

**BEFORE THE HEARINGS COMMISSIONERS
WAIKATO DISTRICT COUNCIL OFFICE**

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

**SUBMISSIONS OF COUNSEL FOR IAN MCALLEY
HEARING 25 ZONE EXTENTS
12 May 2021**

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INTRODUCTION

- 1 Mr Ian McAlley (**Mr McAlley**) made a submission #368 and further submission #FS1150 on the Proposed Waikato District Plan (**PWDP**).
- 2 Mr McAlley opposes the application of the Residential West Te Kauwhata Overlay¹ (**Overlay**) on his landholding at 24 Wayside Road, Te Kauwhata (**Site**) and seeks that the Site be zoned Residential only. His submission also separately sought amendments to and/or deletion of the objectives, policies and rules that impose the Overlay over the Site. This is on the basis that the Overlay unnecessarily constrains growth and does not align with the direction of recent higher-level planning documents. His submission specifically seeks to:²

Amend the zoning that relates to 24 Wayside Road by:

Deleting the Te Kauwhata West Residential Zone and applying the Residential Zone only.
- 3 Essentially, the Overlay in the PWDP reduces the number of allotments able to be realised at the Site by nearly half of that which could potentially be realised under the Residential Zone.
- 4 If the Overlay was to be removed from the Site and substituted for the Residential Zone subdivision standards, this would remove the requirement for a proposed subdivision to achieve the average size standard of 875m², and reduce the minimum size standard from 650m² to 450m².
- 5 Mr McAlley also made a further submission (#FS1150) on the original submission made by Campbell Tyson (#687), regarding the adjoining land to the south of the site at 4 Wayside Road, being a 5.686ha site known as the “Boldero Block”. Campbell Tyson sought retention of the Overlay, but a reduction to the minimum average site size standard applying to subdivision.
- 6 Mr McAlley’s further submission supported Campbell Tyson’s relief sought insofar as it related to amending the minimum subdivision size standards, but opposed the retention of the Overlay to the Boldero Block.

¹ Also referred to variously as the “Te Kauwhata West Residential Area” and the “Te Kauwhata Residential West Area” in the PWDP.

² McAlley submission #368 page 15.

Campbell Tyson made further submission (#FS1061) supporting the relief sought by Mr McAlley.

SUMMARY

- 7 The reporting planner (Ms Macartney) has treated the McAlley submission as relating to the residential zone provisions and not a re-zoning request. That is contrary to the approach taken by the submitter and is also inconsistent with the Panel's direction at the Residential Zone hearing (Hearing 10) that the submitter should make a planning and policy argument for the changes sought.
- 8 Mr Kirkby-McLeod has argued that the Overlay relates to a defined spatial area and as such operates in the same way as a zone.
- 9 Council's Summary of Submissions records Mr McAlley's submission point (#368.34) as "Amend the Zoning of the property at 24 Wayside Road Te Kauwhata from Te Kauwhata West Residential Zone to Residential Zone".
- 10 Submission point 368.34 does not appear to have been addressed in the Hearing on Topic 10.
- 11 The s 42A report for this Topic 25 concludes, in relation to the TKL land, that Mr McAlley's submission has merit in supporting deletion of the Overlay from the planning maps. With respect, amending the planning maps is a key component of the outcomes for Topic 25 zoning changes.
- 12 We agree with Ms Macartney's comments below, which are difficult to reconcile with those of Mr Matheson and Ms Allwood in their s 42A report for Topic 10, recommending that the changes to the Overlay rules relating to the Te Kauwhata West Residential Area are not accepted. Ms Macartney comments:

39. Notwithstanding my stance on this matter, I do agree that if the overlay were to be retained, the resultant density of approximately 8 lots per hectare would not give effect to Policy 6.15 in the WRPS, as that requires a density of 12-15 lots per hectare. I therefore accept that removing the overlay would result in greater efficiencies in terms of potential residential lot yield and that this would also give better effect to the NPS-UD.

40. Both the submitter's evidence and rebuttal statements for Hearing 25 are consistent with the evidence that they filed for Hearing 10. I therefore

conclude that the merits of the submitter's section 32 analysis, which supports the deletion of the Te Kauwhata West Overlay from the planning maps and Rule 16.4.3 from Chapter 16 of the PWDP, need to be considered in the context of Hearing 10, and not this Hearing 25.

