

SECTION 42A REPORT

Rebuttal Evidence

Hearing 25

Zone Extents – Lake Kimihia

Report prepared by: Robert van Duivenboden

10 May 2021

Waikato



DISTRICT COUNCIL

Te Kaunihera aa Takiwaa o Waikato

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I Introduction

I.1 Background

1. My full name is Robert John van Duivenboden and I am a Senior Policy Planner employed by Kāhu Environmental (formerly Perception Planning Limited). I have been contracted by Waikato District Council to write the section 42A report for Hearing 25: Zone Extents – Lake Kimihia.
2. My qualifications and experience are set out in the introduction to my s42A hearing report together with my statement to comply with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014.
3. As a result of rebuttal evidence from Allen Fabrics Limited (AFL) which is the owner of the subject property and proponent of this rezoning request, I recommend rejection of some submission points received by submitters, other than AFL. This does not change my overall support for the introduction of a new Lake Kimihia Zone. Some further technical information concerning flood risks and minimum floor levels, will be provided by AFL at the hearing to support this zone request.

2 Purpose of the report

4. The purpose of this report is to consider the rebuttal evidence filed by submitters. I do not address every point raised in evidence. I respond only to the points where I consider it is necessary to clarify an aspect of my earlier s42A report, or where I am persuaded to change my recommendation. In all other cases, I respectfully disagree with the evidence, and affirm the recommendations and reasoning in my s42A report.
5. In the directions of the hearings panel dated 12 May 2020, paragraph 5 states:

5. The Hearings Panel has determined that the timetable for the exchange of evidence set out in the First and Second Directions should be amended for the hearing of the General Rezoning Submissions in order to first require the respective rezoning proponents to provide their evidence (including all supporting technical information), and for this to be followed, sequentially, by any evidence in opposition, and then the Council's section 42A report(s). This will enable all information (in support of and in opposition to each rezoning proposal) to be evaluated by the section 42A report author when preparing their report and recommendations.
6. In respect to the filing of rebuttal evidence from submitters and Council, paragraphs 12 (e) and (f) of the panel's directions state:

*(e) Any rebuttal evidence by the proponents and opponents of the rezoning is to be filed no later than **10 working days prior to the commencement of the hearing;***

*(f) The Council is to Reply section 42A reports to address matters arising in the evidence of the parties, no later **than 5 working days prior to the commencement of the hearing;***
7. While Hearing 25 Zone extents begins on 17 May 2021, the submissions regrading Lake Kimihia are scheduled to be heard on 3 June 2021.

8. Rebuttal evidence was filed by Allen Fabrics Limited [584] for this topic.

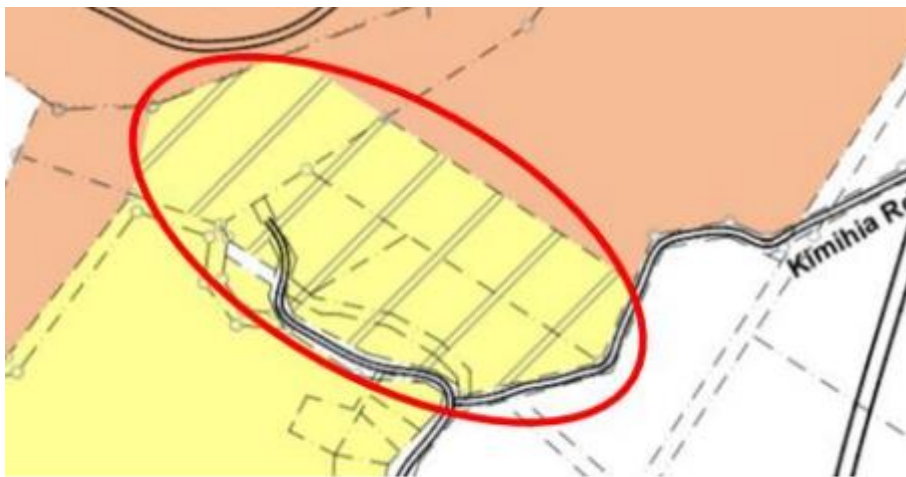
3 Consideration of rebuttal evidence

9. Mr Andrew Cumberpatch (Boffa Miskell Limited) filed rebuttal planning evidence on behalf of Allen Fabrics Limited (AFL) in support of their request to apply a new Kimihia Lakes Zone to their property.
10. In summary, Mr Cumberpatch broadly agrees with my section 42A recommendations but provides additional helpful comments and clarification in respect to the site area and extent of rezoning, the table of submission points and recommended amendments to provisions for the new zone. He also helpfully provides a summary of the outcomes resulting from recent engagement with the 'Kimihia Lakes project team' and submitters. I address these matters under the following headings.

