

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

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

AND

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

**REBUTTAL STATEMENT OF EVIDENCE OF LEIGH MICHAEL SHAW FOR
SUBMITTER #389: J AND T QUIGLEY LTD
3 May 2021**

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INTRODUCTION

- 1 My full name is Leigh Michael Shaw. I am a Planning Manager at CKL. My qualifications are as per my Statement of Evidence of 25th February 2021.
- 2 I reconfirm that I have read and am familiar with the Code of Conduct for Expert Witnesses in the current (2014) Environment Court Practice Note. I agree to comply with this Code of Conduct in giving evidence to this hearing and have done so in preparing this written brief. The evidence I am giving is within my area of expertise, except where I state I am relying on the opinion or evidence of other witnesses. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed. I understand it is my duty to assist the hearing committee impartially on relevant matters within my area of expertise and that I am not an advocate for the party which has engaged me.

SCOPE OF REBUTTAL EVIDENCE

- 3 This rebuttal statement of evidence has been prepared to consider the Waikato District Council S42A Report Hearing 25: Zone Extents Rest of District – Hamilton Fringe by Susannah Tait (16th April 2021) (“S42A Report”), specifically in relation to:
 - (a) Recommendation 29(a) to reject the submission of J and T Quigley Ltd [389.1] (**JTQL**) and retain the Rural Zone.
- 4 This rebuttal evidence responds to the S42A Report on the following matters:
 - (a) Future Proof 2017; and
 - (b) Hamilton City Council submissions; and
 - (c) National Policy Statement for Urban Development 2020 (NPS-UD); and
 - (d) Waikato Regional Policy Statement (WRPS)
 - (e) Zone Extents – Framework Report Supplementary Evidence

FUTURE PROOF 2017

- 5 Paragraph 55 (page 18) of the S42A Report states “the existing Country Living Zone (with the small area of Tamahere Business Zone) covers all land within the urban limits, accordingly there is limited growth capacity within the Tamahere urban limits.” When the subsequent figure identifies approximately 160 hectares of rural-zoned land as a possible expansion area that may, in time, move from Waikato District’s jurisdiction into the Hamilton City jurisdiction.
- 6 Whereas Paragraph 10 (page 40) states that “*Future Proof 2017 identifies a portion of Tamahere as a possible expansion area that has been flagged as land that may, in time, move from Waikato District’s jurisdiction into the Hamilton City jurisdiction.*” Then further notes that “*these sites are an ‘island’ of Rural-Zoned land surrounded by the Waikato Expressway to the east and Country Living-Zoned land to the west and south. The lot sizes are small (relative to typical farming allotments), and most contain urban uses (i.e. rural residential development, a retirement village, a childcare centre). I acknowledge that the rezoning of these sites (to Country Living, or a more intensive zoning appropriate to the needs of Hamilton City) is a question of when, not if.*” The subject site is in the northernmost corner of this area and the proposed zoning will not preclude the long-term strategic importance of this wider area.
- 7 The maps of village limits within Future Proof were intended to provide an indicative extent for growth. Specific consideration of inclusion within a village limit growth extent and extension requests are to be considered through the relevant district plan. This approach is enabled through the section included in the Future Proof Strategy Planning for Growth 2017 entitled “7.5 A Responsible Approach to Development”. Some extracts from this section are given below:

“... the maps representing the Future Proof settlement pattern only provide a general indication of the extent of urban areas. More definitive boundaries are to be determined by each territorial authority through robust planning processes, including structure planning and more definitive urban boundaries which will be determined in district plans.”

When considering proposals for change, such as the land uses identified in the settlement pattern or the timing and staging for land development set out in the Future Proof Strategy, it is critical that the guiding principles that underpin the settlement pattern are not compromised. Despite any change in global, national, regional or local circumstances, these guiding principles remain the foundation of strategic growth and development in the sub-region. Therefore when considering any changes to land use or the timing and staging of land development from that set out in the Strategy, they form the basis of any criteria developed to assess the merits of particular proposals.”

- 8 Future Proof itself acknowledges that there needs to be a flexible and responsive approach to managing growth. For the reasons outlined in my evidence in chief, the rezoning of the JTQL land can occur in a way that is integrated, sustainable and planned.