- 13 We are unclear what conclusions Mr Davey has reached in his supplementary framework report evidence in relation to the residential supply data that applies in Te Kauwhata. He seems to suggest the need for further plan changes to deal with short supply.
- 14 Given the pending legislative changes and the central government directives to allow affordable housing to meet demand, in our submission it would be imprudent to await plan changes within an uncertain and new planning framework in order to deal with an insufficiency of residential land.
- 15 Once the TKL land is developed, it will be difficult to retrofit more intensive housing development on the site. This is the opportunity to align the PWDP provisions with the higher order planning documents.

STATUTORY FRAMEWORK

- 16 In respect of the statutory framework, we adopt Appendix 1 of Ms Parham's opening legal submissions on behalf of the Waikato District Council (**Council**).
- 17 The Council must prepare and change its district plan in accordance with the matters listed in section 74(1). Section 75 sets out the requirements for the contents of district plans. The statutory framework for considering district plans and plan changes was set out in *Colonial Vineyards Limited v Marlborough District Council*.³

Part A – General Requirements

- 18 Firstly, a *territorial authority must prepare and change its district plan in accordance with*⁴ – and assist the territorial authority to carry out – its

³ [2014] NZEnvC 55.

⁴ Section 74(1) (replaced on 3 December 2013, for all purposes, by section 78 RMAA 2013).

functions⁵ so as to achieve the purpose of the Act.⁶ The functions of a territorial authority are set out under section 31 of the Act.

- 19 The district plan (change) must also be prepared in accordance with any national policy statement, New Zealand coastal policy statement, a national planning standard, regulation(s) and any directions given by the Minister for the Environment.

National Policy Statement on Urban Development

- 20 The National Policy Statement on Urban Development 2020 (**NPS-UD**) is one of the documents that needs to be considered when preparing the PWDP. The Council is categorised as a Tier 1 local authority⁷ as the district is identified as a growing region and therefore is subject to the most directive policies in the NPS-UD.
- 21 The NPS-UD directs local authorities to facilitate greater supply and ensure that planning is responsive to changes in demand, while seeking to ensure that new development capacity is enabled by councils and is of a form and in locations that meet the needs of communities and encourages well-functioning, liveable urban environments.
- 22 The NPS-UD defines an urban environment as an area of land that is intended to be predominantly urban in character and is part of a housing market of 10,000 people. It is submitted that the Site qualifies as an urban environment, as it is located within the growth area identified in both the WRPS and the Waikato District Council's growth strategy "Waikato 2070". The latter strategy considers that the population of Te Kauwhata will grow to 10,000 by the year 2070.
- 23 Mr Kirkby-McLeod's evidence sets out in full why Mr McAlley's proposal to remove the Overlay is considered to align with the objectives of the NPS-UD. Without repeating this in full, in summary the proposal will:
- (a) contribute to a well-functioning urban environment (Objective 1 of the NPS-UD) by enabling a greater density of development on land that is well positioned to provide for it, thus allowing for a more

⁵ Section 31.

⁶ Sections 72 and 74(1).

⁷ National Policy Statement for Urban Development 2020, Appendix 1 – Table 1

competitive market and allowing for greater variety in the price, type and location of housing in Te Kauwhata;

- (b) provide for choice and competitiveness in the housing market (Objective 2) and enable more people to live in an area that is near to a centre with employment opportunities and has higher than average demand for housing (Objective 3);
 - (c) develop the land in a manner that responds to the changing needs of people, communities and future generations (Objective 4). The proposed zoning of the land aligns with directives in Future Proof and Waikato 2070 strategies;
 - (d) provide for development of land in a manner that takes into account the principles of the Treaty of Waitangi (Objective 5), insofar as the proposal will be consistent with the proposed residential provisions in the PWDP through Council's consultation with mana whenua;
 - (e) be a decision regarding an urban environment that is: integrated with infrastructure planning and funding decisions; strategic over the medium term and long term; and responsive to a proposal that will significantly contribute to the housing market (Objective 6).
- 24 Mr Kirkby-McLeod's evidence also recognises Policy 8 of the NPS-UD 2020 which requires that decisions affecting urban environments are responsive to changes to plans that would add significantly to development capacity and contribute to well-functioning urban environments. It is submitted that the proposal achieves this, particularly in terms of creating the type of density that supports the viability of future improvements to public transport along the Auckland-Hamilton Corridor that incorporate Te Kauwhata.

