

# **SECTION 42A REPORT**

## **Rebuttal Evidence**

### **Hearing 25**

## **Zone Extents - Te Kauwhata**

Report prepared by: Jane Macartney

10 May 2021

# Waikato



**DISTRICT COUNCIL**

*Te Kaunihera aa Takiwaa o Waikato*

# TABLE OF CONTENTS

1	Introduction .....	3
1.1	Background .....	3
2	Purpose of the report .....	3
3	Consideration of rebuttal evidence that challenges the s42A report recommendations.....	4
3.1	Hugh Green Limited .....	4
3.2	Z & Z Developments Limited Partnership (Z&Z) – 102 Travers Road.....	13
3.3	Ian McAlley and Aidan Kirkby-McLeod – 24 Wayside Road .....	15
3.4	Kainga Ora – Medium Density Residential Zone .....	17
3.5	Conclusion .....	21

## I Introduction

### I.1 Background

1. My full name is Jane Macartney. I am employed by Waikato District Council as a Senior Policy Planner and am the writer of the original section 42A report for Hearing 25: Zone Extents – Te Kauwhata.
2. My qualifications and experience are set out in the introduction of the s42A report together with my statement to comply with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014.
3. As a result of rebuttal evidence from submitters, I recommend two sets of amendments to the notified planning maps that indicate zone extents at Te Kauwhata. These relate to the split between the Business Zone and Business Town Centre Zone, and the introduction of a Medium Density Residential Zone. These map amendments are included in the body of this rebuttal evidence as well as Attachment I.

## 2 Purpose of the report

4. The purpose of this report is to consider the rebuttal evidence filed by submitters. I do not address every point raised in evidence. I respond only to the points where I consider it is necessary to clarify an aspect of my earlier s42A report, or where I am persuaded to change my recommendation. In all other cases, I respectfully disagree with the evidence, and affirm the recommendations and reasoning in my s42A report.
5. In the directions of the hearings panel dated 12 May 2020, paragraph 5 states:
  5. *The Hearings Panel has determined that the timetable for the exchange of evidence set out in the First and Second Directions should be amended for the hearing of the General Rezoning Submissions in order to first require the respective rezoning proponents to provide their evidence (including all supporting technical information), and for this to be followed, sequentially, by any evidence in opposition, and then the Council's section 42A report(s). This will enable all information (in support of and in opposition to each rezoning proposal) to be evaluated by the section 42A report author when preparing their report and recommendations.*
6. In respect to the filing of rebuttal evidence from submitters and Council, paragraphs 12 (e) and (f) of the panel's directions state:
  - (e) *Any rebuttal evidence by the proponents and opponents of the rezoning is to be filed no later than **10 working days prior to the commencement of the hearing**;*
  - (f) *The Council is to Reply section 42A reports to address matters arising in the evidence of the parties, no later than **5 working days prior to the commencement of the hearing**;*
7. Hearing 25 (Zone Extents) starts on 17 May 2021, with the specific Te Kauwhata topic scheduled to be heard on 5 July 2021.
8. Evidence was filed by the following parties for this topic:
  - a. Hugh Green Limited [392]
  - b. Z & Z Developments Limited Partnership [114]
  - c. Ian McAlley and Aidan Kirkby-McLeod [368]
  - d. Kainga Ora [749]