HAMILTON CITY COUNCIL SUBMISSIONS

- 9 Paragraph 115 (page 37) of the S42A Report states that the Hamilton City Council [1379] was a key submitter opposing the majority of submissions to rezone in Tamahere. It is noted that there appears to be a numerical error in the S42A Report, which goes on to paragraph 2 to state:

“To assess the submissions for Tamahere, I have considered all those submissions that seek a rural residential outcome (Country Living Zone or Village Zone) together.”

- 10 It should be correctly noted that Hamilton City Council did not oppose submission #389 by J and T Quigley Ltd. The only further submission received by this submitter was FS1388.91 from Mercury NZ Limited in opposition. Mercury NZ Limited [#730 & FS1388] has opposed many submissions due to the potential for flood hazard risk in areas proposed to be intensified.
- 11 A report was commissioned by Mercury Energy in 2012 from an external expert (DHI Water and Environment Limited). This is part of ongoing prudent emergency response preparedness, with at least seven related and detailed studies undertaken since 1989. The report models water movement in the hypothetical situation of a dam break, and assumes an instantaneous, total removal of the dam, an extreme scenario. The dam break map data is the best estimate of inundation levels for a probable

maximum flood (PMF) and is shown below.¹ The subject site is not subject to the potential hazard risk identified by Mercury NZ Limited.

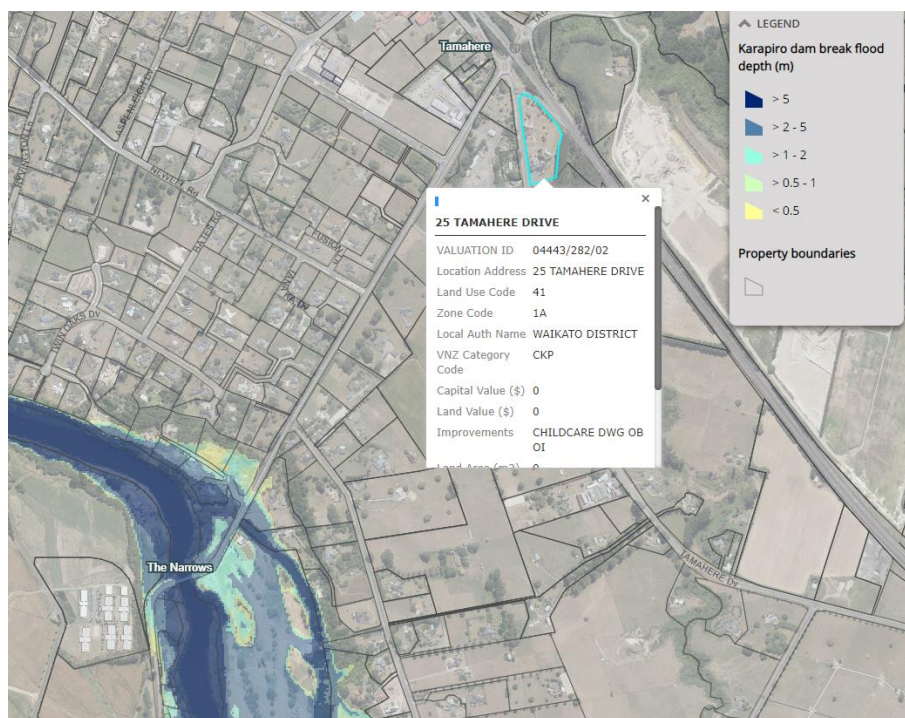


Figure 1: Karapiro dam break flood depth (Waikato Regional Hazards Portal)