Regional Policy Statements

- 25 In accordance with the statutory provisions in the RMA and the criteria in *Colonial Vineyards*, when preparing its district plan (change) a territorial authority shall:
- (a) have regard to any proposed regional policy statement;⁸ and

⁸ Section 74(2)(a)(i).

- (b) give effect to any operative regional policy statement.⁹

Waikato Regional Policy Statement

- 26 Mr McAlley's proposal is consistent with the relevant provisions of the WRPS, including Section 6 of the WRPS which addresses the built environment.
- 27 Significantly, Policy 6.15 of the WRPS stipulates that a gross density target of 12-15 households per hectare be sought for greenfield development in Te Kauwhata. The density provided for by the Overlay is below this target density, with an average gross of 11 households per hectare (8 net). As a result, the Overlay does not enable the outcomes sought by the.
- 28 The removal of the Overlay will enable a potential gross average of 22 households per hectare (16 net). It should also be recognised that feasibility for this density is lessened by factors such as topography of the Site. The rate without the Overlay would be consistent with that enabled by the PWDP for the majority of residential areas across the rest of the District.
- 29 While the s 42A report recommends no change to the zoning of this Site despite the current inconsistency with the objectives and policies in the NPS-UD and the WRPS, Ms Macartney's rebuttal evidence acknowledges the merits of Mr McAlley's submission points. The s 42A report recognised that inconsistency at paragraph 25 stating that the "*zone provisions resulting from TKSP are now largely outdated, particularly minimum residential lot sizes...*". Ms Macartney includes reference from the Environment Court decision on Variation 13 which sets out the purpose of the Variation; namely to provide for expansion of the Te Kauwhata Village.
- 30 The passage also quotes paragraph 53 of the decision which specifically notes that the boundaries set in Variation 13 are not seen by the Court as being a final boundary line (noting that reference in the decision was to the eastern boundary.) The Court noted that expansion in Te Kauwhata necessarily will be in the East-West direction with SH1 being the appropriate western boundary. With that in mind, there appears to be no

⁹ Section 75(3)(c).

rationale for retaining an overlay that prevents full residential development on the TKL site given the physical barriers to other expansion.

- 31 We agree with the conclusion in Ms Macartney's rebuttal evidence at paragraphs 39 and 40 that removing the overlay would result in greater efficiencies in terms of potential residential lot yield and that this would also give better effect to the NPS-UD.

Management Plans and Growth Strategies

- 32 Another general requirement in the *Colonial Vineyards* checklist is when preparing its district plan (change) a territorial authority must also have regard to any relevant management plans and strategies.

Future Proof 2017

- 33 Further to the elements of Future Proof which have been adopted in the WRPS, the Future Proof sub-regional growth strategy identifies attributes for the Te Kauwhata growth management area. It is submitted that the removal of the Overlay, to enable additional residential activity on the Site, would align with Future Proof's description of Te Kauwhata, and in particular the need to accommodate growth due to its strategic location between Auckland and Hamilton.

Waikato 2070 Growth & Economic Development Strategy

- 34 The Waikato 2070 Growth and Economic Development Strategy (**Waikato 2070**) provides a long-term plan to achieve Council's vision of creating liveable, thriving and connected communities. Waikato 2070 was adopted by Council on 19 May 2020.
- 35 Waikato 2070 recognises the potential for Te Kauwhata to have a population of 10,000 by the year 2070 and identifies several growth nodes in the area. The subject site is within a growth node where growth is anticipated in the next 1-3 years. This anticipated growth in the short term reflects the existing zoning pattern in the environment, as well as the strategy for urban growth in Future Proof and the WRPS.
- 36 The deletion of the Overlay sought by Mr McAlley is also considered to align with Focus Area 3.1 in Waikato 2070 which aims for:
- (a) the delivery of well-planned and people-friendly communities, through implementation of the regeneration of town centres and

quality in-fill development around future mass transit stations and ensuring that towns in the district offer housing choice;

- (b) the promotion of sustainable and cost-effective land-use patterns, through taking leadership and building the district to respond to climate change, staging development and being adaptable to future growth scenarios, and integrating land-use and transport to make better use of infrastructure and transport connections.

