

# SECTION 42A REPORT

Rebuttal Evidence

## Hearing 25: Rezoning – Te Kowhai

Report prepared by: Jonathan Clease

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# 1 Introduction

## 1.1 Background

1. My full name is Jonathan Guy Cleese. I am employed by a planning and resource management consulting firm Planz Consultants Ltd, as a senior planner and urban designer.
2. I am the writer of the original s42A report for Hearing 25: Rezoning – Te Kowhai.
3. My qualifications and experience are set out in this earlier s42A report in section 1.1, along with my agreement to comply with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014 as set out in section 1.2.

## 2 Purpose of the report

4. In the directions of the Hearings Panel dated 26 June 2019, paragraph 18, states:  
*If the Council wishes to present rebuttal evidence it is to provide it to the Hearings Administrator, in writing, at least 5 working days prior to the commencement of the hearing of that topic.*
5. The purpose of this report is to consider the rebuttal evidence filed by the following submitters:

Submitter	Submission number
Hamilton City Council	535
Waikato Regional Council	81
Greig Metcalfe	602
Hounsell Holdings Ltd	832

6. In responding to the rebuttal evidence received from submitters I will identify where the submitter agrees with the position reached in the s42A report, where their evidence has led to me changing my recommendations, or where we simply have a difference in view and my original recommendations remain unchanged.
7. This report also addresses several submission points which the Council’s administration team have identified as not having been addressed in earlier reports.

## 3 Response to submitter evidence

### Hamilton City Council [535]

8. Ms Gault filed rebuttal evidence on behalf of Hamilton City Council [535]. She agrees with my recommendations regarding the use of a Future Urban Zone (‘FUZ’) for the large greenfield growth areas in Te Kowhai<sup>1</sup>. She likewise supports<sup>2</sup> the minor changes to the Country Living Zone boundary that I recommended in the Bedford Road area<sup>3</sup>.
9. Ms Gault acknowledges that in the event that the proposed Te Kowhai Airpark Zone to the south of Te Kowhai is confirmed, rezoning of 176 and 178 Limmer Rd to Village Zone would

<sup>1</sup> Paragraph 9 of Ms Gault’s rebuttal evidence

<sup>2</sup> Para. 10, *ibid*

<sup>3</sup> Section 4.14 in my s42a report regarding the submission of Year 91 Family Trust [745.1]

provide a more logical zone boundary<sup>4</sup>. Despite this she is of the view that additional Village Zoning for the two Limmer Rd properties would not accord with the NPS-UD and therefore remains opposed to such rezoning<sup>5</sup>. I discuss the Limmer Rd properties in more detail below as Ms Foley for the Waikato Regional Council has raised similar concerns.

10. Ms Gault agrees with my recommendation to reject the residential zoning (or some form of Hamilton Urban Expansion Area/ Future Urban Zone) sought by Hounsell Holdings for a block in Rotokauri.
11. With the exception of the two Limmer Rd properties, Ms Gault and I are therefore in agreement as to the zoning outcomes for Te Kowhai.

### **Waikato Regional Council [81] –**

12. Ms Marie-Louise (Miffy) Foley filed rebuttal evidence on behalf of Waikato Regional Council [81] regarding the Te Kowhai Airpark Zone in relation to the airpark concept, and more particularly the extent of low density residential development proposed within the airpark. I understand from her evidence that she is not opposed to providing for ongoing airfield operations and ancillary maintenance and aeronautical activities<sup>6</sup>.
13. In addition to Ms Foley’s rebuttal evidence concerning the Airpark, the Waikato District Council’s administration team have identified a number of submission points relating to the Airpark concept that were not explicitly addressed in Hearing 17 which considered the policy and rule framework for the Special Purpose Airpark Zone. These additional submission points are set out in the following table:

<b>Submission point</b>	<b>Submitter</b>	<b>Decision requested</b>
81.226	Waikato Regional Council	Seek further assessment of Te Kowhai Airpark to enable adequate consideration of the area, including, but not limited to covering alignment with WRPS/Future Proof settlement pattern, assessment of precedent of alternative land release, availability of infrastructure, and impacts of the proposal on the Te Kowhai settlement as a whole.
FSI3393	NZTE Operations Ltd	Oppose
FSI176.33	Watercare Services Ltd	Support
FSI386.304	Mercury NZ Ltd for Mercury C	Oppose
369.4	SW Ranby	Amend Map 26.2 Te Kowhai, to change zoning from Te Kowhai Airpark Zone to Rural Zone.
FSI347.4	GL & DP McBride	Support
FSI379.95	Hamilton City Council	Support
FSI386.574	Mercury NZ Ltd for Mercury C	Oppose

<sup>4</sup> Para. 13, Ms Gault’s evidence

<sup>5</sup> Para. 13-14, *ibid*

<sup>6</sup> Paragraph 2.2 of Ms Foley’s rebuttal evidence

535.57	Hamilton City Council	No specific decision sought, but submission opposes the objectives and policies in Chapter 9.2 Te Kowhai Airpark.
<i>FS1339.70</i>	<i>NZTE Operations Ltd</i>	<i>Oppose</i>
535.84	Hamilton City Council	Delete Appendix 9 Te Kowhai Airfield Precincts Zoning. AND Any consequential amendments and/or additional relief required to address the matters raised in the submission.
535.88	Hamilton City Council	No specific decision sought, but the submission opposes the Te Kowhai Airpark Zoning.
<i>FS1062.83</i>	<i>Andrew &amp; Christine Gore</i>	<i>Oppose</i>
834.5	Marshall & Kristine Stead	Retain the Airpark Zone at the Te Kowhai Airfield, as notified.
834.6	Marshall & Kristine Stead	No specific decision sought, however the submitter supports on principle the Te Kowhai Airpark Zone, particularly in regards to their own property.
879.1	Don Wilkinson for SAA Auckland Chapter	Retain Te Kowhai Airfield. AND No specific decision sought, but submission seeks to 'enhance Te Kowhai Airfield per the Submission for even Airpark status'.
<i>FS1339.202</i>	<i>NZTE Operations Ltd</i>	<i>Support</i>

14. Ms Foley raises questions<sup>7</sup> regarding in which hearing the quantum of residential development is to be considered; namely Hearing 17 which assessed the zone provisions, or Hearing 25 which considers the zone extent. In my view the polices and rules associated with the Airpark Zone are the key methods by which the airpark concept is determined. The direction as to what can occur within that zone was therefore a matter for Hearing 17 to resolve. Hearing 17 included extensive evidence and legal submissions from the Airpark proponents and other interested parties on both the concept and the associated rule framework.
15. My earlier s42a report identified that the airpark site is identified in both Future Proof 2008 and 2017 versions (and therefore WRPS Map 6C) as an urban growth area, and is likewise identified in Waikato 2070 as an 'airpark precinct'. Urbanisation of the site in some form is therefore anticipated by the higher order documents. Provision of housing on the site is likewise consistent with the higher order directions that the site is suitable for urbanisation.
16. An airpark will be a bespoke type of development that is readily distinguishable from both residential suburban areas and low density lifestyle block developments. Whilst I understand that the airpark concept includes Precinct D which enables very low density residential

<sup>7</sup> Para.2.3, *ibid*

development (along with Precinct C which provides for medium density), the provision of a residential element appears to be integral to the airpark concept. The lack of reticulated services and the associated implications for the staging of future development were canvassed in detail when the subdivision rule framework was assessed in Hearing 17.

