

SECTION 42A REPORT

Closing Statement

Hearing 25: Rezoning – Te Kowhai

Report prepared by: Jonathan Clease

Date: 19/05/21



TABLE OF CONTENTS

1	Introduction	3
2	Te Kowhai North	3
3	Te Kowhai South	3
4	Te Kowhai Airpark	5
5	Rotokauri.....	5

1 Introduction

1. This closing statement is provided as a response to the evidence presented by submitters at the first hearing on rezoning matters held 17th – 18th May relating to the zoning at Te Kowhai. In this statement I have focussed on the key matters raised by submitters. As such it represents an evolution of my original s42A report and subsequent rebuttal statement. Where my recommendations have not changed, these earlier reports are relied on and I have avoided simply repeating the same arguments.

2 Te Kowhai North

2. A presentation was provided by Mr Brian Butt and Ms Sheryl Kruger on behalf of the Year 91 Family Trust [745] who own a 2.5ha site on the dogleg of Bedford Road. A presentation was likewise made by Mr Lindsay Schick [49] who owns a 35ha dairy farm to the north of Bedford Road. Both submitters are seeking a change from Rural to Country Living Zones.
3. As noted in my s42a report¹, Mr Schick's block is not identified in any higher order documents. It is likewise inconsistent with the Waikato Regional Policy Statement ('VRPS') directions to limit further lifestyle block development, especially in close proximity to Hamilton. No technical evidence was provided by Mr Schick, with his presentation reiterating his Country Living Zone aspirations for his site. I confirm my earlier recommendation that this site retain its Rural Zoning for the reasons given in my earlier report.
4. In my view Mr Schick's property can be readily differentiated from the Butt/ Kruger property. The latter property is only 2.5ha in area, which when combined with the two neighbouring lots to the south gives a total area of some 4.5ha which already contains three homes. Rezoning these properties to Country Living Zone therefore in part reflects existing lifestyle rather than farming uses, 4.5ha compared with 35ha is at a fundamentally different scale, and results in a logical zone boundary and urban edge.
5. Ms Gault presented evidence on behalf of Hamilton City Council [535]. She supported my recommendations on the Bedford Road area. She also agreed with my recommendations regarding the Future Urban Zone ('FUZ') for Te Kowhai south growth areas and retaining a rural zone in Rotokauri (which are discussed in more detail below).

3 Te Kowhai South

6. Evidence was presented by Mr Greg Metcalfe [602] and his planning expert Mr Bevan Houlbrooke regarding his 65ha landholding to the southwest of the existing village. Mr Marshall Stead and Ms Kristine Stead [834] likewise presented to the Panel regarding their 11ha property to the southeast of the village, with their presentation also extending to the landholdings of their neighbours which were referred to as the Davis, Singh, and Sams blocks.
7. Both submitters sought a 'live' Village Zone for their sites, whereas I have previously recommended a FUZ. I agree that their landholdings are appropriate in principle for urban

¹ Para 149, s42a report dated 16 April 2021

development, noting that these blocks have been identified in higher order documents and growth strategies.