Hamilton to Auckland Corridor Plan

- 37 The Hamilton to Auckland Corridor Plan's (**H2A**) vision is to support sustainable growth and increase connectivity between Hamilton and Auckland in ways such as improving housing affordability and choices and enhancing the quality of the natural and built environments and the vitality of Auckland and Hamilton and the communities within the corridor.
- 38 The H2A spatial plan is currently in development, the purpose of which is to identify the intent for future growth over the next 100 years along the corridor.¹⁰ Crucially, the draft plan recognises Te Kauwhata as one of eleven "Main future housing and employment growth clusters" within the Corridor.
- 39 It is submitted that deletion of the Overlay will align with the aims of the spatial plan as it looks to facilitate density within an identified "growth cluster" that is well connected and will support future improvements to the strategic transport network.

Part B – Objectives [section 32 test for objectives]

- 40 The second part of the checklist in *Colonial Vineyards* refers to the need for each proposed objective in a district plan (change) to be evaluated by the extent to which it is the most appropriate way to achieve the purpose of the Act.
- 41 In accordance with Mr Kirkby-McLeod's evidence, the proposal aligns with the strategic direction, objectives and policies of the PWDP, with no discernible areas of conflict. To summarise, the proposal is consistent with:

¹⁰ Formed by the Waikato River, State Highway 1 and the North Island Main Trunk railway line.

- (a) 1.5.1(b) *Compact urban development* – The proposal will encourage growth around the existing township of Te Kauwhata, in an area that has been recognised as appropriate to accommodate urban development;
- (b) 1.5.2(a) *Planning for urban growth and development* – The proposal is located in the Future Proof settlement pattern, and will promote the consolidation of urban development within confined areas and avoid fragmentation of the rural environment;
- (c) 4.1.2 *Objective – Urban growth and development (a) Future settlement pattern is consolidated in and around existing towns and villages in the district* – The proposal is consistent with this objective given it promotes the consolidation of urban settlement around an existing town;
- (d) 4.1.12 *Policy – Te Kauwhata (a) Te Kauwhata is developed to ensure:*
 - (i) *Development is avoided on areas with geotechnical and ecological constraints* – In accordance with the consent obtained for the Site, there are no such constraints which prevent the desired form of urban development;
 - (ii) *Lakeside is the only area that provides for the medium term future growth and is developed in a manner that connects to the existing town and maintains and enhances the natural environment* – The proposal does not conflict with this subclause as it provides for immediate growth which can be undertaken in the short term.
 - (iii) *A variety of housing densities is provided for* – The proposal facilitates diversity in the form of housing density.
- (e) 5.1.1 *Objective – The rural environment (a) Subdivision, use and development within the rural area where:*
 - (i) *high class soils are protected for productive rural activities;*
 - (ii) *productive rural activities are supported, while maintaining or enhancing the rural environment;*
 - (iii) *urban subdivision, use and development in the rural environment is avoided –*

The proposal will allow for greater growth within land zoned for residential purposes. As a result, it will assist with the objective to protect high class soils from being lost to urban sprawl.

Part C – Policies and methods (including rules) [the Section 32 test for policies and rules]

- 42 Part C of the criteria outlined in *Colonial Vineyards* considers the s 32 test for policies and methods (including rules). Policies are to implement the objectives and the rules are to implement the policies.¹¹ Further, each proposed policy or method (including each rule) is to be examined, as to whether it is the most appropriate method for achieving the objectives of the district plan.¹² This includes assessing the efficiency and effectiveness of the provisions in achieving the objectives.¹³
- 43 The submission seeks to have the Overlay removed. It is submitted that this amendment would result in a method which constitutes the best way to achieve the objectives in the PWDP and this is illustrated through the analysis under Part B of the *Colonial Vineyards* criteria above.

SECTION 42A REPORT

- 44 As above, we disagree with Ms Macartney’s view that the overlay should be managed solely through the Residential Zone provisions that are the subject of Hearing Topic 10. Ms Macartney therefore has not made any recommendations on this aspect of Mr McAlley’s relief, although her views on its merits are set out in her rebuttal evidence.
- 45 It is submitted that zones and overlays are both district spatial layers and the spatial extent of overlays has not been addressed in the Residential Zone hearing topic.¹⁴ In our submission this matter logically fits within these Zone Extents proceedings and we note that Mr McAlley’s original submission seeks to have the Te Kauwhata West Residential Zone deleted from the maps. That is a request that affects zoning.
- 46 We also refer to the Panel’s directions to Mr McAlley at Hearing Topic 10 (Residential Zone) where Commissioner Mitchell said that “*the submitter*

¹⁴ See Aidan Kirkby-McLeod’s rebuttal statement of evidence at [7]

*needs to make a planning and policy argument regarding what they are seeking.*¹⁵

- 47 A number of the submission points regarding specific standards applicable to the site as a consequence of the Zone and Overlay were addressed in Hearing 10. However, the actual application and spatial extent of the Overlay was not addressed. Given that the Overlay effectively creates a variation (a sub-zone) of the Residential Zone, the extent of the Overlay is a matter that can rightly fall within the ambit of these provisions.¹⁶
- 48 The Operative Te Kauwhata West Living Zone (which is carried through to the PWDP in the form of the Overlay) was established through Variation 13 to the Operative District Plan. The purpose of Variation 13 was to give effect to the Te Kauwhata Structure Plan. Since then, the WRPS has undergone a full review, the Future Proof Strategy has been revised, and the National Policy Statement on Urban Development Capacity has been introduced (in 2016) and then superseded by the National Policy Statement on Urban Development (in 2020). It is submitted that given the various processes that have been undertaken since Variation 13 it is entirely appropriate that the Council give specific consideration to the spatial extent of the Overlay.
- 49 It is also submitted that whether the Overlay be considered a zone, an overlay or an area, the Overlay as contained in the PWDP is a rollover of a specific zone which limits the density of development.¹⁷ The evidence provided in support of Mr McAlley's submission concludes there is no s 32 assessment that supports the retention of the previous density provisions that applied under the Operative District Plan in the Te Kauwhata West Residential Zone.

¹⁵ See Residential Zone Hearing Topic 10 notes recorded by Waikato District Council.

¹⁶ A zone spatially identifies and manages an area with common environmental characteristics or where environmental outcomes are sought, by bundling compatible activities or effects together, and controlling those that are incompatible. An overlay spatially identifies distinctive values, risks or other factors which require management in a different manner from underlying zone provisions. See National Planning Standards, Chapter 12, Table 18.

¹⁷ See Ian McAlley rebuttal statement of evidence at [8].

SUBMISSIONS IN SUPPORT AND/OR OPPOSITION

50 Campbell Tyson made a submission seeking the retention of the Overlay but a reduction to the minimum average site size standard applying to subdivision. Mr McAlley supported the relief sought by Campbell Tyson insofar as it related to amending the minimum subdivision size standards but opposed the retention of the Overlay to the Boldero Block. Campbell Tyson made a further submission (#FS1061) supporting the relief sought by Mr McAlley.

RELIEF SOUGHT

51 In conclusion, Mr McAlley seeks that the Overlay be removed from its Site as it will otherwise maintain the application of a lower density residential zone to the Site and surrounding area which will be out of step with current planning practice and the direction contained within the NPS-UD.

52 It would be surprising if there is any location in the district where a change in zoning/Overlay to allow greater intensification of residential development is more appropriate or consistent with the planning framework as summarised in *Colonial Vineyards*.

EVIDENCE

53 Mr McAlley will give evidence in support of his submission and further submission.

54 Mr Kirkby-McLeod will give evidence in support of his expert planning evidence.

Date: 12 May 2021



Dr J B Forret/P Kaur
Counsel for Te Kauwhata Land Limited