NATIONAL POLICY STATEMENT FOR URBAN DEVELOPMENT 2020

- 12 Paragraph 4 (page 38) of the S42A Report goes on to state “As noted above, the land in the Hamilton Fringe is considered to form part of the Hamilton City urban environment and is therefore subject to the provisions of the NPS-UD.” In this case, the subject site is well-served by existing public transport as the Cambridge to Hamilton Regional Bus stop is located within 200m, enabling residents access to the same connections and conveniences as those located within Hamilton City.
- 13 Paragraph 5 (page 38) of the S42A Report goes on to assess “all those submissions that seek a rural residential outcome (Country Living Zone or Village Zone) together” and does not consider the uniqueness of 25 Tamahere Drive and the surrounding urban development. The subject site is within 500m of the Tamahere school and 800m from the Tamahere commercial area providing access to healthcare, retail and food outlets.
- 14 For the S42A Report to conclude that the submission does not give effect to Objectives 2, 3(a) and (b), 4, 6 and 8a of the NPS-UD clearly overlooks

¹ Waikato Regional Hazards Portal, Karapiro Dam Break

my evidence in chief and Council's role to enable the requirements of the NPS-UD to be better met.

- 15 Objective 2 relates to an analysis of how the relevant local authority's planning decisions affects the affordability and competitiveness of the local housing market. It is my view that the rezoning proposal gives effect to Objective 2. It is also my view that the recommendations of the S42A Report writer, if adopted, would not give effect to Objective 2 as the report fails to consider individual proposals on their merits. The S42A Report goes on to state "*the rural residential zones are not considered to address the housing (in)affordability issue where the median sale price in Tamahere is \$1.3M*". Jonathan Quigley's rebuttal statement responds to the housing affordability issue.
- 16 Objectives 3(a) and (b) relate to district plans enabling more people to live in areas of an urban environment in which one or more of (a), (b) and/or (c) apply. In this case, the subject site is near many employment opportunities, is well-served by existing public transport. The Cambridge to Hamilton Regional Bus services provide 8 buses to Hamilton and 8 buses to Cambridge during weekdays, this reduces to 4 buses each way on weekends and public holidays. Weekday timetables concentrate on the morning and afternoon peaks but also run around every two hours through the middle of the day, weekend timetable is spread across the day. The 7.50am service from Hamilton to Cambridge travels via Cambridge High School Monday to Friday during school term only. The bus passes through Hillcrest and Hamilton East before terminating in the CBD, providing access to many employment, educational, retail and healthcare services along the way, as well as connections to the Orbiter and Comet bus routes.

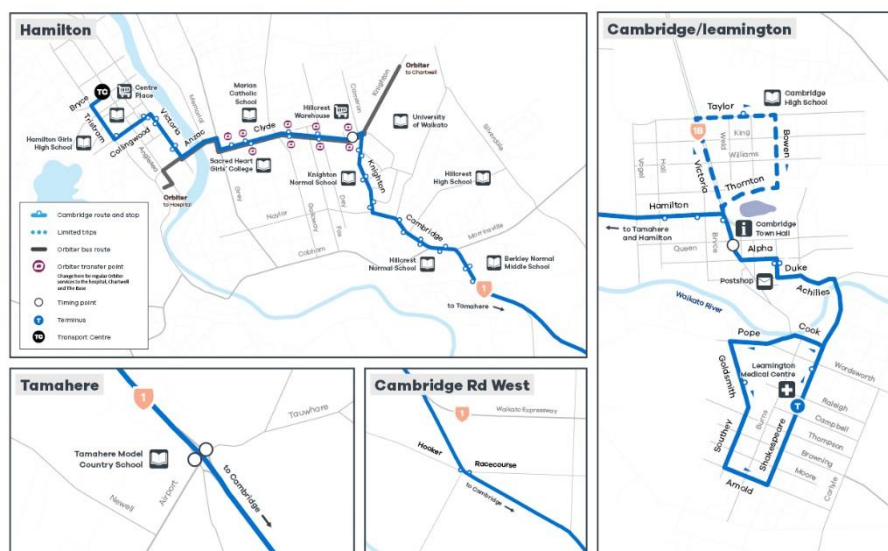


Figure 2: Cambridge to Hamilton regional bus route (Waikato Regional Council's BUSIT)

