

BEFORE THE HEARINGS COMMISSIONERS FOR WAIKATO DISTRICT COUNCIL

IN THE MATTER OF

The Resource Management Act 1991 (“the Act”)

AND

IN THE MATTER OF

of Hearing Submissions and Further Submissions on the
Proposed Waikato District Plan (Stage 1)

Hearing 25 – Zoning

For Submitter:

**Vineyard Road Properties Limited (now Muirlea Limited)
(Submitter # 626)**

Opening Submissions of Counsel for Muirlea Limited

DATED 20th May 2021

**Julian
Dawson**
BARRISTER

e julian@rimalawyer.co.nz **Auckland Office:** 28 Customs
Street East, Britomart,
Auckland
m 0274 200 223 **Northland Office:** 21 Norfolk
Street, Regent,
Whangarei 0112
post PO Box 531,
Whangarei 0140

MAY IT PLEASE THE COMMISSIONERS:

1. These submissions are made on behalf of Muirlea Limited who is the owner of property in Vineyard Road, Te Kauwhata.
2. A submission and further submission to the Proposed District Plan was originally lodged by Vineyard Road Properties Limited requesting:
 - (a) The rezoning of land in Vineyard Road from Countryside Living Zone to Village Zone, including Muirlea's land; and
 - (b) A minimum net site area for general subdivision of 2000m²
3. However, Muirlea Limited has now superceded Vineyard Road Properties. They now advance the submission but only as it relates to their own land.
4. The extent of land included with the submission area is usefully mapped on page 97 of the s42A Report. It is that land at the end of Vineyard Road, owned by Muirlea, totalling some 20 hectares.
5. The s42A Report recommends that my client's request for rezoning be refused. Obviously, that recommendation is disappointing to my clients, and the rationale presented in the s42A Report is not accepted as being logical or justified.

Legal Framework

6. The legal framework under which you are required to assess this submission has been canvassed thoroughly, in the Opening Submissions of Waikato District Council¹. I agree with those submissions, noting though that some nuance of the assessment is required, where a rezoning, such as this is being proposed.
7. To aid in the assessment, Council has prepared a s42A Framework Report. That report was intended to provide a framework for submitter's evidence and to inform the preparation of the s42A Report itself in setting out the relevant statutory tests and statutory considerations².

¹ Opening Legal Submissions of Waikato District Council, 23 September 2019 at paragraphs 26 to 66, Appendix 1.

² s42A Framework Report, 19 January 2021 at paragraph 17

The s42A Framework Report sets out a “three lens” approach which has since been clarified by the Hearings Panel³.

8. The starting point for considering a submission requesting a rezoning is to determine whether the resulting land use pattern, and zoning, will assist Council to carry out its functions in achieving the purpose of the Act, and whether the zone is in accordance with Part 2 of the Act. From there, the proposed rezoning must be examined as to whether it is the most appropriate method for achieving the objectives of the District Plan⁴ by:

- Identifying other reasonably practicable options for achieving the objectives; and
- Assessing the efficiency and effectiveness of the provisions in achieving those objectives by:
 - identifying and assessing the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposed provisions, including opportunities for:
 - (i) Economic growth that are anticipated to be provided or reduced⁵; and
 - (ii) employment that is anticipated to be provided or reduced⁶.
 - If practicable, quantify the benefits and costs referred to above⁷.
 - Assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods⁸.

9. Efficiency and Effectiveness are key themes in this assessment. Efficiency means⁹:

³ Hearings Panel Minute - 15 March 2021

⁴ s30(1)(b) Resource Management Act 1991

⁵ s32(2)(a)(i) Resource Management Act 1991

⁶ s32(2)(a)(ii) Resource Management Act 1991

⁷ s32(2)(b) Resource Management Act 1991

⁸ s32(2)(c) Resource Management Act 1991

⁹ Ministry for the Environment. 2017.; A guide to section of the Resource Management Act 1991 at 18

Efficiency measures whether the provisions will be likely to achieve the objectives at the lowest total costs to all members of society, or achieves the highest net benefit to all of society. The assessment of efficiency under the RMA involves the inclusion of a broad range of costs and benefits, many intangible and non-monetary.

