

**BEFORE THE HEARING COMMISSIONERS
WAIKATO DISTRICT COUNCIL**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of hearing submissions and further submissions on the
Proposed Waikato District Plan

**OPENING SUBMISSIONS FOR DIAMOND CREEK FARM LIMITED
2 October 2019**

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OPENING SUBMISSIONS FOR DIAMOND CREEK FARM LIMITED

Introduction

- 1 These opening submissions are made on behalf of Diamond Creek Farm Limited (“**DCF**”) and concern its submission on the Proposed Waikato District Plan (“**PDP**”).
- 2 These opening submissions will:
 - (a) Provide an overview of the submission and relief sought by the DCF;
 - (b) Suggest rezoning to Country Living Zone (“**CLZ**”) with the requirement for a Structure Plan of a larger area as a pre-condition to subdivision;
 - (c) Address issues in terms of the PDP and s 32 reports; and
 - (d) Demonstrate the suitability of the DCF’s land for rezoning.

Overview of the submission and relief sought

- 3 DCF made a submission (#387) on the PDP in relation to the area of land located on State Highway 23 at Te Uku, with the legal description of Pt Lot 1 DP 23893, Lot 4 DP 437598 and Allot 218 Parish of Whaingaroa (“**property**”). The site is located within the Rural Zone. The property is 43 hectares in area and forms part of the settlement of Te Uku. It is located on the northern side of State Highway 23 (“**SH 23**”).
- 4 The village of Te Uku is located to the west of the subject property and comprises a church, a café, a petrol station and general store, a hall and the local primary school.
- 5 The surrounding properties within the settlement of Te Uku comprise a mixture of rural and rural-residential size allotments that do not conform with any planned rural residential development.
- 6 In our submission, the subject property is well suited to rural lifestyle living and the site should be rezoned to CLZ. The property almost

adjoins the village and meets the objectives and policies in the PDP that favour residential development and growth in and near villages and towns.¹ The property provides the opportunity for a rural residential lifestyle in a location already served by a primary school, regular bus service and which is close enough for commuting to Hamilton without compromising the growth of Hamilton or the Transport Corridor to Auckland.

- 7 This is proposed on the basis that the submitter also owns over 200 hectares of land located directly on the opposite, southern side of SH 23 to the south. The submitter currently farms the two properties as one unit but is finding that increasingly difficult due to the effects of SH 23 separating the farm. The overall size of the subject property, along with the topography of the site and the location of streams and wetland areas restricts the use of the site as a separate and single farming unit.
- 8 In addition, the DCF is very aware of the implications for farming in the Waikato from Plan Change 1 (“**PC1**”) to the Waikato Regional Plan, the National Policy Standard (“**NPS**”) for Freshwater Management, and the Proposed National Environmental Standard (“**NES**”) for Freshwater. The property is not within the scope of PC1 but Waikato Regional Council has been very open about its intention to roll out the controls in PC1 aimed at managing and reducing contaminants to water into the wider region.
- 9 The DCF land currently supports dry stock production. Its use has a low nitrogen output and therefore could not be intensified if PC1 was to apply. Its land use could not be changed to dairying or vegetable growing, both of which would be non-complying under PC1.
- 10 Quite apart from the land use issues, DCF faces logistic problems with trying to intensify the use of the property. There is no practical mechanism for easily moving the stock from one side of SH 23 to the other and it is not economically viable on a site of only 43 hectares to duplicate the yards and other infrastructure needed on the north side of the farm to make it productive.

¹ Objective 4.1.2 “Future settlement pattern is consolidated in and around existing towns and villages in the district.” Objective 5.6.1 “Subdivision, use and development in the Country Living Zone maintains and enhances the character and amenity values of the zone.”

