

**BEFORE AN INDEPENDENT HEARINGS PANEL**

**THE PROPOSED WAIKATO DISTRICT PLAN (STAGE 1)**

**UNDER** of the Resource Management Act 1991  
(the Act)

**IN THE MATTER**  
**OF** Hearing 25: Zone Extents

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**STATEMENT OF REBUTTAL EVIDENCE OF HANNAH OLIVIA PALMER FOR  
BOWROCK PROPERTIES LIMITED (PLANNING)  
DATED 10 MAY 2021**

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## **1. INTRODUCTION**

- 1.1 My full name is Hannah Olivia Palmer. I am an Environmental Consultant at Place Group Ltd (Place Group); a specialist resource management planning consultancy based in Hamilton. I have been in this position since May 2017.
- 1.2 My qualifications and agreement to abide by the Code of Conduct for Expert Witnesses as set out in the Environment Court Practice Note 2014 is outlined in my evidence in chief for Hearing 25.
- 1.3 I am authorised to present this rebuttal evidence on behalf of Bowrock Properties Limited (BPL), in support of its primary submission<sup>1</sup> and further submission<sup>2</sup> on the Proposed Waikato District Plan (PWDP). I was not involved in the preparation of the primary submission made to the PWDP. However I was the author of the further submission for BPL and have presented planning evidence on behalf of BPL in Hearing 12 for the Country Living Zone and have prepared the planning evidence and section 32AA further evaluation report submitted in support of Hearing 25.
- 1.4 Due to the error made by the Section 42A officer in missing our evidence for Hearing 25, the Hearing Panel has granted relief to provide a late submission of rebuttal evidence, with a submission date of 10<sup>th</sup> of May 2021. This rebuttal evidence also incorporates consideration of the supplementary evidence provided by Dr Mark Davey on behalf of Waikato District Council on 28<sup>th</sup> April 2021.

## **2. EVIDENCE STRUCTURE**

- 2.1 In this evidence I rebut several points made by the Council Section 42A Reporting Officer in their report titled "Hearing 25: Zone Extents Rest of District – Addendum<sup>3</sup>" which was released on 23<sup>rd</sup> April 2021. These points specific to BPL's re-zoning proposal relate to the officer's conclusions around:
  - The site not having any features that differentiate it from other proposals for rural-residential development
  - The Hamilton Area of Interest and Urban Expansion Policy Area
  - Shifting of reverse sensitivity effects to other surrounding rural properties
  - Re-zoning the subject site turning Tauwhare into an urban area

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<sup>1</sup> Submission #393

<sup>2</sup> Further submission #1197

<sup>3</sup> Referred to as "Addendum Report" in this evidence

- Provision of accessible public transport routes
  - The Reporting Officer’s reliance on the direction set in strategic growth strategies to recommend BPL’s proposal be rejected.
- 2.2 By association, in addressing the above this rebuttal evidence is also in response to Further Submitter Evidence provided by Hamilton City Council (FS #1379) and Waikato Regional Council (FS #1277).
- 2.3 I also confirm that Mercury NZ Limited have withdrawn their further submission against BPL (FS #1388.112).<sup>4</sup> Paragraph 4 of the Addendum Report provides an overview of further submissions received in relation to BPL’s submission.

### **3. REBUTTAL OF S42A ADDENDUM REPORT**

#### **Differentiating features of BPL’s request for re-zoning**

- 3.1 BPL [393.1] seek to rezone approximately 20ha of land from Rural to Country Living Zone on Tauwhare Road, just outside Tauwhare Village (Lot 32 DP 81580 and Lot 3 DP 325499 – 0.4791ha and 19.676ha respectively). Rezoning the site would therefore be an extension of the Country Living Zone which is presently located on the eastern boundary of the site.
- 3.2 Paragraph 9 of the Addendum Report refers to the officer’s summary of reasons for BPL’s request for re-zoning which states:
- *“There is an opportunity to rezone the site for residential use through the CLZ.*
  - *Development of the site could potentially provide for 25-35 residential properties accounting for natural features of the subject site.*
  - *Residential development would be consistent with the existing context and feel of both Tauwhare Village to the east and Tauwhare Road to the west.”*
- 3.3 This summary of the reasons is accurate; however it is prudent to point out that the primary reasons for the zoning request, which are expanded on in some detail in sections 7.1(a) and (b) of my planning evidence for Hearing 25 and through my section 32AA further evaluation, are:

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<sup>4</sup> See appendix 1

- The subject site cannot be used for traditional rural purposes as a result of legacy planning decisions (prior to BPL's ownership). A search of subdivision consent records and titles has shown that the site owned by BPL was once part of a bigger landholding, part of which is now Glen Ida Estate – a rural-residential development located on the eastern boundary of the subject site. Subdivision occurred several times over the years with the first subdivision occurring in 1999 separating off the subject site (now owned by BPL) from the larger landholding and subdividing the remaining land into several lots. A second subdivision consent for 19 additional lots was granted for the neighbouring landholding in 2007 enabling the creation of Glen Ida Estate (in its current form). The approval by Council to grant these subdivision consents has meant that the ability to productively farm what was the original landholding was lost between 1999 and 2007 as small rural landholdings were created. In the case of BPL, their site is now located adjacent to rural-residential properties in Glen Ida Estate, and also on the northern and western boundaries, and permitted rural uses of the subject site have resulted in reverse sensitivity effects for neighbouring residences.
- The size of the site is not economically viable for productive rural use as permitted by the proposed Rural zoning.
- Under the proposed Rural Zoning, subdivision is prohibited due to the potential presence of High Class Soils (Proposed Rule 22.4.1.1 PR3). However, the potential productive capacity of these soils is restricted due to the site being of a size where it is not able to be farmed as an economically viable unit.
- Both rural and residential uses of the site are therefore restricted under the operative and proposed Rural zoning, and Part 2, section 5 of the Resource Management Act 1991 (RMA) cannot be met if this zoning is retained.

3.4 It is for these reasons that I disagree with the Reporting Officer's conclusion that *"...it does not appear that the site has [sic] any features that would readily differentiate it from numerous other proposals for rural residential development near Hamilton to a point that would overcome the WRPS direction for growth and limitations on rural residential housing supply in close proximity to Hamilton."* I believe the above reasons do constitute features that differentiate this proposal from other proposals - particularly those proposals seeking rezoning for development purposes where the

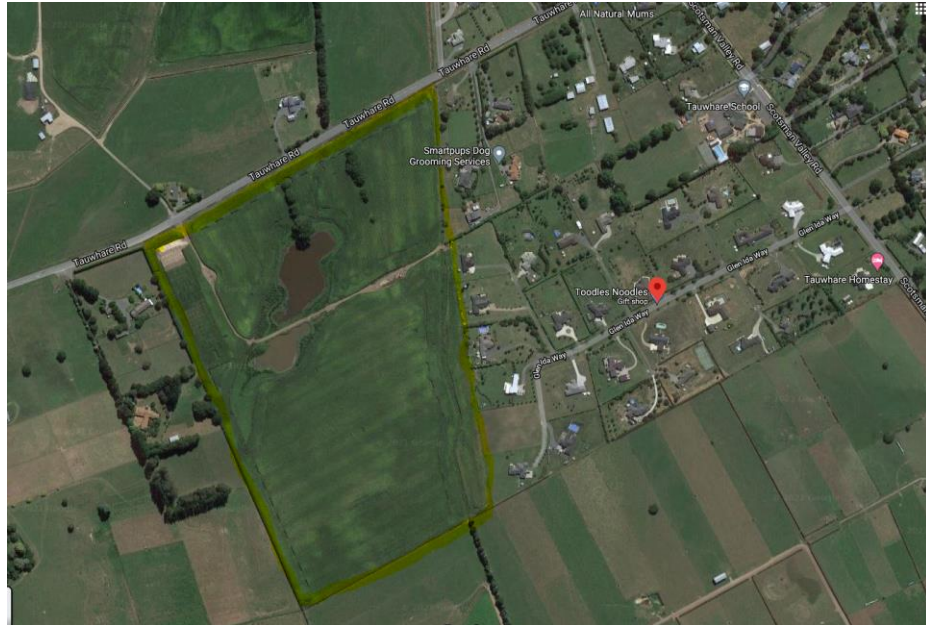
landholdings are of a size that they can be used for the activities anticipated in their notified zones. Rezoning the site to Country Living will enable BPL to put the land to its best and highest use enabling the purpose of Part 2, section 5 of the RMA to be fulfilled.