10. Effectiveness assesses the contribution new provisions make towards achieving the objective, and how successful they are likely to be in solving the problem they were designed to address¹⁰.
11. There is no presumption in favor of any particular zoning, or of the status quo remaining. You are required to determine the most appropriate zoning for the land judging between the status quo and the proposed provisions¹¹.

Council's s42A Report

12. In my view, the key issue emerging from the s42A is whether or not the requested Village Zoning is "efficient and effective". In other words, does the proposed Countryside Living Zone or the requested Village Zone promote the sustainable management of natural and physical resources.
13. The s42A Report concludes that the requested Village Zoning is "problematic" because¹²:
 - (a) There is already sufficient capacity for projected growth in the short, medium and long term;
 - (b) It would result in the inefficient use and development of natural and physical resources;
 - (c) It would result in an undesirable spot zone;
 - (d) It would result in an inconsistent settlement pattern where future growth is not envisaged in the medium term.

¹⁰ Supra note 9 at 19

¹¹ *Infinity Group v Queenstown Lakes DC* (EnvC C010/05) 28 January 2005, at paragraph 53

¹² s42A Report at 277

14. I note that there are no concerns raised with the potential environmental effects of a more intensive zone around such issues as character, amenity, transportation and servicing that might typically feature in such an assessment. Rather, the conclusions reached in the s42A Report seem to be around growth and capacity (necessity), and policy conflict.
15. Mr Williamson addresses these matters in detail in his rebuttal evidence. However, in my view, the issue is really about determining the most efficient and effective density of development. In other words, how can the natural and physical resource of this property be best utilised.
16. I say that because the Council acknowledges that Te Kauwhata is already predominately urban in character¹³, that the Muirlea Property is within the Indicated Urban Limits and signalled for Countryside Living development in 1-3years¹⁴ and the purpose of the Countryside Living Zone is provide for low density residential development. Thus, in the short term (1-3 years), the property is flagged for residential development.
17. The s42A Report acknowledges that the Countryside Living capacity proposed will be taken up in 1-3 years, but there is no provision for Countryside Living beyond that time horizon, nor any provision at all for Village Zoning in Te Kauwhata. Oddly though, and somewhat contradictorily, the s42A Report then concludes that a low density Village Zone would not result in the efficient use of natural and physical resources. But, the Countryside Living Zone would result in an *even lower* density. Surely, that must be an even less efficient use of natural and physical resources?
18. Mr Williamson's unequivocal evidence is that one house per 3000m², or even per 2000m² is readily achievable whilst still affording the "lifestyle" opportunity desired. It is a far more efficient use of land; more houses making better use of a limited resource.
19. On this Mr Williamson's evidence, poignantly says¹⁵:

Promoting residential densities at 1 dwelling per 5,000m² within the practical extent of Te Kauwhata's urban area does not constitute the efficient use of land. At such low densities, the present rate of development is not occurring in a sustainable way, with the supply predicted to be exhausted in just three years.