8. Strategically, in terms of urban growth management and the delivery of the necessary capacity/ yield to meet demand, growth areas near town centres need to deliver urban rather than lifestyle densities. Development to urban densities needs to be supported by reticulated services.
9. As a generalisation, for Te Kowhai the more lots that can be delivered, the cheaper per lot the provision of pipeline services becomes, as the cost of running a new wastewater pipeline from Horotiu can be spread across more future dwellings, along with separate reticulation for potable water.
10. If development is undertaken to unserviced Village Zone densities of 3,000m² it makes future reticulation far less viable as the same cost of piping is spread over fewer (infill) properties.
11. To achieve the yield to make reticulated services viable, to meet capacity targets, and to deliver compact urban forms, development needs to be to Residential Zone densities rather than Village Zone densities. This is especially the case for the large, greenfield growth areas identified in Future Proof and Waikato 2070 strategies.
12. Neither submitter has sought a residential zone, and therefore such a zone would be outside the scope of current submissions. The 'live zone' option is therefore to a Village Zone. My recommendation that these blocks are best zoned to FUZ is not just because of a lack of reticulated services, but because there is a more fundamental question as to what the best long-term development option is.
13. In my view there needs to be a further plan change process undertaken (as set out in the FUZ provisions), as a Residential Zone is not an option available within the scope of these parties' submissions.
14. With a FUZ in place, a 3-5 year timeframe is quite achievable to confirm servicing, progress a plan change, construct a pipeline, and prepare the necessary subdivision and Regional Consents.
15. Hence my recommendation remains that FUZ is the appropriate option:
 - It enables a developer-led agreement regarding funding infrastructure to be confirmed between various landowners, WDC, and Watercare Waikato;
 - It enables a residential zone to be progressed (potentially with reticulated Village Zone in areas of steeper topography on Mr Metcalfe's land);
 - It enables a structure plan to be developed that links between the Metcalf block and the blocks to the east in a coherent manner.

4 Te Kowhai Airpark

16. Mr Warren Jonson [92] presented to the panel seeking Village Zone over his and an adjacent lot in Limmer Road in the event that the airpark zone includes residential neighbours.
17. My recommendation² to rezone Mr Jonson's property to Village Zone turns on the panel's confirmation of the airpark zone and activities.
18. Ms Galt on behalf of Hamilton City Council sought that Mr Jonson's land remains rural.
19. In essence the decision comes down to a tension between achieving a logical, localised zone boundary and village form balanced against wider strategic growth directions and the cumulative effects on this strategic direction caused by numerous small rezonings to lifestyle lot densities. I believe a discrete rezoning does not threaten wider strategic directions and therefore remain of the view that Mr Jonson's submission can be accepted.

5 Rotokauri

20. Ms Kate Barry-Piceno presented legal submissions on behalf of Hounsell Holdings Ltd [832]. Evidence was also received from Mr Craig Batchelor (planning) and Ms Judith Makinson (transport).
21. There is agreement between myself and Hounsell's experts that a live zoning is not appropriate at this point in time. The key area of disagreement is whether or not retention of the Rural Zone (my recommendation) is more appropriate than the alternative of a FUZ or Hamilton Urban Expansion Area Overlay ('UEA'), as is now sought by the submitter.
22. In terms of options, I consider the choice to be between a FUZ or a Rural Zone. The Hamilton UEA is a planning tool that identifies areas where it has been agreed between the two Councils that a land transfer process will be undertaken such that these areas ultimately form part of Hamilton City Council's territorial boundary. It is my understanding that the current UEA provisions were put in place as a consequential outcome following the agreement between the Councils to transfer these areas i.e. the transfer agreement came first. Whilst ultimately a legal question, I am cautious that the District Plan Review process is the appropriate forum for identifying areas of land, and thereby committing both Councils, to undertaking land transfer processes that alter Local Authority boundaries.
23. That said, the FUZ generally achieves the same outcomes sought by the submitter, namely identification that the area is in principle suitable for urbanisation, and with an accompanying policy and rule package that preserves that potential in the meantime.
24. As set out in my earlier evidence³, this site is not identified as a growth area in the higher order documents such as Future Proof 2017, Waikato 2070, or any township-based structure plan. I identified that there are processes underway to review and where necessary update these strategic growth documents, including a review of Future Proof, a Housing and Business