- 11 DCF has already undertaken some subdivision of lifestyle blocks (as allowed under the Operative District Plan (“ODP”) in the rural zone and is enhancing wetland areas in and around those new blocks. Those blocks were completed for sale recently and there is strong interest from purchasers which the real estate agent advises is due to the location, proximity to SH 23 and rural outlook.
- 12 DCF proposes to continue environmental enhancement along the Matakotea Stream which runs through the property and has visions of a walkway through the development that would facilitate local walking opportunities, particularly to and from the school, store and café.
- 13 The rezoning of the property would:
 - (a) ensure efficient use of a land resource that is increasingly becoming unproductive;
 - (b) enable the property to be developed in a more efficient and appropriate manner in accordance with the purpose, objectives, policies and provisions of the CLZ;
 - (c) enable a self-sufficient low density rural lifestyle development that is currently not provided for within this part of the district;
 - (d) ensure other more productive larger rural allotments are protected from future subdivision; and
 - (e) provide a planned alternative to ad hoc subdivision proposals that are currently occurring in the area.

Proposal to rezone to Country Living

- 14 DCF has asked for the property to be rezoned to CLZ. That request is modified to propose a pre-condition for a structure plan showing how the development would best serve Te Uku settlement as a whole. The submitters acknowledge there is a need for this development to be integrated into the village with the needs and potential of the existing community taken into account. While DCF can see the very many advantages of the proposal the directors acknowledge that:
 - (a) consultation with local iwi representatives has not been completed;
 - (b) consultation with the wider community is still at an early stage;

- (c) necessary planning needs to be identified and reported;
 - (d) there is the potential for connectivity and land use opportunities that will greatly enhance the community and provide for sustainable management in light of current infrastructure and facilities. These opportunities need to be investigated with appropriate consultation undertaken.
- 15 DCF has initiated the following expert investigations:
- (a) Transportation
 - (b) Landscape and design
 - (c) Stormwater and land use capability
- 16 In the period until the substantive hearing (the final quarter of 2020) DCF will undertake the necessary consultation to support the rezoning request and to shape the preparation of a Structure Plan for the area.

Issues identified in the PDP

- 17 It is submitted that there are a number of problems with the PDP in terms of its provision for rural residential development within the District. These submissions deal with each of those problems.

Absence of a Growth Strategy

- 18 There is a lack of growth planning in Waikato District and thus a lack of provision for CLZ zoning around existing villages. Unlike either Waipa District Council or Taupo District Council (for example) there is no long term growth strategy planning². Instead, Waikato District Council has relied on the Futureproof Strategy for its growth planning.
- 19 Futureproof does not pretend to identify the specific sites where rural residential development can or should occur. Futureproof doesn't really deal with rural residential development at all. Instead, Futureproof focusses on the places where there can be increased urban growth and proposes indicative limits for certain villages close to Hamilton. In relation to indicative village limits, it states:³

² Compare Taupo TD2050 and Waipa 2050.

³ See p.33, Futureproof Strategy Planning for Growth, November 2017

The expectation is that land within an indicative village limit may be developed to a rural-residential density only unless reticulated wastewater is available, with a single commercial centre providing for the daily convenience needs of residents in the immediate area. [I]t is intended to further investigate whether it is desirable to select one or two villages and prioritise these for future growth and servicing. This approach would see future development being concentrated in one or two existing villages (including Te Kowhai) rather than being scattered across a number of areas.

- 20 The s 32 report for Strategic Direction and Management of Growth ("Strategic/Growth) refers to Objective 4.1.2 "Future settlement pattern is consolidated in and around existing towns and villages in the district." That Objective appears to be one of the few (perhaps only) which refers to the identification of appropriate locations for rural residential development. While the s 32 report (and Futureproof) is clear about the locations for future urban development, there is no commentary about planning for rural residential options.

- 21 Action point 8 in Chapter 11 of the Futureproof Strategy reads:

Examine in further detail, during Phase 2 of the Strategy update, the growth allocated to rural villages from both a capacity and a timing perspective.

Futureproof has now entered Phase 2, but it must rely on information provided at least in part by the districts themselves. Waikato district has not done that research and Futureproof does not appear to have made any further submissions on the PDP. Futureproof did lodge an original submission in which it opposed provisions to allow expansion in Te Kowhai without a structure plan process and the potential for the fragmentation of land within the Urban Expansion Area around Hamilton.

- 22 The s 32 report for Strategic/ Growth⁴ notes that "[c]onsolidating growth in planned locations also means that urban growth can be avoided in more sensitive locations maintaining valuable productive rural land." However, the s 32 report for the CLZ has a complete absence of any analysis of where the CLZ should be extended or even maintained.