¹³ s42A Report at paragraph 49

¹⁴ s42A Report at paragraph 266

¹⁵ Williamson Rebuttal Evidence at paragraph 16

Council's Rebuttal Evidence

20. Council's Rebuttal evidence was received by email on 20 May 2021.
21. That evidence now acknowledges that the Countryside Living Zone would be an inefficient use of the Muirlea Land and that instead, a Residential Zone is preferred. The Village Zone is ventured as another possibility.
22. Substantively, this discussion centres on the density of subdivision that could be achieved under the three zoning possibilities. However, the question of scope of the submission is also raised.
23. In terms of scope, you must first consider whether the submission made was "on" the PDP. There, analysis is required as to whether, first, the submission addresses the change to the status quo advanced by the proposed plan change and, secondly, there is a real risk that persons potentially affected by such a change have been denied an effective opportunity to participate in the plan change process¹⁶.
24. In then considering the submission, you are entitled to include amendments that an informed and reasonable member of the public, having studied all the submissions, should have appreciated that the local authority might make had those submissions been accepted¹⁷.
25. Here, my client's original submission sought that:
- (a) That the subject properties be rezoned to VZ; and
 - (b) That the minimum net site area for general subdivision in the VZ be reduced to 2000m² whether or not the lots are publicly reticulated; and /or
 - (c) Such other relief as may be necessary to give effect to the concerns raised in this submission.
26. Clearly, my client's submission was "on" the PDP in that it challenged the proposed Countryside Living Zone over the property and sought instead a higher intensity of subdivision and Village Zoning. These were all techniques included in the PDP on notification.
27. Looking then at the scope of amendments permissible under the submission. Intensity of subdivision over the Muirlea property, and others in Vineyard Road, was the central issue, and

¹⁶ *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290

¹⁷ *Noel Leeming Appliances Ltd v North Shore CC* (No 2) (1993) 2 NZRMA 243(PT), at p 249 and *Foodstuffs (Otago Southland) Properties Ltd v Dunedin CC* (affirmed on appeal)

relief being pursued. That could be achieved by reference to the smaller site size requested (of 2000m²) or by the imposition of a Village Zoning.

28. Under the Village Zoning, at notification, a minimum site size of 1000m² could have been contemplated. Most certainly the submission sought, and brought into question, the density of subdivision in Vineyard Road. The outcome of that is yet to be determined because of course, there are numerous submissions seeking a greater intensity subdivision within the Village Zone, nuanced or not by the provision of reticulated services.
29. The extent of scope afforded by my client's submission cannot now be determined in a numerical sense. That would be unduly formulaic; an approach the Courts have discouraged.
30. Thus, it is not as simple as saying the maximum density envisaged was 3000m² at one end, but not Residential at the other. Viewed more broadly, my client's submission challenged the density of subdivision provided in the PDP and by achieving either a Village Zoning or the smaller site size of 2000m² requested, a much greater density than in the PDP was contemplated.
31. Indeed, the outcome of the subdivision provisions within the Village Zone, could result in a maximum density of 1000m² or less. That is yet to be seen.
32. Here, the question of scope can be answered by appreciating that my client's submission clearly brings into question a greater density of development within Vineyard Road. Now, that relief is confined to the Muirlea Property, but the scope of the original submission and what others would have appreciated as the possible outcome remains. A density of 1000m² was clearly contemplated under the Village Zone on notification, and that could be a possible outcome here.
33. In all, an overly formulaic approach is not required, or appropriate. Appreciating the possibility of a greater intensity of subdivision, means that a Village Zoning with a greater intensity at round 1000m² is, I submit, clearly within scope.
34. Ms Macartney acknowledges that the equation is finely balanced. I suspect her caution is more around scope, that the substantive outcome. With the issue of scope put to one side, and I think dealt with above, the substantive evaluation comes into focus.
35. In that regard, Mr Williamson will say that 5000m² lots have little prospect of being subdivided further, in a sensible and integrated fashion. Both he and Ms Mcartney agree that such a density and the Countryside Living Zone, would be inefficient. Conversely under a Village Zone

with a density of say 1000m² relying on the notified provisions, a much more efficient and effective land use would be achieved.

Conclusion

36. Ms Macartney and Mr Williamson both now agree that a density of 5000m² under a Countryside Living Zone would be inefficient and inappropriate. In my view, the issue of scope is not of concern, but a Village Zoning, with a density of around 1000m² is a sustainable and appropriate outcome.
37. Ms Macartney's rebuttal evidence is considered constructive and appropriate. However, with little over a day to evaluate and sensibly respond, my client and Mr Williamson would benefit from the opportunity to address this further at the hearing.

A handwritten signature in blue ink, appearing to read 'J.C. Dawson'.

J.C Dawson – Counsel for Muirlea Limited
20th May 2021