- 17 Further, there is high demand for housing land in the area. The Tamahere school is within 500m and the Tamahere commercial area within 800m of the subject site. Therefore, satisfying all three criteria of objective 3 and not just the very high demand to live in this area that is mentioned in paragraph 6 (page 39) of the S42A Report.
- 18 Objective 4 acknowledges that urban environments, including their amenity values, develop and change over time. In this case, the surrounding area is urbanised by the Tamahere Country club and early child learning centre. This proposal consolidates the existing urban areas into one location and is not contrary to objective 4.
- 19 Objective 6 relates to local authority decisions. It is my view that the recommendations of the S42A Report writer, if adopted, would not give effect to Objective 6 as the report fails to consider individual proposals on their merits. Whilst the proposal does not necessarily achieve (a) & (b), it is neither contrary to these. The size and location of the lot, being on the periphery of the urban area, and being of a small size, ensures that the rezoning will not hinder the Council's ability to meet sub-regional growth needs over time. Development of the site will not compromise integrated and strategic outcomes of the surrounding land over the medium to long term.
- 20 Objective 8(a) relates to supporting reductions in greenhouse gas emissions. The S42A Report writer concluded that *"rural lifestyle development tends to promote reliance on private vehicles (rather than public transport)"* without considering the individual merits of this

submission. The Cambridge to Hamilton Regional Bus stop is located within 200m, the Tamahere school is within 500m and an early learning centre is located on the property. Therefore, the reliance on private vehicles is much lower for this specific property.

- 21 Overall, I consider that the requested rezoning of the JTQL site gives effect to the NPS-UD and accordingly does not preclude integrated and strategic outcomes over time.

WAIKATO REGIONAL POLICY STATEMENT

- 22 Paragraph 8 (page 39) of the S42A report states *“the rezoning of these sites to be inconsistent with Objective 3.26 of the WRPS as it would not protect high class soils for primary production and it would enable the land to be used for residential development not ancillary to rural activity.”* This matter was addressed in our evidence, AgFirst concluded there are significant limitations to agricultural options and productivity. The subject site is not used for rural productive activities at present. There is an existing early childcare centre (commercial activity) operating from the site. So, although there is an argument about protecting high class soils for primary production this site is unsuitable for such activities and therefore 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.
- 23 The WRPS has not been updated to give effect to the NPS-UD and the S42A Report writer acknowledges in paragraph 5 that *“the rezoning of land at Tamahere to rural residential will potentially hinder the Council’s ability to meet sub-regional growth needs and will likely prevent integrated and strategic outcomes over time (due to the challenges, including financial, of retrofitting higher density housing and associated infrastructure).”* Therefore, the loss of high-class soils to support the growth of Tamahere is almost inevitable (due to the majority of the Tamahere containing high class soils).

- 24 Paragraph 8 (page 39) of the S42A correctly highlights that the WRPS states new rural residential development should be more strongly controlled where demand is high. As pointed out previously, the WRPS has not been updated to give effect to the NPS-UD which is an enabling document. The subsequent paragraphs go on to consider the other principles listed in section 6A of the WRPS and conclude *“I acknowledge that the rezoning of these sites (to Country Living, or a more intensive zoning appropriate to the needs of Hamilton City) is a question of when, not if. At this time however, I maintain that it is more appropriate for them to retain their rural zoning.”* I note that our client’s site is the only property that has made a submission within the land bound by the new Waikato Expressway, State Highway 1 and the land located between the Southern Links network designation and the existing Hamilton City boundary along Peacocke Road. It is also located at the northernmost tip of this area and surrounded by an urbanised environment. I do not consider the rezoning of this site will conflict with foreseeable long-term needs for expansion of existing urban centres.
- 25 Paragraph 11 (page 40) of the S42A notes that *“given the conservative approach that I think the WRPS promotes for considering rural residential development in the Hamilton Fringe, I do not think it would be appropriate to rezone on the grounds of an already altered landscape”*. In my view, these comments have been made without considering the hierarchy of planning documents that requires national documents to trump regional documents. The conservative approach of the WRPS is repeated in paragraph 14.
- 26 Paragraph 12 (page 41) of the S42A claims *“to establish on-site services that might compromise integration into Hamilton City and its infrastructure.”* The proposed rezoning of 25 Tamahere Road will accommodate services on-site until such time as a reticulated network is made available and will not compromise NPS-UD Objective 6.