#### **Hamilton Area of Interest and Urban Expansion Policy Area**

- 3.5 Table 2 on Page 10 of the further submitter evidence provided by Hamilton City Council (FS #1379) notes that they oppose any further expansion of the Country Living Zone within Hamilton's Area of Interest (AOI), particularly in the Urban Expansion Policy Area (UEA).
- 3.6 I can confirm that the site owned by BPL is within the AOI (and not the UEA) as identified in evidence provided in Hearing 3 by Mr O'Dwyer on behalf of Hamilton City Council. However, I do note that the site is on the very edge of the AOI, and that Hamilton City Council have previously stated in evidence that the boundaries of this area are subject to finer grained analysis (to be informed by data) and to expect refinement, noting that this work has not yet been completed. I therefore submit that there is a likelihood that the site may fall outside of the AOI once this analysis has been undertaken.

#### **Shifting of reverse sensitivity effects to other surrounding rural properties**

- 3.7 The Reporting Officer in paragraph 20 of their Addendum Report in regard to reverse sensitivity effects relating to the site states that *"I note that if proximity to the existing village is indeed creating a reverse sensitivity issue that is limiting farming activities, then the extension of the Country Living zone in this location will simply extend these effects so that they impact on rural landowners adjacent to the submission site"*.
- 3.8 I disagree with this view, as presently the site is sandwiched between rural-residential activity on all sides except the southern boundary of the site, as shown in figure 1 below (site outlined in yellow). Furthermore, subdivision scheme plans presented in my evidence for both Hearing 12 and 25 demonstrate that there is an opportunity to fully address the current reverse sensitivity issues experienced and provide mitigation of future reverse sensitivity effects on the southern boundary through sympathetic subdivision design.



**Figure 1:** Subject site outlined in yellow showing rural residential development on most boundaries. Source: Google Maps 2021.

### **Re-zoning the subject site would turn Tauwhare village into an urban area**

- 3.9 The Reporting Officer in paragraphs 10 and 11 of the Addendum Report highlights that the site is not located within an 'urban area' and further supports this in paragraph 13 as follows:

*"Whilst the existing village comprises a small group of dwellings and community facilities and would fit with the WRPS definition for urban (but not the NPS-UD definition of urban). I believe that the scale of village is not such that is the focus of urban growth provisions within the WRPS... This area falls outside of an urban growth area accommodated through the higher order documents, and Tauwhare is too small to be deemed an existing urban area. I am therefore of the opinion that it will create a new urban area rather than support an existing one."*

- 3.10 In my opinion, the above statement is conflicting as on the one hand the reporting officer concludes that Tauwhare Village (which comprises approximately 90-100 residences) is too small to be deemed an existing urban area, yet the addition of approximately 25 lots (if rezoning the subject site is successful) will create a new urban area. I do not believe that the rezoning proposal is of such a size that it will create a new urban area. However as outlined in my primary evidence for Hearing 25, regardless of the small-scale nature of this proposal, I am of the view that rezoning supports the overall intent of the NPS-UD through the provision of lots that can be serviced, are market-feasible and 100% able to be realised, thereby supporting the provision of housing within a tier-1 urban environment .

