

## Hearing 25: Zone Extents Rest of District – Hamilton Fringe

### Evidence Summary Bundle for Grant & Merelina Burnett – Submitter 185

#### Introduction

1. Mr & Mrs Burnett **oppose** the 'Rural Zone' zoning of 50 Te Awa Lane (legally described as Pt Lot 6 DPS 11104 (SA56A/381)) and request that the property be rezoned as 'Country Living Zone', with all other policy overlays unchanged.
2. I refer the Commissioners to the detailed submission, my statement of evidence dated 12 February 2021 and my supplementary statement of evidence dated 1 May 2021. I continue to stand by these statements and will address any questions you may have on them.
3. My opening submission is that you should accept the position expressed in the submission and statements of evidence over those expressed in the s42A Framework Report and the rebuttal evidence tabled by Ms Tait. The s42A Framework Report and rebuttal evidence tabled by Ms Tait in my opinion are deficient because neither have, other than at a cursory level, considered and assessed the submission and evidence presented on behalf of the Submitter. Therefore, in the absence of any evidence challenging or contrary to the position in the submission and my statements of evidence, I simply do not see how the Commissioners could come to any other decision but to accept the rezoning of the property to Country Living Zone.

#### Overview of Property and its Environs

4. The site has a total title area of 4.0898ha. Of this area, only approximately 50% of the site (or 2ha) is suitable for productive rural purposes.
5. The site is situated at the end of Te Awa Lane and comprises the southern boundary between Rural zoned properties to the south (developed as residential landholdings) and Country Living zoned lots lining the full length of the Te Awa Lane, Te Awa Road and Blue Heron Place enclave. All adjoining lots are sized between 6,000m<sup>2</sup> and 1.6ha and are functional and developed solely as rural residential properties.
6. Separating the site from those rural zoned residential lots to the south is a Local Purpose Reserve – Walkway owned by Council. The western boundary of the property is the Waikato River.

#### Practical Reasons for Rezoning Request

7. The present and proposed Rural zoning presents inefficiencies with regard to the use of the site which is unsustainable and unproductive. Reasons being:
  - The s32 reporting completed with regard to the Rural Zone of the Proposed Waikato District Plan (PWDP) has acknowledged the compromising of rural land resources and the viable use of rural land within sites created under the District Scheme of the 1970's and Plan Change 7 to the Operative District Plan. This in effect acknowledges that allotments created within the 4ha and 5,000m<sup>2</sup> provisions were unable to be considered as rural productive lots; even more so affected by the limited ability of allotments to be amalgamated which would otherwise reverse the creation of rural residential development. The site represents such a scenario in this regard. That is, there is a lack of productivity due to its size and there is significant if not impossible impediments to whether the site has the potential for future amalgamation to preserve a productive use

(due to the bordering rural residentially sized and developed lots and the local purpose reserve). An assumption that the site could be amalgamated with those adjoining sites is factitious at best, considering the owners would have to progressively purchase multiple lots, including Council owned reserve land subject to public submission, in order to gain a viable rural lot.

- The potential for the use of the site under the present Rural zoning is also an unrealistic consideration as both s32 Evaluation Reports for the Country Living Zone and Rural Zone stipulate avoidance of reverse sensitivity effects is a key matter to be provided for in achieving a rural/ rural residential land use balance. Farming (agricultural, horticultural and apicultural) activities are permitted as of right and are likely to generate effects from frost fans, the housing of bees and livestock, the use of sprays and the development of packaging facilities that may be undertaken by the submitter. These activities are not accounted for within the character of the adjoining Country Living Zone and are highly likely to be subject to cumbersome controls due to the proximity of dwellings to the site (i.e. creating reverse sensitivity effects).
8. The site is therefore not fit for its Rural zoned purpose and creates an outcome where the site is too small to farm and too large to maintain as gardens. Retaining the Rural zoning is therefore a perverse sustainable management outcome. **In this circumstance, what is really achieved by retaining the Rural zoning?**
9. In summary, the rezoning of the site is sought for the following (practical) reasons:
- The Local Purpose Reserve – Walkway vested in Waikato District Council provides the logical separation point between the Te Awa Lane cul-de-sac Country Living Zone and a Rural Zone;
  - The site is legally and physically separated from adjoining lots zoned Rural where a potential for amalgamation would otherwise exist to give effect to sustainable rural land use according to the Zone;
  - Sustainable rural land uses are dictated by minimum parent lot size pre- and post-subdivision in Chapter 22 of the Proposed Waikato District Plan which do not align with the size of the site; and
  - Should the Submitter wish to use that site under an intensive or horticultural rural land use, consent is highly unlikely to be granted in consideration of high-risk reverse sensitivity effects in a locality where the site is immediately surrounded on all boundaries with Residential land use activities.

### **Suitability of Property for Country Living Development**

10. To confirm the suitability of the property to accommodate Country Living development, expert assessments were prepared regarding geotechnical site conditions, potential contamination, transportation, and archaeology. Advice has also been sought from utility infrastructure providers regarding the feasibility and serviceability of the rezoning regarding the development that would be enabled through the rezoning of the subject site. From these assessments and advice, there are no environmental matters that would prevent the site from being fully developed for Country Living purposes.
11. If subdivided in accordance with the Country Living Zone rules, the subject site could be subdivided into up to six lots (five additional developable lots). This provides an example of the

level of development and density that would be anticipated by the rezoning and which clearly exists on all neighbouring properties.

12. The s42A Framework Report comments that Council did not want to rezone further land Country Living Zone because residents of the Country Living Zone expected higher levels of service. This may well be the case, however in respect of the property it is located at the end of a cul-de-sac and is afforded all of the services and amenities of the neighbours. Should Council improve the level of services would Council really stop these short of the property – clearly not. The services would be made available to the property. The rezoning would not therefore result in additional demand for services as that demand is already established by the neighbouring Country Living zoned properties along Te Awa Lane.
13. The s42A Framework Report considers that rezoning the property would mean that the area would need to be urbanised and that the cost of that urbanisation would need to be met by forward funding from Council. I can accept that this would be the case where the Country Living Zone is on the periphery of urban areas. However, the Te Awa Road/Lane Country Living Zone is not so located being some distance from any urban town. Further, the area is already largely developed, it is not a new area, and each property therein has appropriate services for the form of development. The area also has a recreation reserve and walkways vested in Council. Accordingly costs to Council from 5 additional lots is not a justifiable reason in my opinion to not rezone the property.

#### **Policy Framework**

14. My statements of evidence and the s42A Framework Report provide detailed assessments of the rezoning request against the policy framework that exist. In my opinion the differences between these assessments, and therefore conclusions, emanate from the position of the assessments. That is, site-specific vs a broad / whole of district. Again, it is my opinion that the Commissioners should favour the site-specific assessment as this considers policy as it relates to the circumstances of the site.
15. The difficulty in providing a broad / whole of district assessment, as has been done by Ms Tait, is that there are obvious policy tensions that exist between protection policies and other policies which seek to enable growth. Considering these on the broad / whole of district approach inevitable leads one to adopt a more conservative protection position, as is the conclusion of Ms Tait. The problem with this approach is that it assumes that the zone boundaries (as this is the issue being considered) are already in the correct place. This fact is highlighted by the peer-review where the author comments *“in other words, in many undefined instances the existing zones have simply been carried forward from the operative district plan, seemingly without close attention to their fit with the broader proposed policy framework. That itself, creates material room for well-reasoned zone changes”*.
16. The rezoning of the property is a case in point. The surrounding environment is not rural. Subdivision and development are very much rural residential in nature, even on land zoned Rural. Given this development pattern, fragmentation of the rural environment will not result from the rezoning – the property is in fact an ‘island’ amongst rural residential development. The rezoning would be an appropriate rationalisation of the Country Living Zone boundary, being consistent with the policy framework and best practice guidance for the following reasons:

- While the site is not located in a “defined growth area” identified in the PWDP, it is located on land that sits within (note within not adjacent or nearby) land developed for rural residential purposes.
- The site is the anomaly in the area. The site is zoned rural but is surrounded by rural residential development and is physically separated from productive rural land (both by the local purpose walkway and rural residential developed properties).
- The site is identified as containing elite soils, such that its conversion to residential activity will remove highly productive land from being utilised for primary industry. However, the area of elite soils in question is limited to but a few hectares and these are such located that expansion to neighbouring sites is not possible.
- In terms of rural amenity, the surrounding land uses are Country Living zoned or rural residential sites. Rezoning would not in any way retain the existing open space and rural character of the rural environment.
- Retention of the site provides no economic benefit as the site is too small for viable productive purposes and the site cannot be amalgamated with other properties to produce an economic rural unit. Development for Country Living zoned purposes is a positive use of the site that is demonstrated to be suitable in all respects for said use and is reflective of the area.
- Changes to zone boundaries are consistent with the maps in the PWDP that show overlays or constraints. There are no overlays or constraints identified in the planning maps that would have relevance to the location of the zone boundaries.
- Changes to zone boundaries take into account the features of the site in that there are no features that need to be taken into account that would prevent Country Living zoned development.
- Zone boundary changes recognise the availability of major infrastructure. As discussed above, infrastructure has been assessed as part of the proposal and it is considered that existing and planned infrastructure will be able to provide for the zone boundary change.
- There is adequate separation between incompatible land uses. The existing rural residential development to the south of the site provides a separation buffer, as does the walkway around the southern boundary of the site. Both of these provide a more logical zone boundary than that proposed by the PWDP.
- Zone boundaries are clearly defensible, and follow property boundaries. The proposed zone boundaries are defined by the site, which will form a logical boundary between Country Living Zone and rural development at its southern limits. The northern limits of the zone boundary are currently Country Living Zone.
- The rezoning of the subject site will enable a more efficient, effective and sustainable use of the subject site, given that it is of a size that is too small to farm and too large to garden. Through the provision of appropriately identified and well-planned parcels of Country Living Zoned land, it encourages the retention of Rural Zoned land elsewhere that may be able to be amalgamated to create larger, more productive rural land parcels. The proposed rezoning of the subject site will result in a logical extension of the existing Country Living Zone and is deemed a more appropriate and efficient use of the site than the existing Rural Zoning.
- The rezoning of the subject site will not lead to sporadic and uncoordinated land fragmentation and will not pressure Council to upgrade transportation and servicing infrastructure as all services are able to be managed and provided for on-site, or are able to be catered for through the existing capacity within the existing infrastructure.

17. The re-zoning request is also not contrary to the Rural zone development principles of Future Proof. That is, the property adjoins an existing rural residential node, is located at the end of a cul-de-sac road and is surrounded by rural residential sized and developed properties, will not create a demand for urban services, will not encroach within the urban rural separation zone, is not seeking urban development controls that would compromise agreed urban limits and provides limited rural residential development in an area already removed from productive purposes. Fundamentally, it is my opinion that the property is exactly that which Future Proof considers is ideally suited to rural residential development.
18. I am also of the opinion that the loss of the high class soils within the site is not significant, as the removal of this small land area from productivity cannot possibly have any foreseeable effect on the ability of future generations to feed themselves. My opinion is supported by an acknowledgement within the PWDP that the Waikato District has significant areas of high-quality soils with considerable potential to produce food and other crops. Thus, when the site is taken in the perspective of its setting, it is my opinion that it is not the prime productive land the PWDP seeks to protect.
19. Furthermore, the rural zone development principles of Future Proof do not seek to prevent development on high quality soils. Rather, Future Proof supports rural residential development provided it is appropriately located. In its guidance to appropriate locations Future Proof is strongly promoting rural residential areas which either develop outwards from established nodes or settlements or which are within defined poorer landform areas which will serve to limit conflicts between rural activities and rural residential dwellers. Thus, the locations about established nodes or settlements suggests to me that there will be some loss of high-quality soils simply because the strategy of locating about established settlements is not solely about protecting productive land. Rather the strategy is concentrating development to a limited number of specific areas thereby protecting other rural areas from sporadic and haphazard development with the benefit of confining potential conflicts and adverse environmental effects and increasing the rural community population base to the benefit of rural services and facilities. Again, it is my opinion that the property is exactly that which Future Proof considers is ideally suited to rural residential development in this regard.

