

**BEFORE THE INDEPENDENT HEARINGS PANEL**

**THE PROPOSED WAIKATO DISTRICT PLAN (STAGE 1)**

**UNDER THE RESOURCE MANAGEMENT  
ACT 1991**

**("RMA")**

**AND IN THE MATTER OF HEARING OF SUBMISSIONS AND  
FURTHER SUBMISSIONS ON THE  
PROPOSED WAIKATO DISTRICT  
PLAN (STAGE 1) – HEARING 3**

**TOPIC 3: STRATEGIC OBJECTIVES**

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**SUBMISSIONS OF LEGAL COUNSEL FOR KONING FAMILY TRUST  
AND MARTIN KONING (SUBMITTER 658 AND FURTHER SUBMITTER  
1329)**

Dated: 3 November 2019

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### ***Introduction and scope of submissions***

1. The submissions and further submissions by the Koning Family Trust and Martin Koning (“the Konings”) include submissions that relate to three policies addressed in this hearing. These are policy 4.1.3 Location of Development, the residential density policy 4.1.5 and policy 4.1.18 concerning the framework for growth and development in Raglan.

### ***Policy 4.1.3 Location of Development***

2. The Konings have lodged a further submission in relation to the submission of Michael Briggs on behalf of Rangitahi Limited. The further submission supports the Rangitahi submission that the indicative urban limits identified in Future Proof should be recorded more clearly in the District Plan as being indicative, consistent with their status in Future Proof and in the Waikato Regional policy Statement.
3. However the proposed removal of the reference to the **2017** updated Future Proof Strategy for Planning Growth is not supported. Retention of that reference is appropriate, to ensure that a specific version of the document is incorporated by reference, rather than a non-specific reference to an undated document that is subject to change..

### ***Policy 4.15 – Density of residential development***

4. The evidence of Mr. Foster addresses this matter by recognizing that the current wording of the policy is adequate if it is recognized that the density targets are to be achieved broadly and over time rather than immediately within each individual subdivision.

5. The status of the policy needs to be kept in mind. It is not a rule but a policy used to guide the rules and the exercise of discretions. As such, the Konings' requested amendment assists in clarifying the broad application of the density targets as identifying the outcomes to be achieved over time and as average gross density targets, over the specified zones.
6. The requested amendment reflects the wording of the relevant density provisions in Future Proof and the RPS, both of which refer to them as targets for achievement over time and, in the RPS, as *average gross density targets*.

***Policy 4.1.18 – Policy framework for growth and development in Raglan***

7. Policy 4.1.18(iv) (notified version) is that “Raglan is developed... to ensure Rangitahi 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 nature environment”.
8. The submission by the Konings is that this policy should be amended, to remove inappropriate restrictions on locations for short, medium and long term growth and is inconsistent with the National Policy Statement – Urban Development Capacity.
9. Before addressing the Konings' proposed amendment of rule 4.1.18(a)(iv), I will address the Section 42A recommendation that the rule should refer to Rangitahi being the area that provides for the medium to long term future growth of Raglan. To the knowledge of Mr Foster and counsel, there is no submission that seeks that type of amendment to this policy. That leaves the Commissioners without the ability to make the

recommended change. That is a jurisdictional constraint, quite separate from the merits of the rule itself or the merits of the recommended change.

10. It seems clear from the wording of the Rangitahi submission and the evidence of Mr Briggs in support of that submission, that the Rangitahi submission is not seeking to make Rangitahi the only location for future Raglan growth for the long term. To the contrary, the evidence of Mr Briggs and the relief specified by him indicate the opposite – that the policy should specify Rangitahi as a short to medium term Future Growth Area.
11. That is not to say that the Konings support in any way the retention of the notified wording of rule 4.1.18(a)(iii), nor the amended wording sought by Mr. Briggs. The point is that there is no scope in the submissions to extend the exclusive status that Rangitahi would be given under this policy.
12. As noted in the evidence of Mr Foster in support of the Koning submission, section 75 RMA requires a District Plan to give effect to any Regional Policy Statement and also to give effect to any National Policy Statement. (paragraphs 2.10 and 2.16)

## **The National Policy Statement on Urban Development Capacity 2016**

### Caselaw relating to the NPS

13. The nature and thrust of the objectives and policies in the NPS were considered by the Environment Court in *Bunnings Limited v Queenstown Lakes District Council* decision [2019] NZEnvC

59. At paragraphs 38 and 39 the Court examined objectives OA1 to OA3 (incorrectly referred to as QA1 to QA3 in the decision) and objectives OD1 and OD2. At paragraph 39, the Court drew the following conclusions from examining those objectives:

*“Objectives OA1 to OA3 show that the NPS – UDC is primarily an enabling document. It is designed to provide opportunities, choices, variety and flexibility in relation to the supply of land for housing and business. Important secondary themes are the integration and development land use within infrastructure (objective OD1) and coordinated planning across local authority boundaries (objection OD2). While there may be a justified need to manage development – expressly in relation to infrastructure objective, and implicitly in relation to the bottom lines designed to open doors for and encourage development of land for business and housing, not to close them”.*