3.1 Site area and extent of zoning

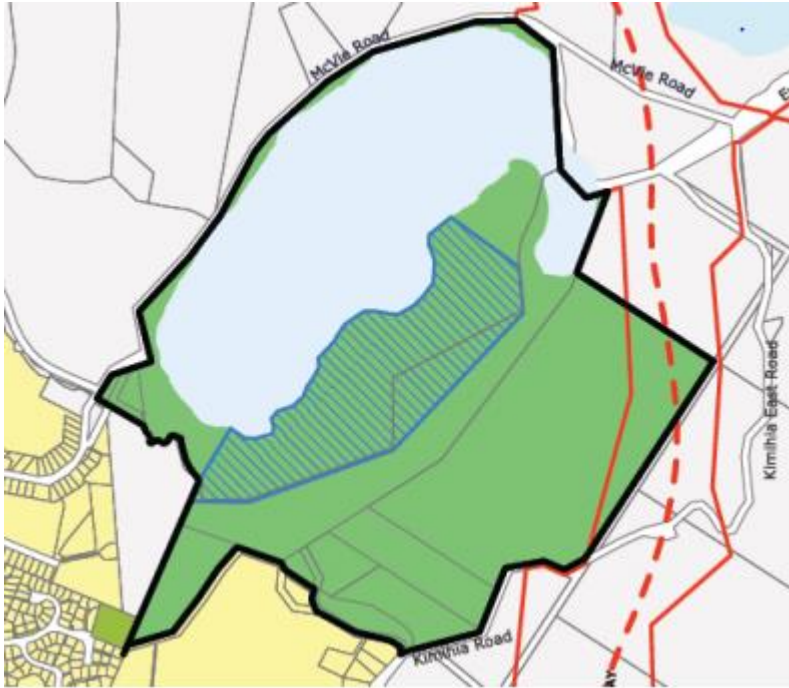
11. Paragraphs 21 and 22 in my section 42A hearing report refer to AFL's confirmation that they now seek the deletion of a proposed residential precinct from the southern area of their property. This precinct was requested in their original submission.
12. However, the following map in AFL's submission also sought to rezone an adjacent area (circled in red on the map below) from Rural to Residential.

Figure 1: Deletion of requested residential precinct



13. While Mr Cumberpatch's evidence confirms that this identified area is no longer sought for rezoning to Residential, it remains subject of the proposed Kimihia Lakes Zone which is outlined in black in this next map.

Figure 2: Extent of requested Kimihia Lakes Zone



14. Mr Cumberpatch considers that it is important to clarify this point as this southern precinct area is located within the geographic area subject of AFL's submission, however it was Council that proposed the Residential zoning, and not AFL.
15. Therefore, no land is sought for rezoning by AFL beyond what was indicated in the notified PWDP. Mr Cumberpatch confirmed that AFL support the Residential Zone as notified for area marked X on the following map.

Figure 3: Residential Zone as notified in the Proposed District Plan



3.2 Zone boundaries

16. My section 42A report requested clarification from AFL as to the eastern boundary of the proposed Kimihia Lakes Zone as it relates to NZTA's Designation J19 for the Waikato Expressway. This is because the actual physical construction of this designated route has not required the full extent of designated land.
17. This matter was raised earlier in Hearing 15 (Designations) and NZTA has provided shape files to Council so that they can be used to delineate the actual physical extent of its highways/expressways throughout the district in the planning maps for the decision version of the PWDP.
18. I agree with Mr Cumberpatch that the configuration of Designation J19 shown on the planning maps in the notified PWDP is outdated and that the actual physical construction presents no difficulties in respect to the proposed new zone and developments within it.