17. If the Panel determine that the extent of residential dwellings enabled through the Airpark concept is too high (especially in advance of reticulated services becoming available), then the mechanism for limiting the number of dwellings lies primarily with the zone's land use and subdivision provisions, rather than the mapped zone extent. The notified zone boundary simply follows the edge of the landholdings controlled by the airpark proponents and includes the land necessary to accommodate the runway and ancillary activities. If the Panel are not convinced that the airpark concept or extent of residential development is appropriate, then the airfield itself can still have a special purpose zoning, with the rules controlling activities limited for instance to only permitting those directly associated with aeronautical activities. The mapped zone boundaries do not necessarily need to change. Alternatively, if Hearing 17 were to determine that the proposed residential elements of the Airpark should be limited until reticulated services are available, then a consequential amendment of this finding could be to reduce the extent of the Te Kowhai Airpark Zone so it only covered Precinct Area A (operations) and Area B (commercial), with a FUZ applying to Precinct Area C (medium density residential) and Area D (residential).
18. In my view the established airfield is sufficiently unique that a special purpose zone is warranted (rather than the airfield having a Rural Zone). As such it is recommended that the submissions supporting a Te Kowhai Airpark Zone be accepted and those opposing the airpark be rejected.
19. Ms Foley opposes rezoning of 158 and 176 Limmer Rd from Rural to Village Zone, even if the full extent of the Special Purpose Airpark Zone is confirmed. She references the general approach set out in Dr Davey's Framework Report that recommended limits on further Village (and Country Living) zoning and the lack of any nexus between these two lots and airpark activities which differentiate them from airpark-related residential dwellings<sup>8</sup>.
20. I set out my reasoning for including these two blocks in section 4.19 of my earlier s42a Report<sup>9</sup>. I consider that reasoning and recommendation to remain valid (assuming the Special Purpose Airpark Zone is confirmed). In essence there is a tension between achieving a logical zone boundary/ urban edge at a local level versus the achievement of wider strategic growth directions such as those seeking to limit further rural residential development, especially in close proximity to Hamilton<sup>10</sup>. The size of the Limmer Rd landholdings and the number of additional dwellings is modest, therefore in itself rezoning of these lots is unlikely to threaten wider growth objectives. The issue therefore becomes one of consistent decision making where the Panel will be faced with numerous submissions seeking rezoning for smaller blocks that of themselves will not threaten outcomes but that cumulatively have the potential to not be effective in giving effect to the WRPS and NPS-UD directions regarding urban growth management.
21. In reaching my recommendation I have been particularly mindful of these strategic growth outcomes (hence my recommendation that the large greenfield Village Zoned areas in Te

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<sup>8</sup> Paras. 2.4-2.5, *ibid*

<sup>9</sup> S.42a Zone extents – Te Kowhai report dated 16 April

<sup>10</sup> Such as WRPS Policy 6.17 and section 6A matters (a)-(h).

Kowhai be rezoned with a FUZ), whilst also recognising that small discrete sites may be able to be rezoned to strengthen logical urban edge outcomes, without threatening the strategic direction (hence my recommendation on the Bedford Rd lots and these two sites on Limmer Rd).

22. In my view the Bedford and Limmer Rd lots are bounded by non-rural zoning on at least two sides and are small in scale, and therefore can both be differentiated from submissions seeking rezoning of either large blocks or blocks with just one urban edge. The Limmer Rd sites are likewise both identified as being suitable for urbanisation in Future Proof 2008, 2017, WRPS Map 6C, and Waikato 2070, all of which differentiates them from the majority of other submissions seeking low density zoning in locations outside of the higher order growth areas.
23. The creation of a logical urban edge to Te Kowhai is the key driver of my recommendation. There is little material addition in capacity hinging on the zoning of these blocks. The Panel will have the benefit of a more global overview of submissions seeking Village and Country Living Zones across the various townships, and will be forming a consistent view as to the extent of such zoning. The final decision will ultimately turn on the Panel's conclusions on the cumulative effects of further low density zoning on strategic outcomes and whether small, discrete rezoning to achieve logical urban edges can occur on a limited basis such that the WRPS and NPS-UD are still able to be given effect to. In my view, limited rezoning in Te Kowhai to strengthen urban edge outcomes remains consistent with higher order directions and therefore my recommendation remains unchanged.

