;
 - (b) Ms Tracey Morse (planning expert); and

¹⁶ See s 42A Report at [62].

(c) Ms Judith Makinson (Transportation Engineer) (available for questions from the Panel as necessary).

Date: 1 June 2021



Dr J B Forret/P Kaur
Counsel for Submitters