3.3 Table of submission points

19. Appendix I to my section 42A hearing report contains a table of all submission points, the decision requested by submitters, and my recommendation in respect to those.
20. My recommendations to accept some of these submission points (184.11, 260.11, 335.12, 584.11 and 880.4) are inadvertently based on the earlier proposal to rezone a southern part of AFL's property from Rural Zone to Residential Zone, as discussed earlier. However, as a result of Mr Cumberpatch clarifying that AFL is not seeking any Residential zoning beyond that indicated in the notified PWDP, I now recommend that these identified submission points be rejected.
21. I also recommended accepting submission points (184.12, 260.12, 335.13, 584.12 and 880.4). These submissions also refer to the proposed Residential zoning of this same southern area. While AFL supports the notified zoning, Mr Cumberpatch considers that a recommendation on these specific submission points does not need to be made. However, while the subject matter of these submissions may not be opposed by AFL, Council is still required to provide a recommendation on every submission point received on the PWDP so that the hearings panel can decide on them. For this reason, my s42A recommendations to accept these submission points remains unchanged.

3.4 Recommended amendments to provisions for Lake Kimihia Zone

22. Appendix I to Mr Cumberpatch's rebuttal contains his updated set of provisions which are a response to the evidence provided by NZTA and Waikato Regional Council (WRC) and AFL's engagement with these two parties. The minor additions to these provisions are discussed in section 4 of Mr Cumberpatch's rebuttal and are summarised below.

New Zealand Transport Agency (NZTA)

23. Mr Cumberpatch concurs with the evidence from Mr Mike Wood (NZTA) in that the same outcome is sought by AFL, and Dave and Francisca Falconer. That is, the rezoning of the former Solid Energy Huntly East Mine from Rural Zone to a new Kimihia Lakes zoning with associated provisions. Mr Wood also confirms that the relief sought by Dave Falconer in his submission [880.4] no longer forms part of AFL's zoning proposal.
24. Mr Wood's evidence (at paragraph 10.5) confirms that NZTA is comfortable with AFL's zoning request subject to two matters relating to signage and stormwater. In the interests of working collaboratively, a meeting was held between AFL and NZTA on 1 April 2021 to discuss these matters, despite them not being specifically raised in NZTA's original submission.
25. In respect to signage, NZTA seeks the following additions to proposed Rule KLZ-R11 Signs:

- a. A new clause that places a limit of one sign on the site (to be consistent with Rule 22.2.6.1 for the Rural Zone in the notified PWDP)
 - b. A new clause that cross-references Rule 22.2.6.2 Signs – Effects on Traffic
26. Mr Wood considers these additions are appropriate in order for the new zone provisions to be consistent with the rest of the PWDP. They will also provide NZTA with an opportunity to comment on any safety aspects concerning the Huntly bypass section of the Waikato Expressway in the event of any resource consent application.
27. Given the scale of the Kimihia Lakes site and the various activities that are proposed, Mr Cumberpatch considers that a limit of one sign would be inappropriate in this instance. Concern is also raised in respect to applying a number of performance standards in Rule 22.2.6.2 to this site because they refer to site entrances and intersections and are therefore superfluous in respect to addressing safety effects on the Waikato Expressway, given that the site has no frontage or direct access to the state highway.
28. Mr Cumberpatch therefore recommends that Rule KLZ-RI I (shown in his Appendix I) be amended in this way:
- (g) *No more than one sign shall be directed at users of the Waikato Expressway and must:*
 - (i) *Not imitate the content, colour or appearance of any traffic control sign; or*
 - (ii) *Contain more than 40 characters and no more than 6 symbols; and*
 - (iii) *Have lettering that is at least 200mm high.*
29. It is understood that this rule amendment resolves Mr Wood’s concern, and I do not oppose the amendment. I note the portion of the site to which the concerns of NZTA would apply are modest, and that a rule for the whole of site would not be appropriate.
30. With regards to stormwater, Mr Cumberpatch has confirmed that a culvert has been constructed under the new Huntly section of the Waikato Expressway at a level of RL 8.2m. The invert level of this culvert, located at the north-eastern corner of AFL’s site, effectively sets the future level of the lake within the former mine pit.
31. The meeting held between AFL and NZTA on 1 April 2021 involved a discussion on downstream effects arising from potential blockage or failure of the culvert(s) that adjoin the Lake Kimihia site. AFL gave an undertaking to further investigate the flood risks and, if necessary, propose a minimum floor level for the site. Mr Cumberpatch intends to provide an update on this matter at the hearing.
- Waikato Regional Council (WRC)
32. Mr Cumberpatch notes that the references to drainage impacts in WRC’s evidence were not specifically raised in their further submission as that focused on the strategic-level rezoning of land within the H2A Corridor. However, he has responded to WRC’s comments as follows:
- (a) No residential land is proposed as part of the Kimihia Lakes Zone.
 - (b) To date, no modelling has been undertaken to determine the residual risk of flooding resulting from the possibility of a breach to the Huntly North Stopbank or overtopping in extreme events. AFL’s site is located within the Defended Area in terms of Stage 2 of the notified PWDP and this does not require any specific mitigation.
 - (c) AFL is considering a minimum floor level.
33. Mr Cumberpatch will provide further information on these matters at the hearing.