⁴ p.69

Planning for a Country Living Zone

23 The s 32 report for the CLZ notes:

Economic: A significant economic benefit is that the CLZ provisions may create development potential on land that may be uneconomic to use for rural purposes. A further economic benefit of directing rural lifestyle activities to the CLZ is that it minimises the potential for sensitive land uses to become established in the rural area, which may affect the operation of established rural land uses.

24 DCF agrees with that statement. The difficulty is that there doesn't seem to be any study of the district's villages to identify where such rural lifestyle activities should occur. Instead the sole focus has been on appropriate locations for urban intensification.

- (a) No mechanisms to ensure rural residential in a consistent and planned way;
- (b) Waipa District Plan has TDRs which enables rural lots to remain in larger land holdings but to sell the development right to landowners in areas where rural residential is preferred, i.e. on low class soils, near villages, near gullies etc.

25 A review of the PDP shows that the only new areas for CLZ is in and around Taupiri. There do not appear to be any new areas zoned for rural residential lifestyle living outside of the growth corridor.

26 The Market Economics report titled "Housing Development Capacity Assessment 2017"⁵ comments that:

The Country Living Zone accounts for around half of the plan enabled infill capacity, predominantly consisting of larger lots around the edge of existing urban settlements and the larger lifestyle properties stretching along State Highway 1 (with the greatest share within the area around the edge of Hamilton City).⁶

⁵ Appendix 2.2 to the s 32 Report for Strategic Direction and Management of Growth

⁶ M.E Housing Capacity Report page 4.

Further, the M.E report states that “[a]round half of the capacity for both subdivision (50%) and redevelopment (47%) occurs within the Country Living Zone.”⁷ That suggests a significant reduction in the planned CLZ and there appears to be no corresponding increase in other parts of the district to provide that mix of residential options.

- 27 The s 32 report Strategic/Growth refers to the assessment criteria to be associated with servicing new lots and subdivisions as leading to “a more diverse demographic range” and providing “housing choices in a range of locations.”⁸ There doesn’t appear to be any analysis or plan for how that might occur in a planned way to replace the rural residential lifestyle options within the CLZ that have been identified for more urban intensification.
- 28 Most of the CLZs in the district are located within the Auckland-Hamilton Growth Corridor. Work on that Corridor was undertaken concurrently with development and notification of the PDP and its impact has not therefore been taken into account in the PDP. In our submission it is entirely appropriate that the land within that Corridor should make the most of the transportation infrastructure with a focus on industrial, commercial and urban development. It doesn’t seem to be a sensible location for low density rural residential development.

Ad hoc rural residential subdivision

- 29 Under the PDP, general subdivision in the Rural Zone is a restricted discretionary activity provided it complies with the following conditions:
- (i) The Record of Title to be subdivided must have issued prior to 6 December 1997;
 - (ii) The Record of Title to be subdivided must be at least 20 hectares in area;
 - (iii) The proposed subdivision must create no more than one additional lot, excluding an access allotment.
 - (iv) The additional lot must have a proposed area of between 8,000m² and 1.6 ha;
 - (v) Land containing high class soil (as determined by a Land Use Capability Assessment prepared by a suitably qualified person) must be contained within the boundaries of only two lots as follows:
 - A. one lot must contain a minimum of 80% of the high class soil; and
 - B. the other lot may contain up to 20% of high class soil.

⁷ M.E Housing Capacity Report page 50.

⁸ Section 32 Report Strategic/Growth page 85.