### **Greig Metcalfe [602]**

24. Mr Houlbrooke on behalf of Mr Metcalfe has provided evidence regarding a large greenfield growth area to the west of Horotiu Rd (discussed in section 4.11 of my s42a report on zone extents in Te Kowhai. Mr Houlbrooke seeks live zoning on the basis that he is confident a developer agreement can be entered into with the Council to enable the provision of wastewater infrastructure within a ten-year period. My position as set out in the earlier s42a report is that the provision of that infrastructure is too speculative at this stage to support live zoning. The upgraded services would need to be sized to support both the Metcalfe block and the other large greenfield growth area to the east, plus potentially the Airpark area. Financing the provision of this infrastructure (where outside of the LTP process) would therefore ideally involve the agreement of these other parties in order to ensure the pipeline is equitably funded and appropriately sized.
25. I am in agreement with Mr Houlbrooke that the block is suitable in principle for rezoning, with the long-term development of this area not opposed in evidence by either HCC or WRC, noting that the evidence of both HCC and WRC support the recommended FUZ approach.
26. In essence it boils down to the degree of certainty considered necessary before live zoning the block. In my view there remains a considerable level of uncertainty regarding the timeliness and funding of network infrastructure. There is also a lack of detailed evidence on matters such as geotechnical, landscape, and the type of live zone i.e. whether it is a serviced Village Zone (with a 1,000m<sup>2</sup> minimum site size) or a Residential Zone, or a mix of the two with larger lots on steeper land. The other key reason for my recommendation to reject the application of a live zone to the site is the absence of a comprehensive structure plan and

detailed site assessment, especially given the size of the site and its importance in influencing the character of Te Kowhai. Given this uncertainty across a number of matters I have erred on the side of caution with a FUZ recommendation, whereas Mr Houlbrooke is of an alternative view.

27. If the Panel prefer the evidence put forward by Mr Houlbrooke, then in my view the eastern greenfield block would also logically be live zoned, as the pipeline would need to be sized to service both growth areas. The choice before the Panel is therefore to live zone both growth areas, or to provide them both with a FUZ.
28. I consider that live zoning the greenfield areas in Te Kowhai is premature given the level of uncertainty across a number of matters and absence of a detailed structure plan and associated detailed site assessment, and therefore my earlier recommendations that these blocks have a FUZ rather than a live zone remain unchanged.

### **Hounsell Holdings Ltd [832]**

29. Rebuttal evidence was provided on behalf of Hounsell Holdings Ltd from Mr Craig Batchelor (planning) and Ms Judith Makinson (transport). I addressed the Hounsell Holdings block in Section 6 of my 16<sup>th</sup> April s.42a report on Te Kowhai, and more specifically via a s42a Addendum dated 21 April.
30. There are a number of issues in play regarding this block, namely:
  - Consistency (or not) with the higher order direction regarding urban growth management in the NPS-UD and the WRPS, Waikato 2070, and township-specific structure plans;
  - Detailed site assessment regarding matters such as servicing, urban design, natural hazards, landscape, ecology, versatile soils, cultural values etc. This is not to say that such matters are insurmountable, however to date there has not been the level of assessment that would normally be expected commensurate with the scale and complexity of a plan change to deliver up to 3,300 households;
  - Ongoing planning processes being undertaken in the greater Hamilton area that do not run in a linear manner;
  - Protection of the future urbanisation potential whilst these non-linear processes are progressed.
31. Mr Batchelor's rebuttal evidence includes a figure showing the site's spatial context (Annexure 1). This figure helpfully places the site in a wider context of existing urban zoned areas and areas subject to a structure plan. These structure plans have been developed by Hamilton City Council (or via private plan changes to the Hamilton City Plan). The Annexure shows that whilst the site is isolated from the existing Waikato townships of Te Kowhai and Horotiu, it is proximate to parts of Hamilton City where urbanisation is anticipated in the future.
32. Mr Batchelor's evidence also includes a Framework Plan (Annexure 2) which 'zooms in' on the site and shows how it might be developed to provide a range of housing densities, local commercial and community facilities, stormwater basins, and transport connections.
33. The additional information provided by Mr Batchelor, along with an assessment of the site against WRPS 6A principles, does show that in the long-term urbanisation of the site (and