- 27 Paragraph 13 (page 41) of the S42A says *“I do not consider that the rezoning of these sites in Tamahere will contribute to reduced fuel consumption (Principle (e)).”* In this case, the subject site comprises an early learning centre, is well-serviced by existing Cambridge to Hamilton regional bus stop (within 200m), the Tamahere school is within 500m and the Tamahere commercial area within 800m of the subject site. There are very few sites so well positioned to enable the reduction in fuel consumption.
- 28 Paragraphs 15 and 16 (pages 41 and 42) of the S42A discusses the strategic objectives of the Proposed District Plan and fails to consider the hierarchy of planning documents that requires national documents to trump regional and district.
- 29 Paragraph 23 (page 42) of the S42A points out *“I disagree with Mr Shaw’s findings that the property falls within the Future Proof urban limits for Tamahere. The urban limits extend to State Highway 21 (Airport Road), while the possible city expansion area extends to the designation for the future State Highway 21.”* And then goes on to state *“As such, 25 Tamahere Drive is not contemplated for urban development by Future Proof (or the Proposed District Plan, given its Rural zoning) in the foreseeable future.”* This contradicts the earlier statement in paragraph 10 (page 40) that *“I acknowledge that the rezoning of these sites (to Country Living, or a more intensive zoning appropriate to the needs of Hamilton City) is a question of when, not if.”* The reason for the applicant’s submission is so that the uniqueness of this site can be considered during the PDP rather than waiting for plan variations/changes to address the sufficiency of land supply following the PDP process.
- 30 Paragraph 24 (page 43) of the S42A points out the failure to consider the eight principles specific to rural-residential development. Whilst not specifically assessed, these matters have been addressed in other areas of the evidence filed on behalf of the submitter and I do not see any noteworthy inconsistencies, especially considering the conservative approach of the WRPS and the enabling approach of the NPS-UD.

ZONE EXTENTS – FRAMEWORK REPORT SUPPLEMENTARY EVIDENCE

- 31 Dr Mark Davey has provided a well-considered analysis of the S42A zoning recommendations. Acknowledging *“The planner recommendations for the use of the MDZ zone have contributed*

significantly to the overall market feasible capacity” while balancing this with expectations that “the reduction between market feasible supply and ‘reasonably expected to be realised’ is significant.” Ultimately concluding “The findings in this evidence should be used as a guide only. The process of assessing supply and determining demand is fraught with difficulty in a district with such dynamic and fluid growth pressures.”

- 32 I consider a known developer intent and capability to be ‘*reasonably expected to be realised*’ for areas which were neither identified in the PDP or in Waikato 2070. The Panel’s ability to meet NPS-UD requirements is restricted by the scope of submissions received. In locations that are not identified by the local authority, Clause 3.8 of the NPS-UD specifically allows for plan changes that will enable well-functioning urban environments connected to transport corridors. Whilst the subject site does not necessarily provide significant development capacity, it does consolidate an existing urban environment without compromising the provision of future infrastructure or precluding future urban development of the surrounding area.
- 33 Therefore, there is a risk of not meeting the broader policy intent of the NPS-UD with respect to allowing sufficient supply for competitive land markets if the panel accept recommendation 29(a) to reject the submission of JTQL and retain the Rural Zone.

CONCLUSION

- 34 This rebuttal evidence has been prepared in relation to Council’s S42A Report on the rezoning request made by JTQL, including Council’s recommendation that the request be rejected.
- 35 JTQL has identified the growth potential of their property due to its location adjacent to Tamahere Village with existing community facilities and public transport connections. The JTQL site is not able to support compact productive rural activities due to its highly modified nature.
- 36 The JTQL site is well suited to be zoned Village and a structure plan has been prepared to inform future development. The rezoned area is likely to accommodate around 8 dwellings, in addition to an access lot and reserves.

37 This rebuttal evidence has considered Council's S42A Report and considers that the reporting officer has placed too much weight on the lower level planning documents, overlooking the need to give effect to or have regard to the higher order national planning documents. Thus, the reliance of the S42A Report recommendation to reject the submission of JTQL and retain the Rural Zone on a perceived inconsistency of the requested rezoning with district and regional documents is in error and the proposal should therefore be accepted.

Date: 3 May 2021



LEIGH MICHAEL SHAW