- 30 The survey firm engaged by DCF, Surveying Services Ltd, has produced the **attached** sketch plan that shows the pattern of existing lifestyle blocks and the potential for further subdivision. That plan shows the proliferation of small lots in the area already. While the standards encourage the use of land with lower productive soils, there is no coordinated or planned pattern to rural residential development in the district. The key to the sketch plan is as below:
- (a) Lots with same colour, i.e. green, red, blue = land owned by same owner
 - (b) BR = Boundary relocation
 - (c) ✓ = land can be subdivided in small rural lot, 1 per title
 - (d) X = can't do anything
- 31 The absence of planning for new CLZs generally is to be contrasted with the operative Waipa District Plan. In Waipa, there is planned future low density large lot residential development provided for in Ngahinapouri, Ohaupo, Pirongia and Te Miro (for example). Waipa has incentives to retain larger rural lots by enabling transferable development rights, where smaller lots can be created recognising that residential value of larger and older lots to the landowner, but transferred to a location with lower productivity soils and preferred lifestyle development potential. The criteria for the location of the transferring lot are spelt out in the district plan.
- 32 Te Uku is an ideal location for a planned CLZ. It has:
- (a) An existing village;
 - (b) Rural and rural residential community,
 - (c) Transport links to both Raglan and Hamilton,
 - (d) Proximity to the educational, commercial, health and community services provided by Raglan, which is an urban growth node; and
 - (e) The existing land use near the village is not economically or environmentally sustainable.

The Country Living Zone

33 The CLZ has one objective:

5.6.1 Objective

Subdivision, use and development in the Country Living Zone maintains or enhances the character and amenity values of the zone.

In our submission the DCF proposal will ensure that objective is met and will also support the relevant policies for the zone.

- 34 There are no growth-related objectives or policies that identify the values that are supported or opposed for planned rural residential development in the PDP. Rather, the policies and rules focus on the effects of the subdivision outcomes that can occur randomly within the rural zone. We say randomly because the fragmentation pattern depends not on any planned identification of appropriate locations for rural residential lots but rather on where there are titles of a suitable size and age that do not contain high quality soils. The outcome has been and will continue to be a random process or rural fragmentation that does not result in sustainable growth that supports existing schools, transport networks and villages.

Submissions and Future Submissions

- 35 There are only 2 further submissions in respect of the DCF submission: from Waikato Regional Council and from Mercury NZ Ltd. Both of those submissions are in opposition.
- 36 There is a submission from Sharp Planning Solutions Ltd (submitter 695) requesting that an area of land be re-zoned to Village Zone at Te Uku. DCF did not make a further submission in respect of the Sharp submission but considers that Te Uku is more appropriate for rural residential lifestyle development given the character of the existing environment. Sharp has not made a further submission in respect of DCF.
- 37 In respect of the Waikato Regional Council submission, we note that WRC opposed over 100 submissions seeking any form of re-zoning. Essentially WRC has taken the approach that any rezoning will be

contrary to the Waikato Regional Policy (“WRPS”) Policy 6.17 and method 6.1.5.

38 WRPS Policy 6.17 reads:

Management of rural-residential development in the Future Proof area will recognise the particular pressure from, and address the adverse effects of, rural-residential development in parts of the sub-region, and particularly in areas within easy commuting distance of Hamilton and:

- a. the potential adverse effects (including cumulative effects) from the high demand for rural-residential development;
- b. the high potential for conflicts between rural-residential development and existing and planned infrastructure and land use activities;
- c. the additional demand for servicing and infrastructure created by rural-residential development;
- d. the potential for cross-territorial boundary effects with respect to rural-residential development; and
- e. has regard to the principles in section 6A.

39 In our submission providing for rural residential development in Te Uku in conjunction with a further structure plan process is not contrary to Policy 6.17, which does not prevent further rural residential development. Rather, the policy requires consideration of the matters set out. There are other policies that contemplate increased residential development in the region in a planned way, such as Policy 6.1.7. In our submission WRC should be most concerned at the lack of planning for rural residential development in the district as part of the PDP which instead allows for haphazard creation of 8000m² lots wherever there are lower quality soils and older titles.

40 WRPS policy 6.1.7 reads:

Territorial authorities should ensure that before land is rezoned for **urban** development, urban development planning mechanisms such as structure plans and town plans are produced, which facilitate proactive decisions about the future location of urban development and allow the information in Implementation Method 6.1.8 to be considered.

41 Policy 6.1.7 is about urban development. The WRPS defines urban as:

Urban – a concentration of residential, commercial and/or industrial activities, having the nature of a city, town, suburb or

a village which is predominantly non-agricultural or non-rural in nature.

42 In our submission re-zoning to accommodate a CLZ in Te Uku is not really urban development, especially when one considers that the PDP has a specific Village Zone category. However, DCF is proposing that a structure plan would be prepared before the area to be re-zoned could be developed any further. That would satisfy Policy 6.1.7.

