

Before the Hearing Panel

Under the Resource Management Act 1991

In the Matter of the Waikato District Council Proposed District Plan -
Hearing 25: Zone extents

And Rezoning proposals by Havelock Village Limited and
Rainbow Water Limited in Pokeno

**First memorandum of counsel on behalf of by Yashili New Zealand Dairy
Co Ltd (further submitter #1086) regarding framework assessment
approach**

Date: 9 March 2021



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MAY IT PLEASE THE PANEL:

Introduction

- 1 The purpose of this memorandum is to respond to the Panel's direction of 5 March 2021 on behalf of Yashili New Zealand Dairy Co Ltd (**Yashili**) (further submitter #1086).
- 2 As set out in the further submissions filed by Yashili, it is generally supportive of the residential zoning proposed by Havelock Village Limited (#862) and Rainbow Water Limited (#205) through their respective submissions. This is on the condition that any rezoning includes an appropriate buffer zone/interface between the proposed residential development and the industrial zone in which Yashili currently operates and intends to expand.
- 3 As such, Yashili's interests in the matters raised by Mr Fuller in his memorandum of 4 March, and subject to the Panel's direction of 5 March, are limited. However, Yashili does remain interested in the outcome of the issue.
- 4 In a comprehensive plan review process such as this, it is inherent that the Panel is going to pick winners and losers in terms of the underlying zoning of land (and therefore its development potential and value) through its decision. In order to do so in a robust and fair way, the Panel must apply the appropriate statutory tests. The question raised is whether the Council's proposed approach to assessment conforms with the statutory requirements.

Yashili's position on the 3 lens approach

- 5 It is agreed that the 3 lens approach set out in the Council's section 42A Framework Report (**Framework Report**) is potentially controversial. This is primarily due to the order in which the Framework Report proposes to assess the zoning proposals against relevant criteria, and the assumptions made that the notified provisions are the most appropriate.

- 6 If the lens 1 assessment is applied in the way Mr Fuller interprets it, the 3 lens approach both diminishes the weight to be given to the relevant higher order direction in both the regional policy statement and national policy statements and elevates the notified version of the proposed Plan beyond what is appropriate.
- 7 The statutory tests, which are the subject of settled case law (as referred to by Mr Fuller), should be applied by the Council in assessing the merits of the proposed rezoning sought through submissions. Caution should be exercised before the Council departs from that approach.
- 8 The Council in its area specific section 42A reports, and the Panel in making its decisions on the submissions, should be taking a coordinated approach to the relevant submissions. It was anticipated that the Framework Report would provide certainty as to how the Council was to approach this issue within the bounds of the required statutory assessment. From recent communications, it is evident this certainty has not been provided, although the required certainty may come through the area specific section 42A reports themselves.
- 9 When assessing the submissions seeking for specific land to be rezoned, the assessment should first consider the need for any rezoning in the district (ie assess the land use requirements and any shortfall) and once that is established, where that rezoning should occur (both from a site suitability perspective, but also following consideration of what is being lost to provide for that rezoning) which includes, in part a spatial planning exercise. For example, is the additional supply required to all go to one or two townships or is it more equitably shared around all of the townships with each individual development area sought by submitters being scored using a consistent set of criteria with the most appropriate being favoured and the worst being rejected?
- 10 If following that exercise there is both an established need for an additional type of land supply required and appropriate land for that type within the scope of submissions, the Panel will need to determine which land is the most appropriate to rezone. Where there is less demand for

rezoning than that required, the Panel would not need to pick a loser and it could rezone all the relevant land.

- 11 The potential issue with the lens 1 approach arises where the existing objectives and policies in the Plan are used as a filter to argue against rezoning on a principled basis without first considering whether additional land supply of the type sought is required, and if so, where that should go and whether the proposed location is the most appropriate.
- 12 However, if the intention for the assessment proposed in lens 1 is to simply determine whether the land subject to the rezoning request is suitable for the rezoned purpose - ie is a proposed residential zone at that location consistent with the objectives, policies and outcomes for a residential area within the Plan, then it may not be a significant issue. The Council's assessment needs to start somewhere and, putting aside submissions seeking to amend the objectives, policies and rules of any given zone, assessment of an area against the intent of the zone could well be that starting point.
- 13 For example, if the higher order analysis confirms that additional residential land is required, and even if the proposals to rezone to residential land would still result in a shortfall if all are granted, that does not necessarily mean that each area subject to a rezoning proposal is suitable for a residential zone outcome. The Panel still needs to consider whether that zone, at that location, is the most appropriate in accordance with the statutory tests.
- 14 Equally, in determining the ultimate issue as to whether a rezoning proposal is the most appropriate, in accordance with the statutory requirements, the Panel will need to assess that against the objectives and policies of the Plan that they determine to be the most appropriate. The Panel is not making its decision on any rezoning proposal in isolation from its decisions on the objectives and policies within the Plan. In the absence of any indication from the Panel about such amendments at this stage, it is appropriate that the Council's assessment addresses the provisions as notified.

Conclusion

15 While there is some concern with the approach proposed in the Framework Report, the significance of that concern will only become evident following receipt of the various submission specific section 42A assessments.

Date: 9 March 2021



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