3.5 Recommendations

34. For the reasons above, I recommend that the hearings panel:

- (a) **Reject** Vera Wennekers [184.11], The Pam Fergusson Charitable Trust and Allen Fabrics Limited [260.11], Willimien Wennekers [335.12], Murray and Jennifer Allen for Allen Fabrics Limited [584.11] and Dave Falconer [880.4].

3.6 Section 32AA Evaluation

35. There are no significant matters arising from a S32AA assessment of the inclusion of proposed new rule KLZ-R11 (restriction on signage facing the Waikato Expressway users). It is concluded that the proposed rule KLZ-R11 is efficient and effective and meets the purpose of the Act. That assessment is attached as Appendix I to this document.

4 Conclusion

36. This concludes my rebuttal evidence based on evidence provided thus far. Additional information will be provided by AFL at the hearing and I am happy to answer any questions that the hearings panel may have.

Robert van Duivenboden

10 May 2021

5 Appendix I Section 32AA Evaluation

Section 32AA assessment of proposed new rule KLZ-R11 (Restrictions on signage facing the Waikato Expressway).

RMA s32AA evaluation, Proposed Signage Rule: *KLZ-R11(Signs)*.

Provisions sought to be amended	Efficiency and effectiveness in achieving the objectives of the PWDP
Additional Rule: Kimihia Lakes Zone Rule 11	Clarifies and further restricts site specific provisions, in addition to PWDP Permitted Activity signage rules. KLZ-R11 provides guidance to only the parts of the site which are in the Waikato Expressway environment.
The relevant Objectives of the PWDP	The Rule insertion proposed, is not inconsistent with the PWDP Objectives particularly Chapter 6 Infrastructure and Policy 6.5.5 (Road Safety).
Scale and significance of the proposal	Minor and positive.
Other reasonably practical options to achieve the WDP objectives/ alternative options.	The proposed “expressway facing” provision will be the most practicable option over that of a site-wide rule. The minority of the site faces the Expressway and it would be negative or less efficient to apply a site wide rule.

Costs/Benefits of new Rule	Benefits	Costs
General	The proposed signage rule both accommodates a need and constrains against negative effects on the infrastructure environment. There are no significant Social, Economic or Cultural costs. Social benefits may accrue via enhanced project success.	Costs to Council are very minor. Cost to the applicant are minor.

Reasons for selection of preferred option	There are overly restrictive general requirements and the submitter-agreed solution is considered efficient and effective.
Extent proposal is the most appropriate way to achieve the purpose of the Act	The proposal promotes sustainable management over the applying existing zoning signage rules. It does so by efficiently and effectively allowing the controlled exposure of the site to the sensitive Expressway.
Risk of acting/not acting and insufficient information	I consider council has sufficient information on which to determine and support this matter. Significant expert evidence (via NZTA Waka Kotahi drafting input) has been submitted for consideration. A risk of not acting exists, in that the land is subject to inappropriate rules for this particular site’s layout and topography.
Conclusion	The proposed zone-specific signage rule KLZ-R11 will be efficient and effective in achieving the objectives of the proposed district plan by: <ol style="list-style-type: none"> 1. Providing for Objective 6.5.2, better achieving Policy 6.5.5 (Road Safety) and do so more efficiently than alternative zone mechanisms. 2. Avoiding unnecessary constraints.

	<ol style="list-style-type: none">3. Will be appropriate for the scale and regional significance of the proposal.4. Contribute to achieving cultural, employment, economic, social and environmental benefits anticipated.
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