43 Implementation method 6.1.5 reads:

Rural-residential development should be directed to areas identified in the district plan for rural-residential development. District plans shall ensure that rural-residential development is directed away from **natural hazard areas, regionally significant industry, high class soils, primary production** activities on those high class soils, electricity transmission, locations identified as likely renewable energy generation sites and from identified **significant mineral resources** (as identified through Method 6.8.1) and their identified access routes.

44 The DCF proposal fills a gap left by the PDP in that there has been no new planning for the replacement of rural residential zoned land that has been identified for infill urban development. The land at Te Uku meets almost all of the criteria in 6.1.5. To date the land capability survey has not been completed. We note that it will be extremely difficult within the Waikato region to find land that meets all of the criteria above and is located around an existing village with reasonable transport links and with a rationale that would attract potential residents.

45 WRC also opposes submissions that propose introducing transferable development rights into the PDP. That opposition points to a blanket opposition to any form of increased rural residential development in the district and blindness to the fragmentation that can occur with the rules as they exist at present. WRC cannot ignore the predicted growth figures for the region or the fact that people do and will continue to want opportunities for rural lifestyle living within commuting distance from their workplaces. In our submission it is better to plan for that rather than allowing it to occur randomly.

- 46 The Mercury NZ further submission is one of 489 opposing various proposals by submitters. It is remarkable that Mercury managed to find any submissions to support and that list is considerably shorter. The list of submission points opposed by Mercury includes 481 submission points from WDC alone.
- 47 It appears that Mercury opposes the PDP process for lack of natural hazard assessment generally and opposes any intensification of use in particular. The DCF proposal would involve natural hazard assessment at the time of structure plan development. There is no obvious reason why the site should be subject to a natural hazard. It is not close to the sea or a significant watercourse. It is relatively flat and any potential for liquefaction would be identified and can be accommodated with building design controls.
- 48 It is relevant that NZTA did not provide a further submission in opposition to the DCF proposal and nor did Waikato District Council. NZTA made 136 further submissions including one in support of the CLZ mapping as notified.