### **Provision of accessible public transport routes**

- 3.11 Paragraph 21 of the Addendum Report states that Tauwhare Village is not serviced by public transport. Paragraph 9.15 of my primary evidence for Hearing 25 refutes this point by outlining:

*“Bus 22 Paeroa-Hamilton stops at Platt Road near SH26 which is a 4 min drive or 13-minute cycle from the subject site. This is a return bus service that has provision to carry bicycles and operates Monday – Friday seeing passengers disembark at the Hamilton Transport Centre at approximately 8.20am having been collected approximately 20 minutes prior and returning to Platt Road at approximately 6pm having left the transport centre at 5.15pm. This service is conducive to commuting, and its proximity to the subject site serves to reduce fuel consumption which supports this development principle.”*

### **Reporting Officer’s reliance on strategic direction for growth in recommending BPL’s proposal be rejected**

- 3.12 In respect of the Reporting Officer’s comment regarding the reasons not being compelling enough to overcome the Waikato Regional Policy Statement (WRPS) direction for growth and limitations on rural residential housing supply in close proximity to Hamilton, I offer the following commentary in rebuttal, and note that Hamilton City Council and Waikato Regional Council have arrived at similar conclusions to the Reporting Officer as expressed in their Further Submitter Evidence (FS #1379 and FS #1277). The below therefore also addresses FS #1379 and FS #1277.
- 3.13 The WRPS contains several provisions requiring District Councils to develop growth strategies to guide development in identified growth areas to occur in a planned, coordinated, and integrated manner. The key growth strategy referred to in policy is Future Proof which applies to the sub-region made up of Hamilton City, Waipa and Waikato Districts.
- 3.14 Future Proof has been relied on heavily to direct growth in both the WRPS and PWDP, with a hard line seemingly taken in respect of the PWDP to reject the majority of requests for rezoning which fall outside of identified growth areas, so as not to undermine the strategic direction set for growth.
- 3.15 Alongside Future Proof sits Waikato 2070, a growth and economic development strategy specific to the Waikato District. Both strategies are referred to as being ‘guiding documents’<sup>56</sup> to inform planning policy and

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<sup>5</sup> <https://futureproof.org.nz/about-us/purpose/>

<sup>6</sup> Waikato District Council (2020). *Waikato 2070. Waikato District Council Growth & Economic Development Strategy*. Retrieved from:

decisions, and do not feature in the hierarchy of planning instruments under the RMA, other than by reference through policy in the WRPS and PWDP.

- 3.16 The reliance of the Reporting Officer's recommendation to reject BPL's request for rezoning based on the strategic direction set for growth in Future Proof, Waikato 2070, and therefore the WRPS and Proposed District Plan, is flawed.
- 3.17 Future Proof and Waikato 2070 are strategic planning guidance documents. As such, in my view, they are not intended to draw clear lines in the sand in relation to zoning as these documents are high level and must remain dynamic and responsive to future pressures/changes. Therefore, whilst they are helpful for planning the provision of infrastructure and growth in a coordinated manner, Future Proof and Waikato 2070 have not (nor are they intended to) accounted for individual circumstances where rezoning would be pragmatic to give effect to the purpose of the RMA.
- 3.18 The Reporting Officer at paragraph 42 of the Addendum Report refers to WRPS Policies 6.14 (Adopting Future Proof land use pattern) and 6.17 (Rural-residential development in Future Proof) as reasons to reject BPL's request, noting that the proposal is consistent with development principles set out in WRPS Section 6A. These policies refer to subdivision and development within the Future Proof area, however specific mention of recognising and managing pressure of rural-residential development in areas within easy community distance of Hamilton is made in Policy 6.17.
- 3.19 In response to Policy 6.17, I put forward that it is key to remember that BPL's proposal is a request to rezone a small parcel of land and that this in my opinion does not undermine the integrity of Policy 6.17, particularly as this is not a proposal for rural-residential development in the UEA.
- 3.20 Furthermore, in my opinion, the Reporting Officer of the Addendum Report fails to recognise that the WRPS provides for flexibility in future planning, and deviation from the set land use pattern identified in Future Proof. WRPS Policy 6.1 (Planned and co-ordinated subdivision, use and development) is the key policy referring to such flexibility with a variety of methods provided to give effect to the policy and its corresponding objectives whilst still ensuring subdivision and development is planned and co-ordinated.
- 3.21 Whilst one of these methods is the development of growth strategies (Method 6.1.6), this is not the only option with several other methods provided. These include having regard to the development principles in

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[https://wdcsitefinity.blob.core.windows.net/sitefinity-storage/docs/default-source/your-council/plans-policies-and-bylaws/strategies/waikato-2070.pdf?sfvrsn=d25e88c9\\_4](https://wdcsitefinity.blob.core.windows.net/sitefinity-storage/docs/default-source/your-council/plans-policies-and-bylaws/strategies/waikato-2070.pdf?sfvrsn=d25e88c9_4)



Section 6A of the WRPS (Method 6.1.1), structure plans and town plans (Method 6.1.7), and provision of information to support new urban development and subdivision (Method 6.1.8). My primary evidence for Hearing 25 addresses how the proposal achieves the development principles (Method 6.1.1) and the information requirements set out in Method 6.1.8.

- 3.22 It is useful to refer back to the Decisions version of the WRPS to understand the reasoning behind the policies referred to, and the development principles mentioned, particularly the fact that flexibility to consider development outside of Future Proof areas is provided for in the WRPS. Page 'x' of the Decisions Version of the WRPS provides an explanation of the intent behind the development principles outlined in section 6A of the WRPS specifically noting the following (emphasis added)<sup>7</sup>:

*"The decisions of the Committee have addressed the relationship identified between certainty of future investment and the need at the same time to provide sufficient flexibility for future land use. Whilst Future Proof sets out a planned land use pattern, including strategic industrial nodes and areas of residential land release, flexibility for future planning is provided...Provision is made for urban growth that will occur in territorial authorities outside the growth strategy areas. This recognises that there is a need to apply principles that will ensure co-ordinated development of land use and infrastructure provision irrespective of the rate of growth. In this regard the Committee considers the Section 6A Development Principles are an important component of the Proposed RPS."*

- 3.23 Policy 6.3 of the WRPS is the other key policy complementing Policy 6.1 to ensure growth and infrastructure is co-ordinated. In my opinion, the information provided in the Preliminary Three-Waters and Transportation Assessments included as Appendices D and E of my Section 32AA further evaluation confirms that rezoning the subject site will not compromise the development, funding, implementation and operation of transport and other infrastructure as required by WRPS Policy 6.3. The site can be appropriately serviced, and the integrity of the transport network maintained. The Reporting Officer's comments in Paragraph 43 of the Addendum Report appear to share the same sentiment stating: *"I am reasonably comfortable that potential effects resulting from the rezoning would not be insurmountable through mitigation measures available through the subdivision consent process."*

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<sup>7</sup> Proposed Waikato Regional Policy Statement Decisions Volume 1: Decisions on Chapters 1 to 7. Retrieved from <https://www.waikatoregion.govt.nz/assets/WRC/WRC-2019/Volume-1-Merged-RPS-Committee-Decisions-Chapters-1-7.pdf>

- 3.24 Furthermore, the Reporting Officer for the Hearing 25 Framework Section 42A Report acknowledges in Paragraph 102 that there is flexibility built into the WRPS for district plans to depart from growth strategies, and that the *“WRPS confers discretion on the council around the implementation of the Future Proof 2009 provisions referenced in the WRPS...Flexibility is allowed to adopt alternative approaches that are justified by evidence”* (paragraph 122 of the S42A Framework Report). BPL’s proposal for re-zoning has been supported and justified by an abundance of evidence.
- 3.25 I acknowledge that the 42A Reporting Officers are having to grapple with potential tension between the National Policy Statement for Urban Development 2020 (NPS-UD), the WRPS, and growth strategies, in making their recommendations to the Hearings Panel on re-zoning proposals. This is having to be done in the absence of policy direction in the WRPS to give effect to the NPS-UD.
- 3.26 However, in considering whether BPL’s proposal is appropriate, I refer the Hearing Panel to paragraph 9.11 of my primary evidence for Hearing 25 particularly in regard to the requirement to provide for ‘responsive planning’ and to give effect to the NPS-UD in terms of providing for sufficient development capacity, as well as the potential shortfall in supply of in supply of sufficient zoned, infrastructure ready and market feasible land for development.
- 3.27 Dr Mark Davey in his supplementary evidence to the Hearing 25 Framework Report refers to there being a difference between available ‘market-feasible’ supply of land/housing and what is reasonably expected to be realised as per clause 3.2 of the NPS-UD, and that this is an important consideration in the context of assessing supply. Dr Davey concludes that even if the recommendations of the s42A planners in respect of areas they consider appropriate for re-zoning are taken forward, Waikato District Council would, based on the analysis provided in the supplementary evidence, meet the quantum of supply required to meet housing demand. However, Dr Davey notes that the level of headroom afforded to meet housing bottom lines, as per the NPS-UD are slim, and that *“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 to exist (particularly in and around each town).”*<sup>8</sup>
- 3.28 The proposal by BPL represents an opportunity for Council to contribute to the supply of market-feasible land for development at a site that is reasonably expected to be realised given the significant investment that has gone into this process to date.

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<sup>8</sup> Paragraph 68 - Hearing 25: Framework report: Supplementary Evidence

3.29 Furthermore, this is a site that is able to be serviced, is contiguous to an existing rural-residential area, and subdivision can be undertaken in a way that is sympathetic to the character of the area and surrounding land uses ensuring that effects on the surrounding environment can be remedied and/or mitigated.

### **Summary**

3.30 This rebuttal evidence has been prepared primarily in relation to Council's S42A Addendum Report for Hearing 25 on the rezoning request made by BPL, including Council's recommendation that the request be rejected.

3.31 BPL have identified that permitted uses of the site under the current rural zoning are problematic due to its size and proximity to surrounding rural-residential development.

3.32 Rezoning the site to Country Living is a pragmatic solution allowing the site to be put to its best and highest use in a manner that meets the purpose of the RMA, and this has been supported by an abundance of evidence and a thorough section 32AA evaluation.

3.33 Furthermore, it has been demonstrated that in rezoning the site to Country Living many of the development principles outlined in Section 6A of the WRPS can be met. This is supported by the Reporting Officer in her statement in paragraph 12 of the Addendum Report *"In terms of Schedule 6A of the WRPS I consider on review of the evidence provided that the development outcomes could largely be met by the rezone request and that the site specific effects can generally be managed."*

3.34 The Reporting Officer, in arriving at the recommendation to reject BPL's request for rezoning, I consider has placed too much weight on the strategic direction set for urban growth in higher order documents, particularly Future Proof and Waikato 2070 (including Section 6C Map 6-2 in the WRPS), and the overall approach to growth management within the district.

3.35 I also draw the same conclusion in relation to the statements of evidence provided by Waikato Regional Council and Hamilton City Council which oppose any extension of the Country Living Zone, particularly outside of identified growth areas, as both Waikato Regional and Hamilton City Councils also rely on the direction set by Future Proof.

3.36 Future Proof and Waikato 2070 are dynamic rather than static documents, and provision exists to consider rezoning proposals outside of these areas as demonstrated earlier in this rebuttal evidence, particularly where there is strong evidence to do so.

3.37 Therefore, I respectfully ask the Hearings Panel to carefully consider the reasons for, and the merits of this rezoning proposal, and to approve BPL's request to rezone their site to Country Living.

3.38 Thank you for your consideration, and we look forward to presenting our evidence in Hearing 25.



**Hannah Olivia Palmer**

10/05/2021

Appendix A – Confirmation of withdrawal of  
further submission made by Mercury NZ  
Limited