### 3 Consideration of rebuttal evidence that challenges the s42A report recommendations

#### 3.1 Hugh Green Limited

9. Planning evidence has been provided from Mr Aaron Grey (CivilPlan Consultants Limited) on behalf of Hugh Green Limited. This evidence responds to my s42A recommendation<sup>1</sup> to reject this submitter's request [392.1] to reduce the extent of the Business Town Centre Zone (BCTZ) by replacing it with the standard Business Zone.
10. Mr Grey accepts my view that the residential growth of Te Kauwhata will result in demand for additional small-scale retail activities and that this should be directed to the BCTZ as per various directions in the relevant planning documents. However, at paragraph 2.4 of his rebuttal, he states that he *'strongly disagrees with the inferred position of Council that the supply of 12 ha Business Town Centre Zone is necessary in order to cater for this demand.'*
11. I have discussed this matter with Mr Grey, and further reflected on the Business Development Capacity Assessment (BDCA (2017))<sup>2</sup> and feedback from the submitter's economist, Mr Adam Thompson.
12. I now accept that the 12ha extent of BCTZ in the notified PWDP is excessive and is not an appropriate response to that assessment. This is because the BDCA (2017) forecasted the need for an additional 1.5 ha for business land in Te Kauwhata over a long term of 30 years, of which only 0.4 ha was needed for retail activities. Both of these hectare figures have built in the 15% competitive margin as required by clause 3.22(2)(c) of the NPS-UD. Furthermore, the submitter says that if all this demand was for small-scale retail activities, there is still approximately 1.3ha of vacant land in the BCTZ provided for that purpose in these locations:
  - 3466m<sup>2</sup> at 3, 7 and 9 Main Road
  - Approximately 7000m<sup>2</sup> to the rear of 5, 13, 15, 17, 25, 31 and 33 Main Road
  - Approximately 2500m<sup>2</sup> near Tavern Park Lane - currently part of 20 Main Road, 4 Baird Avenue, and 6 Baird Avenue (assuming the existing dwelling on the latter site is removed or repurposed).
13. The following two maps illustrate land within the BCTZ which is currently vacant land and the variety of existing businesses. The first map also indicates those properties where verandahs are required with new developments. Verandahs are required where high pedestrian flows are expected.
14. The only update to these maps is the demolition of the red-roofed building at 4 Main Road and its replacement with a new supermarket and associated carpark at 6 Main Road. The photograph that follows the maps indicates this construction as at 5 May 2021 and rebuts Mr Grey's suggestion that there might be a small possibility that the consent for the new supermarket would not be given effect. I expect that this supermarket will be complete, or near complete, when this hearing commences.

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<sup>1</sup> S42A hearing report – paragraph 314

<sup>2</sup> Business Development Capacity Assessment 2017 (16 July 2018) – Appendix 16.12 to s32 report for Business Zone and Business Town Centre Zone

**Figure 1: Aerial showing vacant land and verandah requirement in proposed Business Town Centre Zone**



Figure 2: Google map showing vacant land in vicinity of Te Kauwhata's main street



Figure 3: Existing supermarket at 4 Main Road and new supermarket under construction at 6 Main Road



Photograph taken 5 May 2021

15. I also agree with the submitter's requested division between a Business Zone and BCTZ within the block of land bordered by Main Road, Saleyard Road and Baird Avenue. This division roughly aligns with the northern edge of the private accessway shown as Tavern Park Lane on the aerial maps above, but also accounts for the configuration of titles and buildings that traverse boundaries. I therefore consider that Tavern Park Lane, as shown by the following photographs, represents a logical and legible division for most of the zone split.

**Figure 4: View of Tavern Park Lane looking east towards Our Lady Queen of Peace Catholic Church and St John's**



*Photograph taken 5 May 2021*

**Figure 5: View of Tavern Park Lane looking west towards new supermarket under construction**



16. Accordingly, as a result of the submitter's rebuttal and my reassessment, I now recommend that the submitter's request to amend the division between the Business Zone and BTCZ be accepted.

### 3.1.1 Recommendation

17. For the above reasons, I recommend that the hearings panel:
- (a) **Accept** Hugh Green Limited [392.1] and [FS1078.1] and Doug Nicholson [403.6].

### 3.1.2 Section 32AA Evaluation

18. Mr Grey provided a section 32AA evaluation with his primary evidence and I consider it useful to summarise his conclusions here which I agree with. The only modifications I recommend are the removal of Mr Grey's references to a supermarket (as a result of the new supermarket now being constructed) so that the reasons listed below for accepting the amended zone split are slightly more generic.
19. In summary, the option of reducing the extent of BTCZ as described in Hugh Green's submission [392] and replacing that with a Business Zone, is considered to be the most efficient and effective method to achieve Objectives 1.12.8(b)(i), (b)(ii), (b)(iv) and (vi), Objective 4.5.1(a), and Objectives 4.5.12(a), (b) and (c) of the PWDP because:

- (a) It would allow for a wide range of commercial activities, including large format retail, on vacant land adjacent to the established town centre and would utilise land and infrastructure efficiently
- (b) It would remove restrictions on the types of commercial activities that can occur on vacant land adjacent to the established town centre so that a compact, sustainable and good quality urban environment can be developed
- (c) It would enable the Business Zone to continue allowing for mixed use development on vacant land adjacent to the established town centre
- (d) The availability of a large area of vacant Business-zoned land in Te Kauwhata would allow for a variety of commercial activities that complement those anticipated in other commercial zones
- (e) The existing town centre along Main Road would remain within the BTCZ, which includes provisions that relate to the maintenance and enhancement of its character
- (f) The allowance of large format retail on vacant land directly adjacent to the established town centre would not compromise the objective of the town centre remaining as a community focal point, and would not compete with large format retail developments that may be located elsewhere outside of a Business Zone.