Conclusion

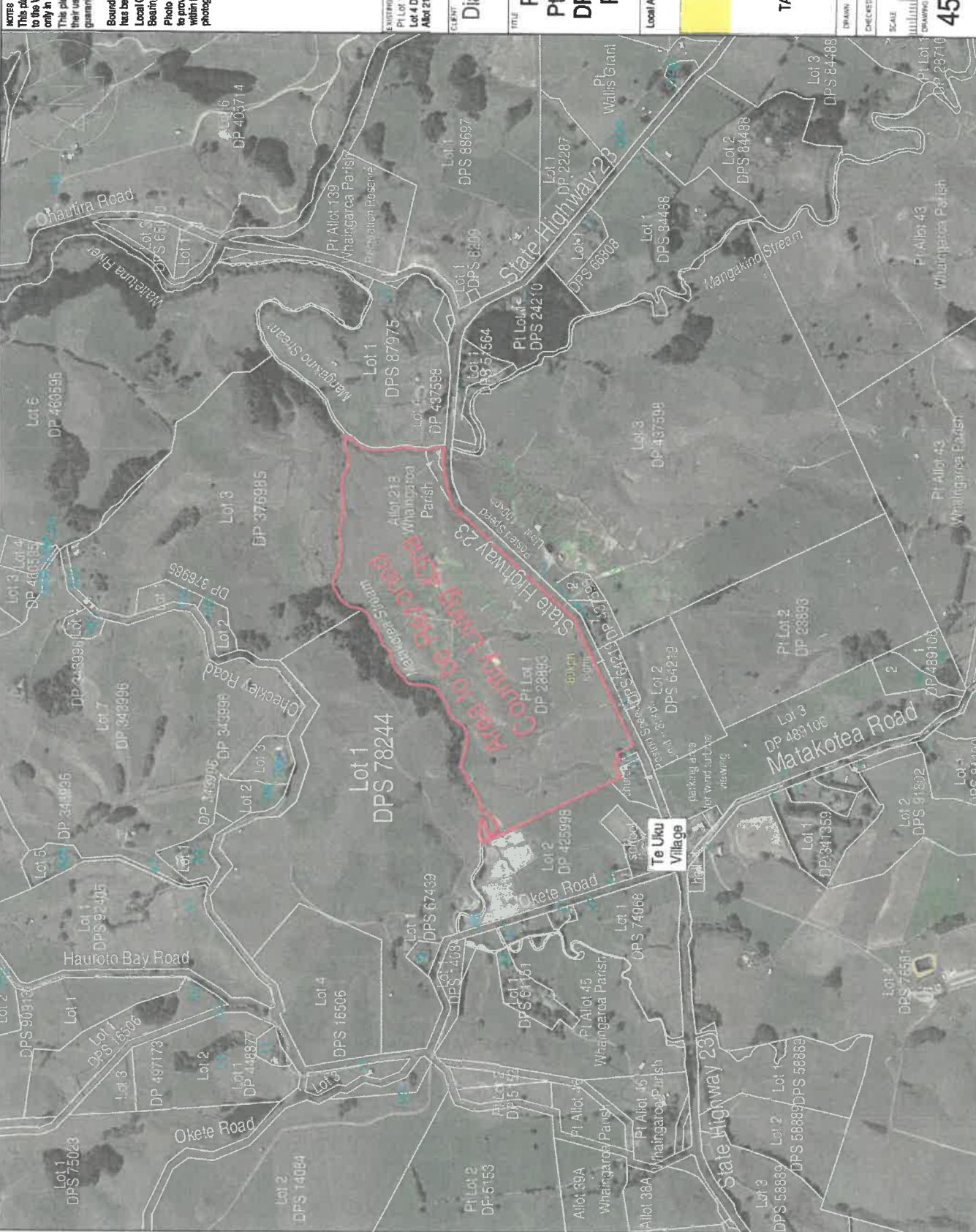
- 49 In conclusion:
- (a) The DCF proposal provides for planned rural residential development around an existing village that would be consistent with policies in both the PDP and the WRPS.
 - (b) DCF proposes that a structure plan process would be required before subdivision could be approved.
 - (c) DCF has commenced consultation within the community and with council, iwi and other stakeholders with interests in the area.
 - (d) DCF will consult with both further submitters before the substantive hearing.
 - (e) Investigations have been commenced to support the proposal as being worthy of consideration pending a full structure plan process. The results of those landscape, stormwater and transportation investigations will be provided as expert evidence at the substantive hearing.

- (f) DCF seeks feedback from the Hearings Panel regarding any additional information that would assist with explanation and/or decision making in relation to the DCF proposal.



Dr J B Forret

Counsel for the submitter



NOTES

This plan has been prepared to accompany a submission to the Waikato DC Proposed District Plan. It is to be used only in conjunction with the submission to Council.

This plan has been prepared for the client named, for their use only and for the purpose requested. No guarantee is given or implied to other parties or for other uses.

Boundary data taken from Landonline database and has been determined to be survey accurate.

Local Coordinate Datum: Māori Datum 2000.

Bearings in terms of Geodesic Datum 2000.

Photo (if visible) is an uncorrected photo and is used to provide background information only. Elements within the photo may appear out of place due to photographic distortion. Date of Photo 11-03-16

EXISTING TITLES

Pt Lot 1 DP 23893, CFR SA1205778
Lot 4 DP 437598, Part CFR SA1205778
Allot 218 Whaingaroa Parish, CFR SA1205778

CLIENT

Diamond Creek Farm Ltd
SH 23, Te Uku

TITLE

Proposed Rezoning of
Pt Lot 1 DP 23893, Lot 4
DP 437598 and Allot 218
Parish of Whaingaroa

Local Authority: Waikato District Council
Surveying Services Ltd, 2018

Surveying Services
THE DEGREE OF PRECISION
TAURANGA, HAMILTON, PAEROA
0800 BOUNDARY (0800 288 632)
www.surveyingservices.co.nz

DRAWN: SALZ
CHECKED: JMR
APPROVED: DAL

DATE: 03/10/2018

SCALE
1:10000 (A3)
Only to scale if printed at A3 size

4533B.04 Rezoning
SHEET 1 OF 1