14. At paragraph 45 of the decision the Court examined policies PA2 and PA3. The court concluded “these policies are the substantive directions to local authorities”. (emphasis added)
15. In the present case, the Council would not be recognising and implementing those *substantive directions*, if it retains a growth policy that would enable a single location, in the hands of a single developer, to be the only substantial residential growth area for an expanding town.
16. Those enabling objectives and policies in the NPS indicate that express reliance on a single and constrained future development location such as Rangitahi is inappropriate:

## Objectives

*Objective Group A – Outcomes for planning decisions*

*Objective OA2: Effective and efficient urban environments that have sufficient opportunities for the development of housing and business land to meet demand, and which provide choices that will meet the needs of people and communities and future generations for a range of dwelling types and locations, working environments and places to locate businesses.*

The limitation of growth to one location that is under the control of one developer is less likely to achieve this objective than provision for multiple locations under the control of multiple potential developers.

*Objective OC2: Local authorities adapt and respond to evidence about urban development, market activity, social, economic, cultural and environmental wellbeing of people and communities and future generations, in a timely way.*

If capacity within Rangitahi runs short, or if Rangitahi development is suspended or slowed for any reason, there is little if any opportunity for the Council to adapt to evidence of unmet demand in a timely way. Multiple opportunities for development enable flexibility and rapid response to changes in the market and social environment.

## Policies

*PA3: When making planning decisions that affect the way and the rate in which development capacity is provided, decision makers shall provide for the social, economic, cultural and environmental wellbeing of people and communities and future generations, whilst having particular regard to:*

- (a) *Providing for choices that will meet the needs of people and communities and future generations for a range of dwelling types and locations, working environments and places to locate businesses.*
  
- (c) *Limiting as much as possible adverse impacts on the competitive operation of land and development markets.*

Choice of locations will be limited by identification of just one development area that is in the hands of one developer. Competitive operation of land and development markets are more likely to be hindered where there is a single development area provided for, in the hands one developer.

### **The Waikato Regional Policy Statement**

- 17. The RPS sets out to adopt urban limit provisions that were developed in Future Proof. Policy 6.14 in the RPS is expressly identified as a policy about adopting the Future Proof land use pattern as determined in 2009. Looking back to the Future Proof provisions themselves, there is explicit reference to the proposed urban limits as being indicative at that time and remaining so until further development analysis has been completed. (Future Proof 6.4 Urban and Village Limits)
  
- 18. The indicative nature of the urban limits is demonstrated by the more recent re-zoning of the Rangitahi peninsula to Residential, although it falls outside the 2009 Future Proof indicative limits, and outside the RPS urban limits that were intended to adopt those indicative limits.

19. The RPS does not contain a provision that gives the Rangitahi peninsula any exclusive planning status. It was not identified in the Future Proof or RPS planning provisions as a specific growth area at Raglan, let alone the single growth area. It is rightly now identified in Policy 4.1.18 as an appropriate growth area, but so are the other areas around it that are within or adjacent to the urban growth areas more recently identified in the latest iteration of the Future Proof urban limits.
  
20. As the RPS is clear that the 2009 urban limits are indicative, there is no conflict with the RPS, nor a failure to give effect to it, if the District Plan growth policies identify a broader range of growth options in the same general location as the areas identified in the RPS indicative limit map.

***Giving effect to both the NPS and the RPS***

21. Both these superior planning instruments can be given effect by amending the policy identifying Rangitahi as the single growth area for Raglan. There is nothing in the RPS that requires such a “single location” provision to be included in a District Plan, so such a provision is not necessary to give effect to the RPS.
  
22. The NPS leans against such a provision, as a constraint on flexibility, choice and the ability to react to changing circumstances.
  
23. Paragraph 155 of the *Bunnings* decision emphasises the Court’s interpretation of the strength of policy PA3.



“Further, policy PA1 must be read with policy PA3 which expressly requires the Council (as consent authority) and on appeal, this Court, to pay particular regard to providing for choices, promoting efficient use of urban land and limiting adverse impacts on the competitive operation of land matters “as far as possible”. This last matter is a strong test and it is difficult to see how policy 10.4 of the ODP can survive it”.

It is equally difficult to see how policy 4.1.18(a)(iv) as notified can survive the directions within policy PA3 of the National Policy Statement.

24. If there is any perceived conflict between the indicative urban limits provisions in the Regional Policy Statement and the NPS, the NPS is to be given greater weight for the following reasons:
- (a) The NPS came into force after the RPS became operative, and the RPS has not been amended to respond to the NPS;
  - (b) The RPS does not attempt to recognise and give effect to the NPS, nor to direct District Plans to do so. It is deficient in that respect until it is amended as directed by the NPS.
  - (c) The NPS must be given effect in the District Plan review process, regardless of the absence of a response to it in the RPS.
  - (d) The NPS demands greater weight because it is a later document.
  - (e) The NPS demands greater weight because it is higher in the statutory hierarchy.

25. The reasons outlined above are recorded in paragraphs 112 and 113 of the *Bunnings* decision cited above, as being reasons why the NPS was to be given greater weight than provisions in the District Plan that were relied on as justifying an approach that the Court considered to be in conflict with the NPS.

Dated: 3 November 2019



P M Lang  
Counsel for the submitter