adjacent blocks) could ultimately form part of a logical, connected urban area that functionally is part of Hamilton City. The key question is how such long-term potential fits within the timing of the current district plan review process and the zoning tools available to the Panel.

34. Mr Batchelor notes that the submitter is looking to actively engage with the forthcoming review of the Hamilton Urban Growth Strategy which he advises will take a further 12-18 months to complete. In parallel to this Hamilton initiative I am aware that the wider Future Proof members are actively preparing a Housing and Business Assessment ('HBA'), as required in the NPS-UD. The HBA process is required to provide an ongoing assessment of capacity over the coming years.
35. I understand from Dr Davey<sup>11</sup> that no additional housing capacity is required in the short-term (and generally also in the medium term) for the majority of townships in the District. From a capacity perspective there is therefore a sufficient timing buffer to enable these other planning processes to be concluded, with the quantum of any additional growth areas determined and potential future sites identified.
36. It appears to be accepted by the submitter's experts that the level of assessment is not currently at the point that a live zoning is supportable, given that such an outcome has not been pursued in evidence. Mr Batchelor notes (para 5.1) that the limited geographical scope of the submission would also not enable a FUZ to be extended over land beyond the submitter's control. Given this scope limitation, he concludes that "the most appropriate approach would be for the commissioner panel to recommend that the council promote a plan variation or change to include all of the affected land".
37. I take such direction to mean that in addition to existing options before the Panel (retain rural zone, live zone, or FUZ), a fourth option is to retain the rural zone through the District Plan Review process but recommend that Council initiate a variation to examine more broadly the urban growth potential of both the site and the surrounding areas.
38. Alternatively, and as set out in my 16 April report, the Council could wait for the wider planning processes such as the HBA and Future Proof update to be concluded and then if need be to initiate a plan change in the future (or alternatively a private plan change could be lodged by the submitter). I accept that the timing of such is likely to be several years away.
39. In the meantime the land under the submitter's control remains under their control – that is, if the submitter's long-term aspirations are urbanisation, then such potential is able to be readily protected simply by the submitter choosing to not subdivide the site or otherwise engage in rural activities that would limit long term urbanisation.
40. Fundamentally, I remain of the view that anything other than a Rural Zone would be premature at this point in time, given the lack of identification of the block in the higher order documents and on the basis of the limited level of information received to date.

### **Submission points not explicitly addressed in earlier s42a report**

41. Waikato Council's administration team have identified several discrete submission points relating to Te Kowhai that did not receive an explicit recommendation in the earlier s42a report.

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<sup>11</sup> S42a Framework Report – Supplementary Evidence, Dr Davey, 28<sup>th</sup> April 2021

<b>Submission point</b>	<b>Submitter</b>	<b>Decision requested</b>
296.3	Terra Consultants (CNI) Ltd	Amend the zoning of the land between Horotiu Road and Te Kowhai Road from Rural Zone to Village Zone
<i>FS1277.13</i>	<i>Waikato Regional Council</i>	<i>Oppose</i>
<i>FS1379.64</i>	<i>Hamilton City Council</i>	<i>Oppose</i>
<i>FS1386.304</i>	<i>Mercury NZ Ltd</i>	<i>Oppose</i>
116.2	R&M Weir Family Trust	Retain Village Zone over 692 Te Kowhai Rd
<i>FS13876.97</i>	<i>Mercury NZ Ltd</i>	<i>Oppose</i>