### **3.1.3 Recommended map amendment**

To assist the hearings panel, Figure 6 shows the zone split between the Business Zone and BCTZ in the notified PWDP and Figure 7 shows my recommended map amendment.

Figure 6: Zone split between Business Zone and BTCZ in notified PWDP



**Figure 7: Recommended zone split between Business Zone and BTCZ**



### 3.2 Z & Z Developments Limited Partnership (Z&Z) – 102 Travers Road

20. Mr Sam Shuker (Birch Surveyors Limited) has provided rebuttal evidence on behalf of Z&Z in respect to the zoning of their property at 102 Travers Road.
21. Z&Z's submission [114] requests that this property (shown in red outline on the map below) be rezoned to Village instead of the predominant as-notified Country Living zoning.

**Figure 8: Proposed Zoning of 102 Travers Road - PWDP**



22. Mr Shuker's rebuttal evidence (at paragraphs 6 and 7) states this:
  6. *When the original submission to rezone the site was being prepared, there were pockets of Village Zone. Seeing as recommendations have gone away from this and predominantly Future Urban is being proposed, a Residential zoning may be a more practical option for the Site.*
  7. *I know this is not common practice to change the relief sought this late in the process, however, the intent of the initial submission was to increase the density and propose an urban zoning which is still within the scope if Residential is proposed.*
23. Paragraph 161 of my s42A hearing report states that while the Environment Court's decision in 2013 suggested that an area on Travers Road could be described as 'residential land-in-waiting' (and this would include Z&Z's property at 102 Travers Road), the notified PWDP does not signal any change to the operative Country Living Zone, nor has any submitter requested that it be rezoned to Residential.