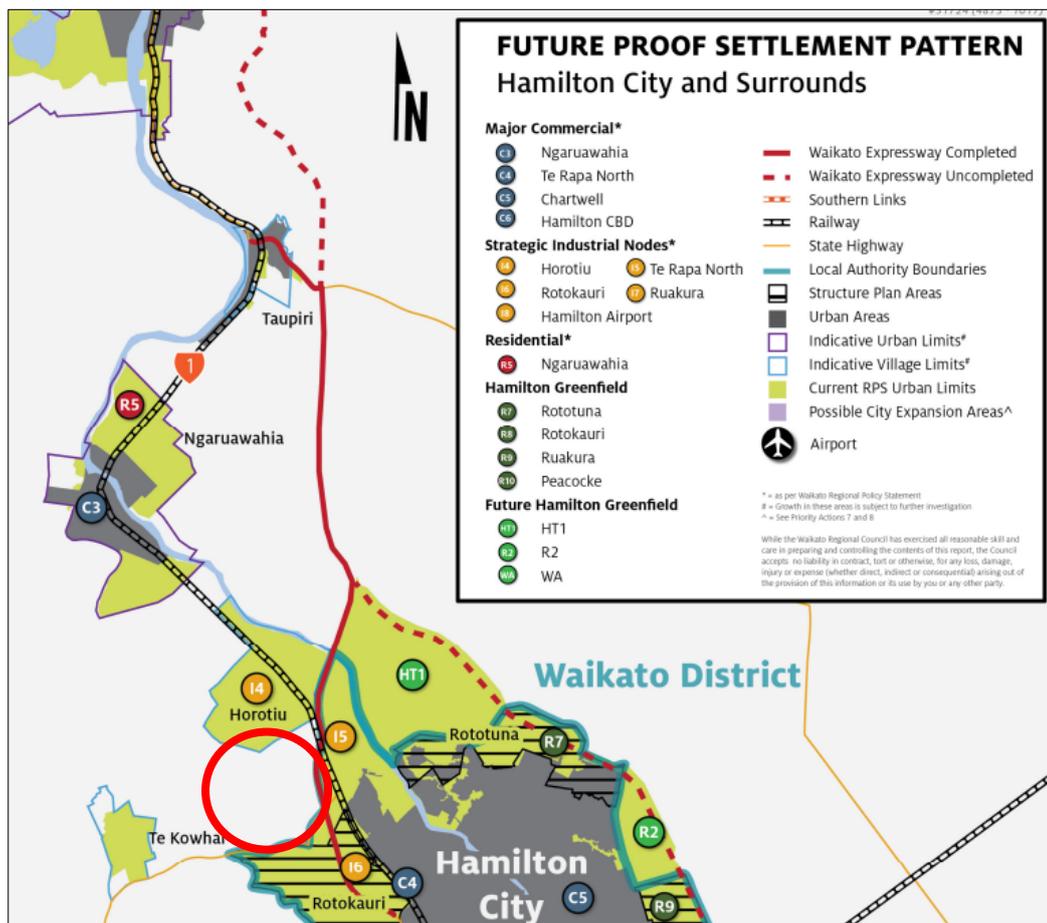
² Para.161, s42a report dated 16 April

³ Para. 167, *ibid*

Capacity Assessment (as required under the NPS-UD), and with Hamilton City Council separately reviewing and updating the Hamilton Urban Growth Strategy ('HUGS').

25. I agree with Mr Batchelor that the area between Horotiu and Hamilton City Council's territorial boundary does appear to be a 'gap' in the urban form identified in Future Proof 2017, especially once the HCC structure plan areas are built out over the coming years (shown as a red circle in Figure 1 below). In my verbal opening statement to this hearing I made an off-the-cuff comment that this gap may be based on technical or policy reasons. This comment should more accurately have been that I am unaware of whether or not there are any technical or policy reasons for this gap.