42. The submission outcome sought by Terra Consultants Ltd was assessed in Section 4.4 of my earlier report (albeit that the specific submission point was not referenced). I recommended that no further Rural Zoned land east of the existing Te Kowhai Estates landholding be rezoned (the green area shown in Figure 9 of my earlier report). In line with that earlier recommendation, it is recommended that submission point 296.3 be rejected and the further submissions in opposition all be accepted.
43. The submission by the R&M Weir Family Trust [116.2] was assessed in Section 4.4 of my earlier report. A further submission in opposition from Mercury Energy was however omitted from the recommendations table. In line with my earlier recommendation that the Weir Trust submission be accepted, it is recommended that the Mercury further submission be rejected.

## Appendix I. Recommendations

<b>Submission point</b>	<b>Submitter</b>	<b>Decision requested</b>	<b>Recommendations</b>
81.226	Waikato Regional Council	Seek further assessment of Te Kowhai Airpark to enable adequate consideration of the area, including, but not limited to covering alignment with WRPS/Future Proof settlement pattern, assessment of precedent of alternative land release, availability of infrastructure, and impacts of the proposal on the Te Kowhai settlement as a whole.	Accept
<i>FS13393</i>	<i>NZTE Operations Ltd</i>	<i>Oppose</i>	<i>Reject</i>
<i>FS1176.33</i>	<i>Watercare Services Ltd</i>	<i>Support</i>	<i>Accept</i>
<i>FS1386.304</i>	<i>Mercury NZ Ltd for Mercury C</i>	<i>Oppose</i>	<i>Reject</i>
369.4	SW Ranby	Amend Map 26.2 Te Kowhai, to change zoning from Te Kowhai Airpark Zone to Rural Zone.	Reject

FSI347.4	GL & DP McBride	Support	Reject
FSI379.95	Hamilton City Council	Support	Reject
FSI386.574	Mercury NZ Ltd for Mercury C	Oppose	Accept
535.57	Hamilton City Council	No specific decision sought, but submission opposes the objectives and policies in Chapter 9.2 Te Kowhai Airpark.	Reject
FSI339.70	NZTE Operations Ltd	Oppose	Accept
535.84	Hamilton City Council	Delete Appendix 9 Te Kowhai Airfield Precincts Zoning. AND Any consequential amendments and/or additional relief required to address the matters raised in the submission.	Reject
535.88	Hamilton City Council	No specific decision sought, but the submission opposes the Te Kowhai Airpark Zoning.	Reject
FSI062.83	Andrew & Christine Gore	Oppose	Accept
834.5	Marshall & Kristine Stead	Retain the Airpark Zone at the Te Kowhai Airfield, as notified.	Accept
834.6	Marshall & Kristine Stead	No specific decision sought, however the submitter supports on principle the Te Kowhai Airpark Zone, particularly in regards to their own property.	Accept
879.1	Don Wilkinson for SAA Auckland Chapter	Retain Te Kowhai Airfield. AND No specific decision sought, but submission seeks to 'enhance Te Kowhai Airfield per the Submission for Airpark status'.	Accept
FSI339.202	NZTE Operations Ltd	Support	Accept

Submission point	Submitter	Decision requested	Recommendations
296.3	Terra Consultants (CNI) Ltd	Amend the zoning of the land between Horotiu Road and Te Kowhai Road from Rural Zone to Village Zone	Reject
FSI277.13	Waikato Regional Council	Oppose	Accept

<i>FS1379.64</i>	<i>Hamilton City Council</i>	<i>Oppose</i>	<i>Accept</i>
<i>FS1386.304</i>	<i>Mercury NZ Ltd</i>	<i>Oppose</i>	<i>Accept</i>
<i>116.2</i>	<i>R&amp;M Weir Family Trust</i>	<i>Retain Village Zone over 692 Te Kowhai Rd</i>	<i>Accept</i>
<i>FS13876.97</i>	<i>Mercury NZ Ltd</i>	<i>Oppose</i>	<i>Reject</i>