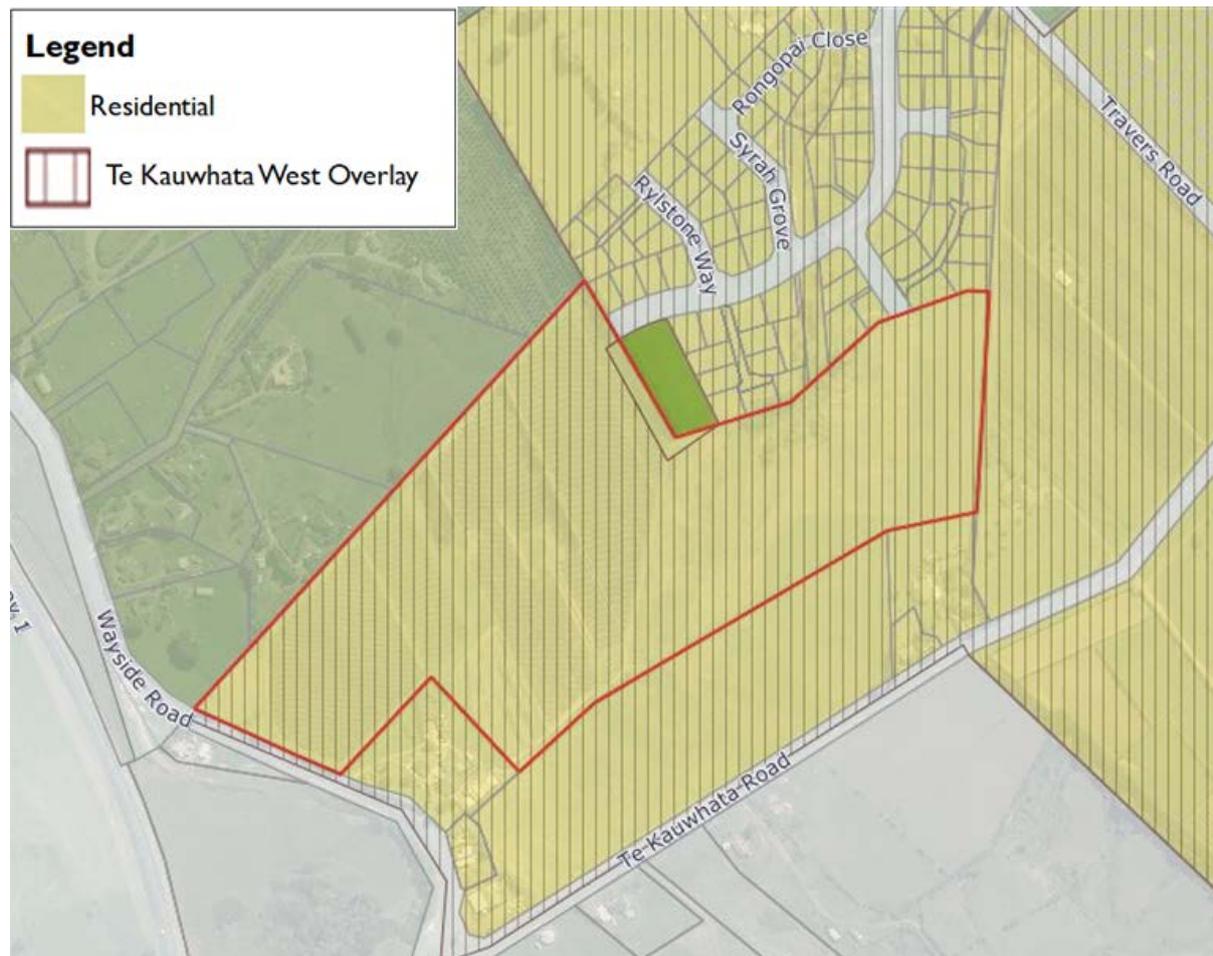


28. However, I do not consider that the potential loss of a public road in this location justifies the application of a Residential Zone at this point in time. This is primarily because of my concern about the lack of scope within submissions. I therefore maintain my support for such zoning to be considered through a separate statutory process, rather than this current district plan review.
29. Accordingly, my s42A recommendations in respect to 102 Travers Road remain unchanged.

### 3.3 Ian McAlley and Aidan Kirby-McLeod – 24 Wayside Road

30. Mr Ian McAlley [368] is the director of Te Kauwhata Land Limited (TKL) and owner of property at 24 Wayside Road.
31. Mr McAlley has filed rebuttal evidence, together with that from his planning consultant, Mr Aidan Kirby-McLeod, in respect to the application of the proposed Te Kauwhata West Overlay to this property.
32. To assist the hearing panel, the following map indicates the location of 24 Wayside Road in red outline, its Residential zoning and the Te Kauwhata West Overlay in terms of the PWDP.