Figure 1. Future Proof 2017 extract



26. Dr Davey has documented in his Framework Report and subsequent statement at the opening to this hearing that there is sufficient capacity provided through the Proposed District Plan (as recommended by officers) to definitely meet short term needs (1-3 years), and to also meet medium term needs (3-10 years), albeit by a finer margin. There is therefore sufficient time (from a capacity perspective) to enable the need for, and merit of, urbanising this block of land to be properly assessed through a range of processes that are already underway. These processes also enable a broader comparison of the merit of various blocks around Hamilton City's fringe to be compared (in the event that infrastructure funds are limited and need to be focussed on the locations where they will deliver 'greatest bang for buck').
27. I remain of the view that it is premature to confirm the 'in principle' suitability for a block of this size without a fuller understanding of site-specifics, servicing, connectivity, and capacity,

and in the absence of it having been identified in any higher order documents. I acknowledge that the submitter's site (and surrounding landholdings in the 'gap' between Horotiu and the Hamilton City boundary) may well ultimately prove to be suitable for some form of urbanisation. In my view assessment of future urbanisation potential would necessarily encompass a review of the entire area between Horotiu and Hamilton City to enable a comprehensive, integrated conclusion to be reached as to the nature (industrial vrs residential) and extent of future zoning in this wider area.

28. Whilst questions of scope are ultimately a matter for legal interpretation, in my view the submission is specific as to the geographic extent of the relief sought. A FUZ over just the submitter's land would be a piecemeal 'spot zone' and would not result in or facilitate the more comprehensive assessment of the wider area necessary to deliver a connected and coherent future urban form. Ms Barry-Piceno identified in legal submissions⁴ that additional scope may be able to be found in the relief sought by Hamilton City Council in relation to the Chapter 4 urban growth provisions. I would simply note that Hamilton City Council have provided evidence by Ms Galt to this hearing explicitly opposing the relief sought by Hounsell Holdings. It therefore seems to me to be something of a long bow to rely on scope being found in the submission of a party that is explicitly opposing the relief sought.
29. I understand from the submitter's hearing presentation that a key outcome sought by the submitter is that future urbanisation potential is protected whilst the more strategic processes run their course over the next few years. In my view the identification of a FUZ is primarily based on a conclusion that urbanisation of the area is suitable in principle and gives effect to the higher order documents. As a consequence of that finding, the rule package includes provisions to preserve development potential whilst a more detailed plan change is developed, site investigations undertaken, and servicing constraints resolved. In short, the 'preservation of potential' function is as a consequence of the primary finding that the land is suitable in principle for urbanisation. The FUZ is not intended to be used as a tool to preserve potential whilst the strategic 'in principle' merit of a block is resolved.
30. If this 'in principle' assessment is progressed through the Future Proof, HBA, and HUGS processes, then whilst it may take 5 years, the fragmentation risk is for a relatively short period of time. I note that the submitter's landholdings are held in four titles. With a total area of some 142 ha, then the Rural Zone subdivision provisions recommended in Hearing 18⁵ would enable 1 lot per 40ha, plus 1 'child lot' for every lot over 40 ha. Boundary adjustments could be undertaken to consolidate the existing 4 lots into 3 lots over 40 ha, thereby enabling a further 3 x 1ha lots to be created, giving 6 in total. I do not consider the addition of 3 x 1ha lots in the context of a 142ha landholding to represent a fragmentation risk that is so severe as to warrant protection through a FUZ zoning, in advance of the more strategic merit of the site being confirmed through the strategic processes currently underway.
31. Ms Barry-Piceno noted that the submitters are well resourced, experienced, and used to taking a long-term view of development potential, with reference to the 25 year period taken to deliver Papamoa provided as an example. Given such experience and long-term perspectives, the fragmentation risk is further reduced, especially if the developers are planning to actively engage with strategic planning processes over the next few years.

⁴ Paras 11-12, Ms Barry-Piceno legal submissions

⁵ S42a report by Ms Katherine Overwater, dated 25th August 2020

32. I accept that in the long term the submitter site and surrounding landholdings between Horotiu and Hamilton City's territorial boundary may ultimately be urbanised, and could in time form a coherent, logical, and connected expansion of the Hamilton urban environment following consideration of the wider landuse patterns between Horotiu and Hamilton. In the meantime, and pending the outcome of strategic planning processes that are currently underway, I consider the retention of the Rural Zone to be more appropriate than a FUZ spot zone over the submitter's landholdings.