#### **Response to Rebuttal Evidence by Ms Tait Dated 10 May 2021**

20. Ms Tait's rebuttal evidence still does not consider the submission and evidence for the property. The rebuttal evidence is again at a broad level not a property specific level. In doing so in my opinion Ms Tait's recommendation to reject the re-zoning request is flawed and incorrect based on the facts and information that has been presented.
21. In respect of the recommendation to reject the re-zoning because the request does not give effect to the National Policy Statement for Urban Development (NPS-UD), I remain of the view that the property is not within the Hamilton 'urban environment'. An urban environment is defined in the NPS-UD as: *"any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that: (a) is, or is intended to be, predominantly urban in character; and (b) is, or is intended to be, part of a housing and labour market of at least 10,000 people"*. The urban areas within the WRPS and Future Proof documents identify the urban areas and future urban areas around Hamilton – the Te Awa Lane area and the property specifically are not identified with either of these documents. The reason for this is clear, the area is not urban and is not intended to be therefore it simply cannot be an urban environment as defined in the NPS-UD.

22. Ms Tait in her rebuttal evidence has reversed her opinion in regard to the re-zoning of the Yumelody Lane area, now recommending that it be re-zoned Country Living Zone. She has distinguished her opinion in regard to the re-zoning of the property by concluding that the “*site is not physically constrained or defined to the extent that it would prevent others south of 50 Te Awa Lane also seeking to rezone their land in time*”. I disagree with this statement. As outlined earlier, the site is both physically constrained and defined by the Waikato River and the local purpose reserve. Moreover, the properties to the south do not need to be re-zoned as they are already of a Country Living Zone size and are developed accordingly.
23. Ms Tait in her rebuttal evidence also identifies that high class soils land cannot be rezoned where it is not defined by physical features such that amalgamation with adjoining rural land and uses is not possible. If this is the case why is it that Council have rezoned to Country Living an area of land within Te Awa Road that is high class soil and is used for rural purposes with adjoining land in the same ownership? Is it a case of Council picking winners or favouring well known personalities? In my opinion when assessing the merits of the two properties, the Submitters property is more consistent with the objectives and policies than the Te Awa Road property (refer to **Figure 1** below).



**Figure 1:** Proposed District Plan Map (left) and Operative District Plan Map (right)

### Conclusion

24. The rezoning of the site will enable a more efficient, effective and sustainable use of the site, given that it is of a size that is too small to farm and too large to garden. It encourages the retention of Rural Zoned land elsewhere that may be able to be amalgamated to create larger, more productive rural land parcels.
25. Due to the size, location and separation from other rural zoned properties, the proposed rezoning of the site will result in a logical extension of the existing Country Living Zone and is deemed a more appropriate and efficient use of the site than the existing Rural Zoning.
26. The rezoning of the subject site will not lead to sporadic and uncoordinated land fragmentation and will not pressure Council to upgrade transportation and servicing infrastructure as all services are able to be managed and provided for onsite, or are able to be catered for through the existing capacity within the existing infrastructure.
27. Adopting the rezoning is considered to be a positive planning decision that would enable the Council to better respond to high levels of growth and anticipated demand for housing in the District and provide greater competition and choice in the housing land market.

28. I recommend that Council rezone the property located at 50 Te Awa Lane to Country Living.