**Figure 10: Residential Zoning and Te Kauwhata West Overlay – 24 Wayside Road (PWDP)**

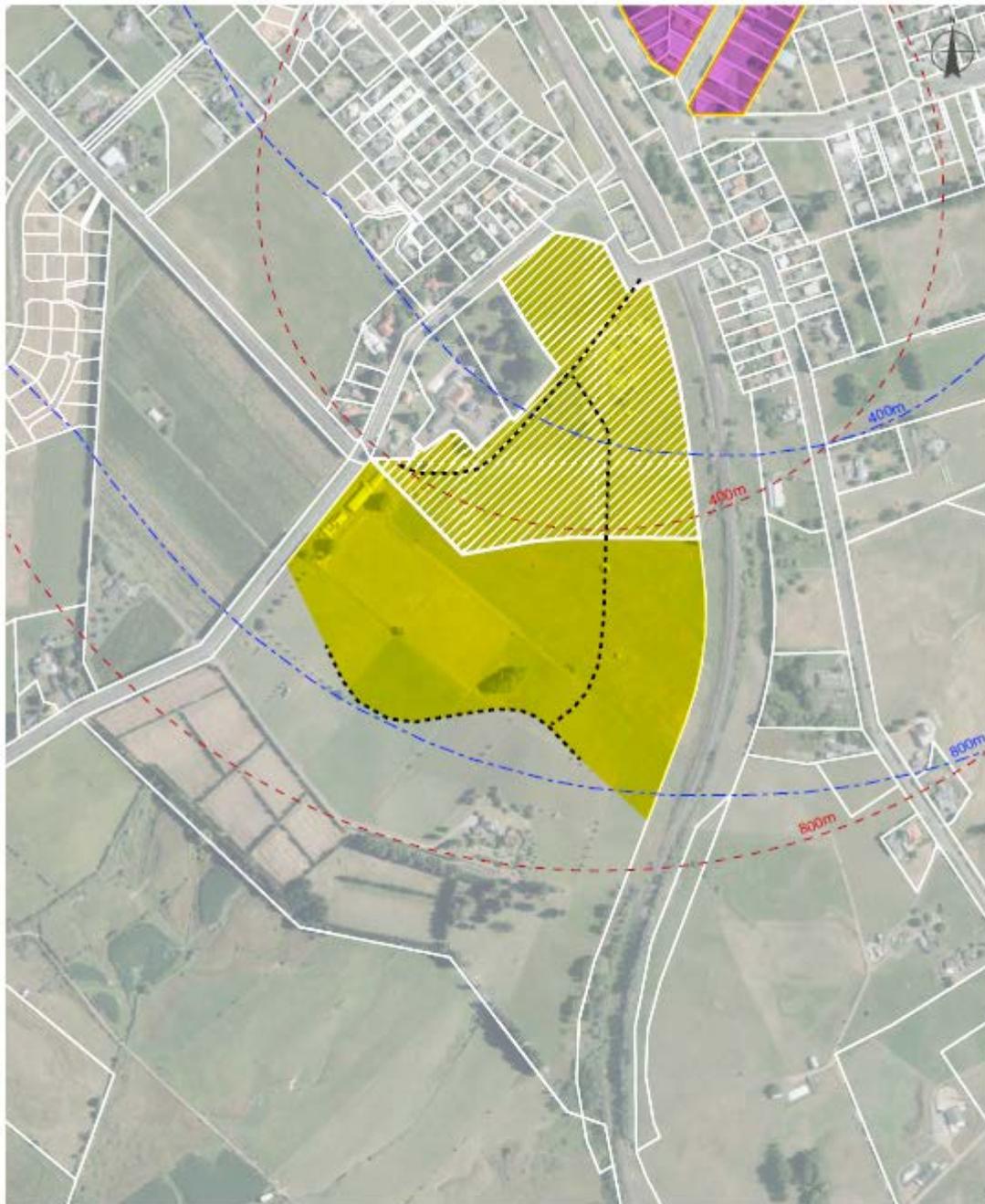


33. Messrs McAlley and Kirkby-McLeod oppose the Te Kauwhata West Overlay on the basis that there is no justification to require larger lot sizes within it.
34. Paragraph 142 in my s42A report states that this overlay carries over the operative provisions for the Te Kauwhata West Living Zone and triggers the application of Rule 16.4.3 in the PWDP. Under this rule, a minimum net site area of 650m<sup>2</sup> and minimum average net site area of 875m<sup>2</sup> is required. For properties outside this overlay, Rule 16.4.2 requires a minimum net site area of 450m<sup>2</sup>.
35. Mr Kirkby-McLeod's rebuttal evidence (at paragraph 7) considers that zones and overlays are both district spatial layers, and are categorised as such under the Ministry for the Environment's National Planning Standards. Because the spatial extent of overlays was not addressed in the earlier Hearing 10 (Residential Zone), he considers that this matter "logically 'fits' within these 'Extent of Zone' proceedings".
36. However, in my view, it is clear that the submitter is concerned with the minimum lot sizes prescribed by Rule 16.4.3. This rule sets out the provisions for subdivision within the overlay which were addressed in Hearing 10.
37. To assist the hearings panel, paragraph 144 in my s42A report is repeated here:
144. The provisions for the Residential Zone, including Rule 16.4.3, were considered in earlier Hearing 10. Te Kauwhata Lands Limited presented planning evidence and legal submissions at that hearing and the section 42A author made a recommendation on their submission. The evidence now filed for this zone hearing for Te Kauwhata is consistent with that filed for Hearing 10 and the submitter's position is unchanged. Because this evidence is specific to the provisions within the Residential Zone, as opposed to the zone itself, it is not necessary for me to reassess the merits as part of this hearing report. In my view, to do so would essentially allow the submitter another opportunity to present their case, which has not been afforded to other submitters. This results in potential prejudice to submitters who were party to Hearing 10, but not to this Hearing 25 for Te Kauwhata.
38. Various zones in the PWDP are affected by overlays which invoke different, and usually more stringent, requirements for subdivision and development compared with zones that are unaffected by overlays. All zone provisions have already been addressed in earlier hearings.
39. Notwithstanding my stance on this matter, I do agree that if the overlay were to be retained, the resultant density of approximately 8 lots per hectare would not give effect to Policy 6.15 in the WRPS, as that requires a density of 12-15 lots per hectare. I therefore accept that removing the overlay would result in greater efficiencies in terms of potential residential lot yield and that this would also give better effect to the NPS-UD.
40. Both the submitter's evidence and rebuttal statements for Hearing 25 are consistent with the evidence that they filed for Hearing 10. I therefore conclude that the merits of the submitter's section 32 analysis, which supports the deletion of the Te Kauwhata West Overlay from the planning maps and Rule 16.4.3 from Chapter 16 of the PWDP, need to be considered in the context of Hearing 10, and not this Hearing 25.
41. Accordingly, my s42A recommendations in respect to 24 Wayside Road remain without change.

### 3.4 Kāinga Ora – Medium Density Residential Zone

42. Rebuttal planning and urban design evidence has been provided by Mr Philip Stickney (Beca) and Mr Cameron Wallace (Barker and Associates) respectively on behalf of Kāinga Ora (KO).
43. Their rebuttal evidence responds to the Hearing 25: Zone Extents – Thematic Issues, FUZ & MDRZ Section 42A Hearing Report – Part II (prepared by Jonathan Cleese, 16 April 2021), the Hearing 25 Framework report Supplementary Evidence (prepared by Dr Mark Davey, 28 April 2021) and the five section 42A reports in Hearing 25 for Te Kauwhata, Tuakau, Huntly, Pokeno and Raglan.
44. In summary, my s42A report supported the introduction of a Medium Density Residential Zone (MRDZ) at Te Kauwhata, subject to a reconsideration of the footprint of this zone within the property at 75 Te Kauwhata Road. This is because KO's submission had relied on Council's Intramap tool to determine the spatial extent of the MDRZ, rather than the statutory version of the pdf planning maps. Unfortunately, this resulted in KO designing their proposed MDRZ so that it immediately abuts the notified Residential Zone, rather than the assumed Reserves Zone shown by Intramap at that time. This Intramap error has now been rectified.
45. Mr Wallace's rebuttal evidence (at paragraph 6.6) considers that because the entire area of approximately 350 hectares within 75 Te Kauwhata Road is undeveloped and unconstrained, this offers a significant opportunity for a comprehensive, master-planned greenfield development in close proximity to the town centre, schools and open space, as well as a potential stop on the Auckland-Hamilton commuter rail service. Consequently, Appendix 2 of his rebuttal considers the following six options to inform a rational boundary for a MDRZ on this property:
- (g) 400m radial walking catchment from the current town centre zone extent
  - (h) 400m radial walking catchment from the potential Te Kauwhata Rail Station
  - (i) Alignment with existing cadastral boundary
  - (j) Alignment with the top of an existing ridgeline leading to the existing dwelling at the south-western portion of the site (this broadly aligns with an 800m walking catchment from the potential Te Kauwhata Rail Station)
  - (k) Alignment with the approximate extent of flat land/indicative road at the bottom of the ridgeline running through the site
  - (l) Alignment along a theoretical straight extension of Travers Road through to the rail corridor (this broadly aligns with the bottom of the ridgeline running through the site).
46. Mr Wallace prefers option (e) because it uses an indicative road as the termination for the MDRZ. KO's revised MDRZ footprint, along with the indicative roads in the notified PWDP, are illustrated below.

Figure 11: KO's Preferred Option E – MDRZ within 75 Te Kauwhata Road



**Legend**

- Proposed Business Town Centre Zone Extent
- Town Centre Radial Catchments (400m/ 800m)
- Rail Station Radial Catchments (400m/ 800m)
- Indicative Road (as per notified PDP)
- Proposed MDRZ extent (Primary Evidence)
- Revised MDRZ extent (Rebuttal Evidence)

47. While this revision means an extension of the MDRZ beyond 400m from the town centre, Mr Wallace states (at paragraph 6.9) that this would take advantage of relatively flat undeveloped land proximate to the town centre and potential rail station. He also states that this approach would be consistent with that taken in respect to KO's requested MDRZ on greenfields at Pokeno and which is supported by that s42A hearing author.

48. I have viewed the contours of this property from the adjacent railway line and agree that the southern extent for the revised MDRZ would be appropriate. The photograph below indicates the change in contours between easy sloping land and steeper slopes, and the approximate location of the indicative roads. In providing this photograph for the panel's consideration, with Mr Wallace's assistance, this shows the approximate location of the indicative roads shown by the white dashed lines and the approximate southern extent of MDRZ shown in dark green.

**Figure 12: Approximate southern extent of MDRZ and indicative roads on 75 Te Kauwhata Road**



*Photograph taken 5 May 2021*

49. However, despite what I agree would be a rational MDRZ boundary, I consider that there is an issue in respect to scope. This is because the revised footprint of MDRZ on 75 Te Kauwhata extends beyond the area subject of KO's original submission and primary evidence. The same concern exists in respect to applying a MDRZ to the property at 55 Te Kauwhata Road which is zoned Country Living as noted in paragraph 331 of my s42A hearing report.
50. In my opinion, the correct process to rezone both these areas would be a future plan change or district plan review. Therefore, I am left to recommend that the MDRZ on 75 Te Kauwhata extends no further than what was addressed by KO's primary evidence.
51. I have raised this issue of scope with Mr Stickney so that he is given an opportunity to respond to this matter at the hearing.
52. Accordingly, I recommend that KO's request to introduce an MDRZ at Te Kauwhata be accepted in part on the basis of their primary evidence.

### **3.4.1 Recommendation**

53. For the reasons above, I recommend that the hearings panel:

- (a) **Accept in part** Kainga Ora [749.124] on the basis of their primary evidence.
- (b) **Delete** Policy 4.1.12(a)(ii) as a consequence of introducing an MDRZ to Te Kauwhata.
- (c) **Reject** Mercury Energy Limited [FS1387.1043].

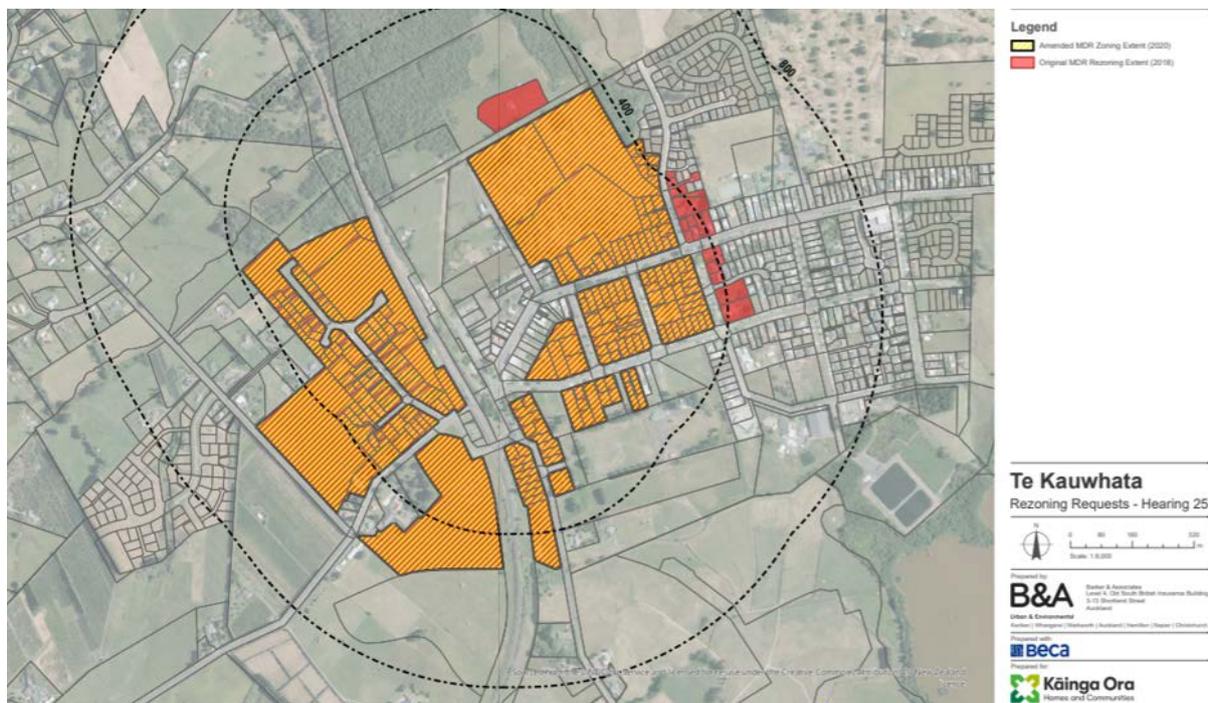
### 3.4.2 Section 32AA Evaluation

54. Paragraphs 335-340 of my section 42A hearing report summarise Mr Stickney's section 32AA which supports the introduction of an MDRZ to Te Kauwhata. I remain in agreement with this evaluation and no change is recommended as a result of this rebuttal evidence.

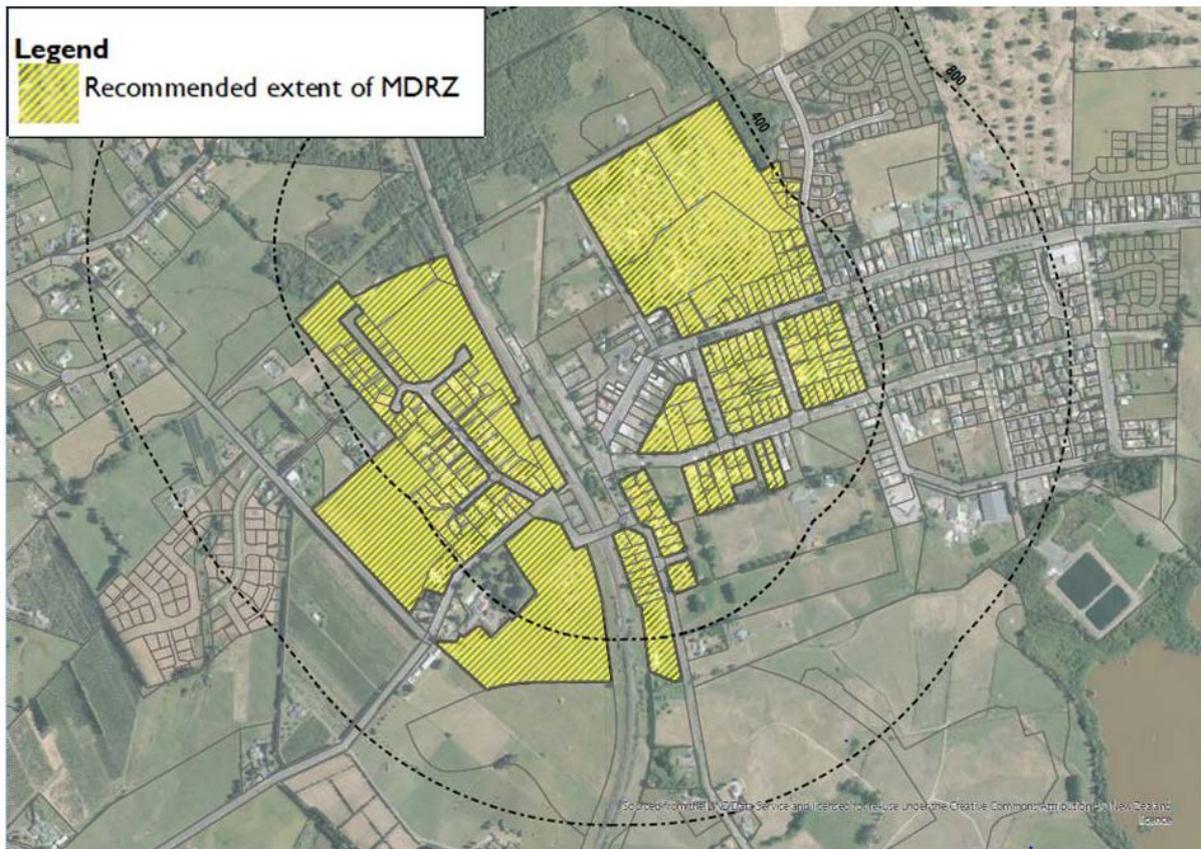
### 3.4.3 Recommended map amendment

55. I recommend that a MDRZ be introduced to Te Kauwhata consistent with KO's primary evidence and identified on the following map as 'Amended MDR Zoning Extent (2020)'.
56. To assist the hearings panel, Figure 13 indicates the MDRZ extents in terms of KO's original submission and their primary evidence. Figure 14 indicates my recommended extent of MDRZ.

**Figure 13: Extent of MDRZ in KO's original submission and primary evidence**



**Figure 14: Recommended extent of MDRZ at Te Kauwhata**



### 3.5 Conclusion

57. This concludes my rebuttal evidence in respect to the extent of zoning at Te Kauwhata. I am happy to answer any questions that the hearing panel may have.

Jane Macartney

10 May 2021

### Appendix I: Recommended planning map amendments

I recommend that the following two sets of amendments be shown in the planning maps for the decision version of the PWDP.

#### Recommended division between Business Zone and BTCZ – Te Kauwhata



### Recommended map amendment – Introduction of MDRZ to Te Kauwhata

Introduce a MDRZ to Te Kauwhata consistent with KO's primary evidence and identified as follows:

