

Attachment I

LAWYERS

 **E-MAILED**
3/8/16

WESTPAC HOUSE
430 VICTORIA STREET
PO BOX 258
DX GP 20031
HAMILTON 3240
NEW ZEALAND
PH: (07) 839 4771

3 August 2016

Waikato District Council
Private Bag 544
NGARUAWAHIA 3742

SCANNED
Set No _____

RECEIVED

- 5 AUG 2016

Waikato District Council

DDI: (07) 838 6023
FAX: (07) 839 4855
MOBILE: 021 249 3321
bparham@tomwake.co.nz

Partner: Bridget Parham

FILE REF: 204622-584

For: **Betty Connolly**

Dear Betty

Plan Change 17 - Status of submission by Beverage Developments Limited

Introduction

1. You have sought advice as to whether Waikato District Council ('Council') has jurisdiction to consider the submission made on Plan Change 17 Ngaruawahia and Surrounding Villages ('PC17') by Beverage Developments Limited ('Beverage') received on 12 May 2016 ('Beverage submission'). The submission seeks to rezone three properties on State Highway 1 at Horotiu from Rural to Business.
2. PC17 does not propose any zone changes to these properties or any properties nearby.

Executive Summary

3. Pursuant to clause 6 of the First Schedule of the Resource Management Act 1991 ('RMA'), any person may make a submission "on" a proposed policy statement of plan (including a plan change).
4. The High Court decision in *Clearwater Resort Limited v Christchurch City Council*¹ sets out a two limb test for determining whether a submission is "on" a plan change.
5. The Beverage submission does not meet either limb of the *Clearwater* test. Accordingly, Council does not have jurisdiction to consider the Beverage submission as it is not "on" PC17.

Relief sought in the Beverage submission

6. In the preamble at paragraph 1, the Beverage submission seeks that the property at 6004 State Highway 1, Horotiu and two adjacent properties immediately to the "South" be rezoned from Rural to Business. However, in the relief sought (headed "Proposal"), the submission refers to the three properties on State Highway 1 immediately to the "North" of Park Road.

¹ AP34/02, 14 March 2003.

7. Council sought clarification from Beverage (Mr Briggs) as to the exact properties it seeks to be rezoned. Mr Briggs responded to Council by email dated 28 July 2016 as follows:

On reflection and also on viewing the aerial photo you have forwarded, my view now is as all the properties to the North of 6018 State Highway 1 plus [sic] those fronting Park Road are of an area of between .1ha and .5ha, the current zoning of rural lifestyle is inappropriate and should be amended to residential, business or light industrial.

8. Beverage now seeks to extend its submission in two key respects. Firstly, it seeks to include a number of additional properties, none of which are owned by Beverage. Secondly, it seeks residential, business or light industrial zoning. The original submission only sought a business zoning over the properties. These two changes were not identified in the original submission.
9. There is no opportunity for Beverage to extend the scope of its original submission after the close of original and further submissions as no person directly or potentially affected by the expanded relief sought has the opportunity to lodge a further submission against the amended submission. The relief sought in the original submission must stand. For this reason, our advice relates only to the original submission lodged by Beverage. We note it is still not clear whether this submission is intended to refer to the properties to the north or south, but this has no impact on our advice for the purpose of this opinion.
10. Turning to the original submission lodged by Beverage, the reasons advanced in support of a proposed business zoning is that the three properties in question are unsuitable for rural or lifestyle activities due to their size (approximately 1 acre). The submission also points to the nearby residential subdivision nearing completion "a few hundred metres" to the north of the properties and asserts that the increase in residential activity in the area will result in a need for retail and/or light industrial activities in the area. The submission also states that the dwelling on the corner of Park Road and State Highway 1 was once operated as a retail shop.

The legal issue

11. The right to make a submission on a plan change is conferred by clause 6 of the First Schedule to the RMA which provides that once notified, any person may make a submission on a proposed policy statement or plan (or plan change as the case may be).
12. If a submission is not "on" the plan change, Council cannot amend the plan as sought in the submission.
13. The critical legal issue is whether the Beverage submission is "on" PC17 as publicly notified.

When a submission is "on" a plan change

14. The leading authority on the question of whether a submission is "on" a variation or plan change is the High Court decision of William Young J in *Clearwater Resort Ltd v Christchurch City Council*.

15. William Young J set out the bipartite test for determining whether a submission is on a plan change or variation:²
 - (a) A submission can only fairly be regarded as being “on” a variation if it is addressed to the extent to which the variation changes the pre-existing status quo; and
 - (b) If the effect of regarding a submission as “on” a variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected, this is a powerful consideration against finding that the submission is truly “on” the variation.
16. The *Clearwater* test has been considered and applied in other recent High Court decisions including *Option 5 Inc v Marlborough District Council*³, and *Palmerston North City Council v Motor Machinists Limited*⁴. It has also been considered by the Environmental Court in the recent decision *Well Smart Investment Holding Limited v Queenstown Lakes District Council*⁵.

Option 5 Inc v Marlborough District Council

17. In *Option 5*, the Council had proposed a variation defining the scope of a Central Business Zone. The variation, as notified, had not rezoned any land apart from some Council-owned vacant land. A submission was made to Marlborough District Council (“MDC”) seeking the addition of further land to the zone. MDC agreed with the submission and amended the variation accordingly.
18. On appeal, the Environment Court said that the submission was not “on” the variation. The Environment Court decision was subsequently appealed to the High Court. The High Court accepted the Environment Court adopted the correct approach when assessing whether the submission was on the variation. That approach is to:
 - (a) First, consider the purpose of the variation and the policy behind the variation. The purpose and policy is to be identified from its provisions and not from the content of its public notification. The Council’s explanation of the variation may be a relevant consideration, but only in respect of whether there has been any prejudice to any person who might have made a submission but did not do so;
 - (b) Secondly, detail the extent of the submission in question; and
 - (c) Thirdly, acknowledge and apply the considerations suggested by William Young J in *Clearwater* (being the two limb test).
19. The High Court said the first limb of the *Clearwater* test may not be of particular assistance in many cases, but the second limb of the test will be of vital importance in many cases, and may be the determining factor in some cases. It agreed with the Environment Court that so much will depend upon scale and degree. Further it said the analysis of what is “on” and what is not will depend, in part, on what perspective is brought to the proposed variation and the submission by each party.

² Paragraph [66].

³ HC Blenheim CIV 2009-406-144, 28 September 2009.

⁴ [2013] NZHC 1290.

⁵ [2015] NZEnvC 214.

20. Ronald Young J did not accept the appellants' submission that because the variation involved some rezoning of the Central Business Zone, any submission advocating further extension of that zone would be "on" the variation. He rejected that argument as being "too crude". He reasoned:

So much will depend on the particular circumstances of the case. In considering the particular circumstances it will be highly relevant to consider whether, as William Young J identified in *Clearwater*, that if the result of accepting a submission as on (a variation) would be to significantly change a proposed plan without a real opportunity for participation by those affected then that would be a powerful argument against the submission as being "on".

21. The lack of opportunity for participation was determinative in *Option 5*. The amended variation had the potential to rezone at least 50 residential properties. That would occur without any direct notification to the property owners and therefore without any real chance to participate in the rezoning process. The only notification to those property owners was through public notification in the media that they could obtain summaries of submissions. Nothing indicated to those property owners that the zoning of their property might change. The submission was not therefore, on the plan change.

Palmerston North City Council v Motor Machinists Ltd

22. *Motor Machinists* also concerned a proposed plan change which included the rezoning of land along a ring road. Four lots at the end of the respondent's street (which runs off the ring road) were among properties to be rezoned. The respondent, whose land was ten lots away from the ring road, filed a submission seeking that his land be included in the rezoning. The Council found that the submission was not "on" the plan change because the plan change did not directly affect the respondent's land. The Environment Court disagreed.

23. On appeal, the High Court considered that the first limb of the *Clearwater* test requires that the submission must "reasonably be said to fall within the ambit of the plan change"⁶. One way of analysing that is to ask whether the submission raises matters that should have been addressed in the section 32 evaluation and report. If so, the submission is unlikely to fall within the ambit of the plan change. Another is to ask whether the management regime in a district plan for a particular resource is altered by the plan change. If it is not, then a submission seeking a new management regime for that resource is unlikely to be "on" the plan change, unless the change is merely incidental or consequential.

24. The High Court considered that the second limb of the *Clearwater* test requires consideration of whether there is a real risk that persons directly or potentially affected by the additional changes proposed in the submission have been denied an effective opportunity to respond to those additional changes in the plan change process.

25. The Court commented that:

[I]t would be a remarkable position that a plan change might so morph that a person not directly affected at one stage (so as not to have received notification initially under clause 5(1A)) might then find themselves directly affected but speechless at a later stage by dint of a third party submission not directly notified as it would have been had it been included in the original instrument. It is that unfairness that militates the second limb of the *Clearwater* test.

⁶ Paragraph [81].

26. Noting the significance of the section 32 report to the second limb of the test, the Court considered that robust, sustainable management of natural and physical resources requires notification of the section 32 analysis of the comparative merits of a proposed plan change to persons directly affected by those proposals. There is a real risk that submissions proposing more than consequential further changes will be inconsistent with that principle. This is because such changes are unaccompanied by the section 32 analysis that accompanies a proposed plan change or variation or because persons directly affected are, in the absence of an obligation that they be notified, simply unaware of the further changes proposed in the submission. Accordingly, a precautionary approach is required to receipt of submissions proposing more than incidental or consequential further changes to a notified proposed plan change⁷.
27. The Court concluded that neither limb of the *Clearwater* test was satisfied. The extension of the zone reasonably required coherent long term analysis rather than an opportunistic insertion by submission. The lack of formal notification to adjacent landowners meant that the inclusion of a rezoning of two isolated lots in a side street was found to “come from left field”.
28. The Court allowed the appeal finding that the Council lacked jurisdiction to consider the submission as it was not “on” the plan change.

Well Smart Investment Holding Ltd v Queenstown Lakes District Council

29. The issue in *Well Smart* was whether the Court had jurisdiction to hear parts of four appeals on plan change 50 (“PC 50”) to Queenstown’s Operative District Plan. Queenstown Lakes District Council (“QLDC”) publicly notified PC 50 to extend the existing Queenstown Town Centre Zone through the rezoning of land. The appellants each made submissions on PC 50. The appellants’ land was adjacent or close to, but outside the PC 50 area. The Commissioners at the Council hearing found that there was no scope to consider parts of the submissions because the submissions were not “on” PC 50. On appeal to the Environment Court, Judge Jackson disagreed with the reason that the Commissioners gave for finding the relief to be out of scope, stating:⁸

The Hearing Commissioners stated that the further extension land “...does not fall within the area of the district plan that is subject to the proposed plan change” as if that by itself makes the submission out of scope. Indeed they later said as much. I consider that is incorrect as a matter of law because in *Motor Machinists* Kos J expressly stated that zoning extensions by submissions are “...not exclude[d] altogether.”

30. On the basis that Appendix A to the section 32 report considered the appellants’ land as potentially suitable for rezoning, the Court found that the first limb of the *Clearwater* test had been met.
31. The submissions did not however, meet the second limb of the *Clearwater* test. Judge Jackson considered that the purpose of the second limb is to prevent procedural unfairness to persons who would be more affected by a submission than by the notified plan change. In this case, fair and reasonable notice was not given to those who might be affected. While Appendix A did give some notice to owners and businesses in the area of changes to the zoning of land and of consequential changes to the rules governing land, he held that that was insufficient. That is because while potential submitters should look at the section 32 analysis, it is unfair to expect them to pore

⁷ Paragraph [91].

⁸ Paragraph [24].

over the appendices. Accordingly, Judge Jackson held that the affected parts of all four appeals were not within jurisdiction.

Summary of caselaw

32. To summarise the above authorities on the question of what is “on” a plan change or variation, the following questions are relevant in assessing whether the *Clearwater* tests are met:

First limb

- (a) Whether the submission can be said to reasonably fall within the ambit of the variation? The following questions may assist in answering that question:
- (i) Whether the submission raises matters that should have been addressed in the section 32 evaluation and report? If so, it is unlikely to fall within the ambit of the plan change. A precautionary approach will be required.
 - (ii) Whether the management regime in a district plan for a particular resource is altered by the variation? If it is not, then a submission seeking a new management regime for that resource is unlikely to be “on” the plan change *unless* the change is merely incidental or consequential.

Second limb

- (b) Whether there is a real risk that persons directly or potentially affected by the additional changes proposed in the submission have been denied an effective opportunity to respond to those additional changes in the variation process?
- (c) Has fair and reasonable notice been given to those who might be affected by the proposed changes in the submission?

Evaluation of the Beverage submission against PC17

Purpose of PC17

33. Applying the approach in *Option 5*, it is first necessary to consider the purpose of PC17 and the policy behind the plan change. The purpose of PC17 is to rezone land in the Ngaruawahia township, Taupiri, Horotiu, Te Kowhai and Glen Massey villages to provide for the projected population growth in the immediate future (ten year timeframe).⁹ The Summary Statutory Report states that beyond the first ten years, to provide for projected population growth for a further 20 years to 2046, additional areas will need to be considered in the structure plan process as it progresses. PC17 implements Stage 1 of the Ngaruawahia and Surrounding Villages Structure Plan.
34. In relation to the areas proposed to be rezoned under PC17, the Summary Statutory Report states¹⁰:

The identified growth areas have been formed in such a way that they directly relate to the identifiable boundaries of the Ngaruawahia township and Taupiri,

⁹ Summary Statutory Report including section 32A analysis, Section 4, Plan Content, Page 23

Horotiu, and Te Kowhai villages. In particular, the growth areas have been selected to connect to the existing zoned or established residential development to facilitate connectivity and enhance amenity and social coherence.

35. PC17 is limited to rezoning only. No changes to the rural framework are sought for any of the areas proposed to be rezoned under PC17. This means once the areas are rezoned, they can be developed in accordance with the existing zone provisions.

Evaluation of Beverage submission

36. Having evaluated the purpose of PC17, it is next necessary to consider the Beverage submission. We refer to our discussion in paragraphs 6 and 10 above in this regard. In summary, the submission seeks three rural zoned properties at Horotiu be zoned Business.

Clearwater tests

37. We now turn to consider the *Clearwater* tests for determining whether the Beverage submission is "on" PC17. The first test is to determine whether the submission fairly and reasonably falls within the ambit of PC17.
38. PC17 does not seek to rezone any rural zoned land to business. It does, however, seek to provide limited business zoning at Ngaruawahia and Horotiu. At Ngaruawahia, PC17 seeks to rezone two areas to business as follows:
- (a) Rezone one vacant property on Great South Road from Light Industrial to Business Zone (Map 3). The Summary Statutory Report notes that establishing industrial activities on the site would likely result in a loss of amenity for the residential development directly opposite the site;¹¹
 - (b) Properties numbered 2, 4 and 6 Galileo Street, Ngaruawahia be rezoned from Living Zone to Business Zone to support the town centre of Ngaruawahia township (Map 5).
39. The three subject sites referred to in the Beverage submission are some distance from the above Ngaruawahia areas proposed to be rezoned Business under PC17. The properties subject to this submission are in a different geographical location. The relief sought in the submission cannot therefore be said to be an extension of the boundaries already proposed to be rezoned Business.
40. In the Horotiu area where the submission relates, PC17 seeks to rezone two properties at Great South Road, Horotiu from Industrial to Business (Map 8). The reason given in the PC17 Summary Statutory Report is to cater for the anticipated future needs of the residents and workforce at Horotiu as a result of industrial and residential growth in the area¹². It is noted the same reason is advanced in the Beverage submission in support of its relief sought. This fact may support an argument that the submission is "on" PC17 as the need for Business zoning at Horotiu is discussed in the section 32 report. However, the section 32 report did not consider the submitter's land (or any other land) as potentially suitable for rezoning.

¹¹ Page 29

¹² Page 40

41. Further, the properties subject to the Beverage submission are approximately 2.5 km north of the proposed Business zoning at Horotiu. This zoning is directly opposite the Horotiu Industrial Park where a significant source of the Horotiu workforce will be based. The three properties subject to the submission are not identified on any of the PC17 maps, such is the distance from the areas proposed to be rezoned Business.
42. In *Option 5*, the High Court rejected the appellants' submission that because the variation involved some rezoning of the Central Business Zone, any submission advocating further extension of that zone would be "on" the variation. Given the absence of any discussion about the potential rezoning of the three subject properties in the section 32 report, combined with the distance between those properties and the two Horotiu areas proposed to be rezoned Business under PC17, we do not consider the Beverage submission meets the first limb of the *Clearwater* test. The subject properties are neither adjacent or close to the two areas in Horotiu proposed to be rezoned Business.
43. Turning to the second limb of the *Clearwater* test, the issue is whether there is a risk that persons directly or potentially affected by the changes proposed in the submission have not had an opportunity to participate in the plan change process. As set out in *Well Smart*, the purpose of the second limb is to prevent procedural unfairness to persons who would be more affected by a submission than by the notified plan change.
44. In the case of PC17, fair and reasonable notice was not given to those who might be affected by the rezoning sought in the submission because there was no discussion in the section 32 report about the potential rezoning of the three subject properties. The relief sought cannot be regarded as being merely consequential or incidental given the distance from the proposed Business rezoning under PC17 and the absence of a section 32 analysis of the relief sought.
45. It is also significant, as it was in the *Option 5* decision, that the submission is not limited to properties owned solely by the submitter, but includes two further properties owned by persons other than the submitter. Those owners, together with land owners adjacent to those two properties, are directly affected, but have not had notice of the proposed changes and will not already be involved in the PC17 process as submitters. Simply put, no one reading the PC17 documents would have contemplated the three subject properties being rezoned from Rural to Business. In the circumstances, persons would be more affected by the Beverage submission than by PC17 as notified. As a result, the Beverage submission fails the second limb of the *Clearwater* test.
46. As the submission does not pass either limb of the *Clearwater* test, the submission is not "on" PC17. Accordingly, Council does not have jurisdiction to consider the submission.

Conclusion

47. The Beverage submission does not meet either limb of the *Clearwater* test for the reasons set out above. This means the submission is not "on" PC17. The effect of this is that Council does not have jurisdiction to consider the submission.

Yours faithfully
TOMPKINS WAKE

A handwritten signature in black ink, appearing to read 'BParham', written in a cursive style.

Bridget Parham
Partner

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WESTPAC HOUSE
430 VICTORIA STREET
PO BOX 258
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Partner: L F Muldowney

FILE REF: 204622-584

For: **Betty Connolly**



Dear Betty

Plan Change 17 - Status of Foster Development Submission

Introduction

1. You have sought advice as to whether Waikato District Council ('Council') has jurisdiction to consider the submission made on Plan Change 17 Ngaruawahia and Surrounding Villages ('PC17') by Foster Development Limited dated 13 May 2016 ('Foster submission').¹ The submission relates to the land surrounding and including, the Te Kowhai Airfield.
2. PC17 does not propose to rezone the Te Kowhai Airfield or any land surrounding the Airfield.

Executive Summary

3. Pursuant to clause 6 of the First Schedule of the Resource Management Act 1991 ('RMA'), any person may make a submission "on" a plan change.
4. The High Court decision in *Clearwater Resort Limited v Christchurch City Council*² sets out a two limb test for determining whether a submission is "on" a plan change.
5. The Foster submission does not meet either limb of the *Clearwater* test. Accordingly, Council does not have jurisdiction to consider the submission as it is not "on" PC17.

Relief sought in Foster Submission

6. The Foster submission requests that the PC17 rezoning in the Te Kowhai Village be extended to include land in the immediate environs of the Te Kowhai Airfield. The submission seeks the following relief:
 - (a) Extend the scope of rezoning to include Rural land between Te Kowhai Airfield and Limmer Road (State Highway 39) encompassing Lots 1-4 DP 434641, Lot 5 DP 387354 and Lot 1 DPS 88922;

¹ Submission No. 9

² AP34/02, 14 March 2013.

- (b) Rezone Part Lot 1 DP 434641, Part Lot 4 DP 434641 and Part Lot 5 DP 387354 to "Airfield Zone" or equivalent;
 - (c) Rezone Part Lot 1 DP 434641, Part Lot 4 DP 434641 and Part Lot 5 DP 387354 to "Airpark Residential A" or equivalent; and
 - (d) Rezone Part Lot 1 DP 434641, Lots 2 and 3 DP 434641, Part Lot 4 DP 434641, Lot 1 DPS 88922 and Part Lot 5 DP 387354 as "Airpark Residential B" or equivalent.
7. All of the land subject to the Foster submission in currently zoned Rural. The requested rezoning would enable the establishment of an Airpark concept at Te Kowhai Airfield. This concept provides for the ability to live adjacent to, and operate from, a shared airfield facility. The Airfield Zone would cover the runway, existing hangers, office and parking areas. Airpark Residential A zoning would provide for integrated apartments and hangers and Airport Residential B zoning would provide for residential living on approximately 2,500m² sections.

The legal issue

- 8. The right to make a submission on a plan change is conferred by clause 6 of the First Schedule of the RMA which provides that once notified, any person may make a submission on a proposed policy statement or plan (which includes a plan change).
- 9. If a submission is not "on" the plan change, Council cannot amend the plan as sought in the submission.
- 10. Accordingly, the critical legal issue is whether the Foster Submission is "on" PC17 as publicly notified.

When a submission is "on" a plan change

- 11. The leading authority on the question of whether a submission is "on" a variation or plan change is the High Court decision of William Young J in *Clearwater Resort Ltd v Christchurch City Council*.
- 12. William Young J set out the bipartite test for determining whether a submission is on a plan change or variation:³
 - (a) A submission can only fairly be regarded as being "on" a variation if it is addressed to the extent to which the variation changes the pre-existing status quo; and
 - (b) If the effect of regarding a submission as "on" a variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected, this is a powerful consideration against finding that the submission is truly "on" the variation.
- 13. The *Clearwater* test has been considered and applied in other recent High Court decisions including *Option 5 Inc v Marlborough District Council*⁴ and *Palmerston North*

³ Paragraph [66].

⁴ HC Blenheim CIV 2009-406-144, 28 September 2009.

*City Council v Motor Machinists Limited*⁵. It has also been considered by the Environmental Court in the recent decision *Well Smart Investment Holding Limited v Queenstown Lakes District Council*⁶.

Option 5 Inc v Marlborough District Council

14. In *Option 5*, the Council had proposed a variation defining the scope of a Central Business Zone. The variation, as notified, had not rezoned any land apart from some Council-owned vacant land. A submission was made to Marlborough District Council ("MDC") seeking the addition of further land to the zone. MDC agreed with the submission and amended the variation accordingly.
15. On appeal, the Environment Court said that the submission was not "on" the variation. The Environment Court decision was subsequently appealed to the High Court. The High Court accepted the Environment Court adopted the correct approach when assessing whether the submission was on the variation. That approach is to:
 - (a) First, consider the purpose of the variation and the policy behind the variation. The purpose and policy is to be identified from its provisions and not from the content of its public notification. The Council's explanation of the variation may be a relevant consideration, but only in respect of whether there has been any prejudice to any person who might have made a submission but did not do so;
 - (b) Secondly, detail the extent of the submission in question; and
 - (c) Thirdly, acknowledge and apply the considerations suggested by William Young J in *Clearwater* (being the two limb test).
16. The High Court said the first limb of the *Clearwater* test may not be of particular assistance in many cases, but the second limb of the test will be of vital importance in many cases, and may be the determining factor in some cases. It agreed with the Environment Court that so much will depend upon scale and degree. Further it said the analysis of what is "on" and what is not will depend, in part, on what perspective is brought to the proposed variation and the submission by each party.
17. Ronald Young J did not accept the appellants' submission that because the variation involved some rezoning of the Central Business Zone, any submission advocating further extension of that zone would be "on" the variation. He rejected that argument as being "too crude". He reasoned:

So much will depend on the particular circumstances of the case. In considering the particular circumstances it will be highly relevant to consider whether, as William Young J identified in *Clearwater*, that if the result of accepting a submission as on (a variation) would be to significantly change a proposed plan without a real opportunity for participation by those affected then that would be a powerful argument against the submission as being "on".
18. The lack of opportunity for participation was determinative in *Option 5*. The amended variation had the potential to rezone at least 50 residential properties. That would occur without any direct notification to the property owners and therefore without any real chance to participate in the rezoning process. The only notification to those property owners was through public notification in the media that they could obtain

⁵ [2013] NZHC 1290.

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summaries of submissions. Nothing indicated to those property owners that the zoning of their property might change. The submission was not therefore, on the plan change.

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19. *Motor Machinists* also concerned a proposed plan change which included the rezoning of land along a ring road. Four lots at the end of the respondent's street (which runs off the ring road) were among properties to be rezoned. The respondent, whose land was ten lots away from the ring road, filed a submission seeking that his land be included in the rezoning. The Council found that the submission was not "on" the plan change because the plan change did not directly affect the respondent's land. The Environment Court disagreed.
20. On appeal, the High Court considered that the first limb of the *Clearwater* test requires that the submission must "reasonably be said to fall within the ambit of the plan change"⁷. One way of analysing that is to ask whether the submission raises matters that should have been addressed in the section 32 evaluation and report. If so, the submission is unlikely to fall within the ambit of the plan change. Another is to ask whether the management regime in a district plan for a particular resource is altered by the plan change. If it is not, then a submission seeking a new management regime for that resource is unlikely to be "on" the plan change, unless the change is merely incidental or consequential.
21. The High Court considered that the second limb of the *Clearwater* test requires consideration of whether there is a real risk that persons directly or potentially affected by the additional changes proposed in the submission have been denied an effective opportunity to respond to those additional changes in the plan change process.
22. The Court commented that:

[I]t would be a remarkable position that a plan change might so morph that a person not directly affected at one stage (so as not to have received notification initially under clause 5(1A)) might then find themselves directly affected but speechless at a later stage by dint of a third party submission not directly notified as it would have been had it been included in the original instrument. It is that unfairness that militates the second limb of the *Clearwater* test.
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landowners meant that the inclusion of a rezoning of two isolated lots in a side street was found to “come from left field”.

25. The Court allowed the appeal finding that the Council lacked jurisdiction to consider the submission as it was not “on” the plan change.

Well Smart Investment Holding Ltd v Queenstown Lakes District Council

26. The issue in *Well Smart* was whether the Court had jurisdiction to hear parts of four appeals on plan change 50 (“PC 50”) to Queenstown’s Operative District Plan. Queenstown Lakes District Council (“QLDC”) publicly notified PC 50 to extend the existing Queenstown Town Centre Zone through the rezoning of land. The appellants’ each made submissions on PC 50. The appellants’ land was adjacent or close to, but outside the PC 50 area. The Commissioners at the Council hearing found that there was no scope to consider parts of the submissions because the submissions were not “on” PC 50. On appeal to the Environment Court, Judge Jackson disagreed with the reason that the Commissioners gave for finding the relief to be out of scope, stating:⁹

The Hearing Commissioners stated that the further extension land “...does not fall within the area of the district plan that is subject to the proposed plan change” as if that by itself makes the submission out of scope. Indeed they later said as much. I consider that is incorrect as a matter of law because in *Motor Machinists* Kos J expressly stated that zoning extensions by submissions are “...not exclude[d] altogether.”

27. On the basis that Appendix A to the section 32 report considered the appellants’ land as potentially suitable for rezoning, the Court found that the first limb of the *Clearwater* test had been met.
28. The submissions did not however, meet the second limb of the *Clearwater* test. Judge Jackson considered that the purpose of the second limb is to prevent procedural unfairness to persons who would be more affected by a submission than by the notified plan change. In this case, fair and reasonable notice was not given to those who might be affected. While Appendix A did give some notice to owners and businesses in the area of changes to the zoning of land and of consequential changes to the rules governing land, he held that that was insufficient. That is because while potential submitters should look at the section 32 analysis, it is unfair to expect them to pore over the appendices. Accordingly, Judge Jackson held that the affected parts of all four appeals were not within jurisdiction.

Summary of case law

29. To summarise the above authorities on the question of what is “on” a plan change or variation, the following questions are relevant in assessing whether the *Clearwater* tests are met:

First limb

- (a) Whether the submission can be said to reasonably fall within the ambit of the variation? The following questions may assist in answering that question:
- (i) Whether the submission raises matters that should have been addressed in the section 32 evaluation and report? If so, it is unlikely

⁹ Paragraph [24].

to fall within the ambit of the plan change. A precautionary approach will be required.

- (ii) Whether the management regime in a district plan for a particular resource is altered by the variation? If it is not, then a submission seeking a new management regime for that resource is unlikely to be “on” the plan change *unless* the change is merely incidental or consequential.

Second limb

- (b) Whether there is a real risk that persons directly or potentially affected by the additional changes proposed in the submission have been denied an effective opportunity to respond to those additional changes in the variation process?
- (c) Has fair and reasonable notice been given to those who might be affected by the proposed changes in the submission?

Evaluation of Foster Submission against PC17

Purpose of PC17

- 30. Applying the approach in *Option 5*, it is first necessary to consider the purpose of PC17 and the policy behind the plan change. The purpose of PC17 is to rezone land in the Ngaruawahia township, Taupiri, Horotiu, Te Kowhai and Glen Massey villages to provide for the projected population growth in the immediate future (ten year timeframe).¹⁰ The Summary Statutory Report states that beyond the first ten years, to provide for projected population growth for a further 20 years to 2046, additional areas will need to be considered in the structure plan process as it progresses. PC17 implements Stage 1 of the Ngaruawahia and Surrounding Villages Structure Plan.
- 31. In relation to the areas proposed to be rezoned under PC17, the Summary Statutory Report states¹¹:

The identified growth areas have been formed in such a way that they directly relate to the identifiable boundaries of the Ngaruawahia township and Taupiri, Horotiu, and Te Kowhai villages. In particular, the growth areas have been selected to connect to the existing zoned or established residential development to facilitate connectivity and enhance amenity and social coherence.

- 32. PC17 is limited to rezoning only. No changes to the rural framework are sought for any of the areas proposed to be rezoned under PC17. This means once the areas are rezoned, they can be developed in accordance with the existing zone provisions.

Evaluation of Foster Submission

- 33. Having evaluated the purpose of PC17, it is next necessary to consider the Foster submission. This has already been considered in paragraphs 6 and 7 above. Essentially, the submission seeks that the Te Kowhai Airfield and land in the vicinity of

¹⁰ Summary Statutory Report including section 32A analysis, Section 4, Plan Content, page 23

¹¹ Page 23

the Airfield be rezoned from Rural to a combination of zones to enable the establishment of an Airpark.

Clearwater tests

34. We now turn to consider the *Clearwater* tests for determining whether the Foster submission is “on” PC17. The first test is whether the submission fairly and reasonably falls within the ambit of PC17.
35. At Te Kowhai, the changes proposed by PC17 are limited to rezoning two areas totalling approximately 41 hectares of Rural zoned land to Country Living (see Maps 10 and 11). The purpose of this rezoning at Te Kowhai is to accommodate anticipated growth in the short term. One of the proposed areas is adjacent to existing residential development in the village central and the second area is adjacent to an existing Country Living zone. According to the Summary Statutory Report, both areas are well positioned to the existing village and facilities.¹²
36. Significantly, PC17 does not seek any changes to the Te Kowhai Airfield or land immediately surrounding the Airfield. In this regard, the management regime in the District Plan for the Airfield and its surrounding area is not altered by PC17. As the Foster submission seeks a different management regime for the Airfield through rezoning, the Foster submission does not fairly and reasonably fall with the ambit or PC17.
37. The relief sought in the submission cannot be said to be “merely incidental or consequential” to the rezoning in the Te Kowhai Village central. The submission does not seek rezoning to accommodate the projected growth at Te Kowhai which is the principal purpose of PC17. Rather, the rezoning proposed in the submission is specifically sought to enable aviation related industrial activities and the Airpark concept to more easily establish in the vicinity of the Airfield. This is required because, according to the submission, the current Rural zone provisions are not supportive of the proposed activities.
38. The matters raised in the submission are not addressed at all in the section 32 report. There is no mention of the Te Kowhai Airfield in the section 32 report.
39. For the above reasons, we conclude the Foster Submission does not pass the first limb of the *Clearwater* test.
40. Turning to the second limb of the *Clearwater* test, the issue is whether there is a real risk that persons directly or potentially affected by the changes proposed in the Foster submission have not had an opportunity to participate in the plan change process. Given the section 32 report did not notify or address any potential rezoning at or adjacent to the Airfield, affected person’s participatory rights are dependent on seeing the submission or summary of submission and appreciating the significance of the change from those documents. You instruct only Hamilton City Council (‘HCC’) has lodged a further submission on the Foster submission. This of itself indicates other interested parties have not seen the submission as we would expect the proposed zoning to generate a lot of interest as it would result in significant changes to the Airfield and surrounding areas, and in particular to nearby rural land owners. We note with interest that the HCC further submission opposes the Foster submission and raises concerns whether the requested rezoning is within the scope of PC17.

¹² Page 44.

41. As the proposed changes are not merely incidental or consequential for the reasons stated above, the relief sought in the submission can be regarded as coming out of left field. All persons directly or potentially affected by the relief sought will not already be involved in the PC17 process as submitters.
42. The submission proposes a relatively novel approach, at least in the New Zealand context, to development at the Te Kowhai Airfield with the Airpark concept. In such circumstances, the Courts in *Clearwater* and *Motor Machinists* advise caution before concluding a submission is "on" a plan change.
43. Simply put, no one reading the PC17 documents would have contemplated for one moment any change to the Te Kowhai Airfield and the surrounding land. As a result, we conclude the Foster submission fails the second limb of the *Clearwater* test.
44. As the submission does not pass either limb of the *Clearwater* test, the submission is not "on" PC17. Accordingly, Council does not have jurisdiction to consider the submission.

Conclusion

45. The Foster submission does not meet either limb of the *Clearwater* test. This means the submission is not "on" PC17 and Council does not have jurisdiction to consider the submission.
46. The matters raised in the submission can of course be pursued by the submitter through the comprehensive District Plan review currently underway.

TOMPKINS WAKE



Bridget Parham
Partner

encl.

LAWYERS



E-MAILED

3/8/16

WESTPAC HOUSE
430 VICTORIA STREET
PO BOX 258
DX GP 20031
HAMILTON 3240
NEW ZEALAND
PH: (07) 839 4771

3 August 2016

Waikato District Council
Private Bag 544
NGARUAWAHIA 3742



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- 5 AUG 2016

Waikato District Council

DDI: (07) 838 6023
FAX: (07) 839 4855
MOBILE: 021 249 3321
bparham@tomwake.co.nz

Partner: Bridget Parham

FILE REF: 204622-584

For: **Betty Connolly**

Plan Change 17 - Further Submission by Howard Lovell

Introduction

1. You have sought advice as to whether the further submission to Plan Change 17 Ngaruawahia Township and Surrounding Villages ('PC17') lodged by Howard Lovell dated 12 July 2016 ('further submission') is beyond the scope of his original submission to which the further submission relates.
2. If the further submission is outside scope, Council has no jurisdiction to consider the further submission.

Summary

3. A further submission under clause 8 of the First Schedule to the Resource Management Act 1991 ('RMA') is more constrained than an original submission under clause 6. Clause 8(2) expressly provides that a further submission can only be in support of, or in opposition to, the relevant original submission. A further submission cannot extend the scope of the original submission.
4. Mr Lovell's further submission seeks to extend the proposed New Residential rezoning over his property at 15 Murphy Lane, Taupiri ('the property') to additional areas. This is beyond the scope of his original submission which supports the rezoning of his property as identified in PC17.
5. Accordingly, Council has no jurisdiction to consider the additional rezoning sought in the further submission.

Evaluation of the Submissions

6. Mr Lovell lodged an original submission under clause 6 dated 4 May 2016 in support of PC17¹. By way of relief, Mr Lovell's original submission asked Council to "approve" the rezoning of his property from Rural to New Residential as identified on Map 7 in PC17.

¹ Submission 1.

7. Mr Lovell subsequently lodged a further submission in support of his original submission. Mr Lovell completed the further submission on Council's form. On the form he seeks that his original submission be allowed. Under the heading on the form "the reasons for my support or opposition are", Mr Lovell has written "see Attached." Attached to the further submission form is a letter from Blue Wallace Surveyors Limited dated 11 July 2016 ('the letter'), which forms part of the further submission.
8. The reasons for the further submission are set out in paragraphs 1 and 2 of the letter as follows:
 1. It does not make sense to undertake a plan change to rezone such a small area of land that would only contain around 40 Lots. A larger area would provide for the future extension of Taupiri Township which will undoubtedly grow once the expressway is completed and given the likely population growth in the Auckland/Waikato/Bay of Plenty golden triangle as predicted in years to come.
 2. To restrict residential development to a very irregular shaped parcel of land would result in a very inefficient subdivision layout/irregular shaped lots and multiple minor access lanes to rear lots.
9. The letter requests that the proposed New Residential rezoning be significantly extended to include the additional area highlighted in yellow on the plan attached to the further submission. The extended area includes the entire balance of Mr Lovell's property at 15 Murphy Lane and a further adjacent block (both currently zoned Rural).
10. The letter further requests that if the area to be rezoned is limited to the proposed rezoning on Map 7, then the eastern boundary of that area should be extended to take in the gully/low lying areas which it is suggested, should be filled.

Legal Analysis

11. The class of persons who may make a further submission on a proposed policy statement or plan (including a plan change) is not unlimited. Clause 8(1) prescribes three classes of persons whom may make a further submission:
 - (a) any person representing relevant aspects of the public interest; and
 - (b) any person who has an interest in the proposed policy statement or plan greater than the interest that the general public has; and
 - (c) the local authority itself.
12. There is no question Mr Lovell has status to lodge a further submission under clause 8(1)(b) above as a portion of his property is subject to rezoning under PC17. There is nothing in clause 8 to prevent a person lodging a further submission on their own original submission, subject to compliance with subsection (2).
13. A further submission is more limited than an original submission under clause 6. Clause 8(2) expressly provides:

A further submission must be limited to a matter in support of or in opposition to the relevant submission made under clause 6.

14. The then Planning Tribunal in *Offenberger v Masterton District Council*² held that a further submission cannot extend the scope of the original submission and can only seek allowance or disallowance in whole or in part of the original submission.
15. This was confirmed by the Environment Court in *Telecom NZ Ltd v Waikato District Council*³. In that case, a proposed plan specified underground cables and lines for telecommunication facilities to be permitted activities in all zones. The appellant submitted that the permitted activity status be extended to include certain policy areas. A further submission in opposition to the Appellant's submission sought that the activity be non-complying in all areas. The Court held the further submission to be invalid and not an issue it could determine on appeal.
16. As the further submission procedure is designed to ensure there is full public knowledge of any proposal to amend a publically notified plan change, further submissions are confined to either support or opposition and cannot introduce additional matters.
17. The scope of Mr Lovell's original submission was to approve the rezoning of his property to New Residential as identified in Map 7 to PC17. The original submission did not seek to extend the proposed zoning over any additional areas. Therefore, the most that Mr Lovell's further submission in support could seek, is the total allowance of his primary submission, with the effect that the Council's proposed rezoning over his property as identified in Map 7 be upheld.
18. It is not open to Mr Lovell, through his further submission in support to his primary submission, to seek to extend the proposed New Residential zoning over additional areas of his property.
19. As the further submission is outside the scope of the original submission, the Council have no jurisdiction, in reliance on Mr Lovell's further submission, to amend PC17 to extend the New Residential zoning over additional areas of his property.
20. We have not analysed the original submissions against PC17 to see if any other submitter has sought to extend the zoning over Mr Lovell's property.

Conclusion

21. Mr Lovell's further submission, to the extent it supports the proposed New Residential zoning over his property as identified in Map 7, is a valid further submission which Council can consider.
22. However, to the extent the further submission seeks to extend the New Residential zoning over the property beyond that proposed in Map 7, the further submission is invalid as it extends the scope of the original submission.
23. This means Council has no jurisdiction, in reliance on Mr Lovell's original or further submission, to amend PC17 to extend the proposed New Residential zoning over additional areas of Mr Lovell's property.

² Decision W53/96, 16 May 1996.

³ AO74/97, Judge Sheppard, 4 July 1997.

24. You have not identified any other original submission that would give Council jurisdiction to consider extending the zoning over Mr Lovell's property.

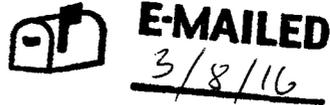
TOMPKINS WAKE



Bridget Parham
Partner

encl.

LAWYERS



WESTPAC HOUSE
430 VICTORIA STREET
PO BOX 258
DX GP 20031
HAMILTON 3240
NEW ZEALAND
PH: (07) 839 4771

3 August 2016

RECEIVED

DDI: (07) 838 6023
FAX: (07) 839 4855
MOBILE: 021 249 3321
bparham@tomwake.co.nz

Waikato District Council
Private Bag 544
NGARUAWAHIA 3742

- 5 AUG 2016

Partner: Bridget Parham

FILE REF: 204622-584



For: **Betty Connolly**

Plan Change 17 - Status of Singh Submission

Introduction

1. You have sought advice as to whether Waikato District Council ('Council') has jurisdiction to consider the submission made on Plan Change 17 Ngaruawahia and Surrounding Villages ('PC17') by Paramjeet Singh. Mr Singh seeks to re-zone his property at 689 Te Kowhai Road, Te Kowhai ('the property') from Rural to Country Living Zone (Map 11).
2. PC17 does not propose any zone change to Mr Singh's property.

Executive Summary

3. Pursuant to clause 6 of the First Schedule of the Resource Management Act 1991 ('RMA'), any person may make a submission "on" a proposed policy statement or plan (including a plan change).
4. The High Court decision in *Clearwater Resort Limited v Christchurch City Council*¹¹ sets out a two limb test for determining whether a submission is "on" a plan change.
5. We conclude on balance that Mr Singh's Submission, by the narrowest of margins, meets the first limb of the *Clearwater* test as it can be said to reasonably fall within the ambit of PC17.
6. Mr Singh's submission does not however, pass the second limb of the *Clearwater* test as no one reading PC17 as notified would have contemplated a possible rezoning of Mr Singh's property. There is no discussion of the potential for his property to be re-zoned in the section 32 report.
7. As the submission does not meet both limbs of the *Clearwater* test, it is not "on" PC17 as required by clause 6 to the First Schedule.
8. Accordingly, Council has no jurisdiction to consider Mr Singh's submission.

¹¹ AP34/02, 14 March 2013.

The Legal issues

9. The right to make a submission on a plan change is conferred by clause 6 of the First Schedule of the RMA which provides that once notified, any person may make a submission on a proposed policy statement or plan (which includes a plan change).
10. If a submission is not “on” the plan change, Council cannot amend the operative plan as sought in the submission.
11. Accordingly, the critical legal issue is whether the Singh submission is “on” PC17 as publicly notified in accordance with clause 6.

When a Submission is “on” a Plan Change

12. The leading authority on the question of whether a submission is “on” a variation or plan change is the High Court decision of William Young J in *Clearwater Resort Ltd v Christchurch City Council*.
13. William Young J set out the bipartite test for determining whether a submission is on a plan change or variation:¹²
 - (a) A submission can only fairly be regarded as being “on” a variation if it is addressed to the extent to which the variation changes the pre-existing status quo; and
 - (b) If the effect of regarding a submission as “on” a variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected, this is a powerful consideration against finding that the submission is truly “on” the variation.
14. The *Clearwater* test has been considered and applied in other recent High Court decisions including *Option 5 Inc v Marlborough District Council*¹³ and *Palmerston North City Council v Motor Machinists Limited*¹⁴. It has also been considered by the Environment Court in the recent decision in *Well Smart Investment Holding Limited v Queenstown Lakes District Council*¹⁵.

Option 5 Inc v Marlborough District Council

15. In *Option 5*, the Council had proposed a variation defining the scope of a Central Business Zone. The variation, as notified, had not rezoned any land apart from some Council-owned vacant land. A submission was made to Marlborough District Council (“MDC”) seeking the addition of further land to the zone. MDC agreed with the submission and amended the variation accordingly.
16. On appeal, the Environment Court said that the submission was not “on” the variation. The Environment Court decision was subsequently appealed to the High Court. The High Court accepted the Environment Court adopted the correct approach when assessing whether the submission was on the variation. That approach is to:

¹² Paragraph [66].

¹³ HC Blenheim CIV 2009-406-144, 28 September 2009.

¹⁴ [2013] NZHC 1290.

¹⁵ [2015] NZEnvC 214.

- (a) First, consider the purpose of the variation and the policy behind the variation. The purpose and policy is to be identified from its provisions and not from the content of its public notification. The Council's explanation of the variation may be a relevant consideration, but only in respect of whether there has been any prejudice to any person who might have made a submission but did not do so;
 - (b) Secondly, detail the extent of the submission in question; and
 - (c) Thirdly, acknowledge and apply the consideration suggested by William Young J in *Clearwater* (being the two limb test).
17. The High Court said the first limb of the *Clearwater* test may not be of particular assistance in many cases, but the second limb of the test will be of vital importance in many cases, and may be the determining factor in some cases. It agreed with the Environment Court that so much will depend upon scale and degree. Further it said the analysis of what is "on" and what is not will depend, in part, on what perspective is brought to the proposed variation and the submission by each party.
 18. Ronald Young J did not accept the appellants' submission that because the variation involved some rezoning of the Central Business Zone, any submission advocating further extension of that zone would be "on" the variation. He rejected that argument as being "too crude". He reasoned:

So much will depend on the particular circumstances of the case. In considering the particular circumstances it will be highly relevant to consider whether, as William Young J identified in *Clearwater*, that if the result of accepting a submission as on (a variation) would be to significantly change a proposed plan without a real opportunity for participation by those affected then that would be a powerful argument against the submission as being "on".
 19. The lack of opportunity for participation was determinative in *Option 5*. The amended variation had the potential to rezone at least 50 residential properties. That would occur without any direct notification to the property owners and therefore without any real chance to participate in the rezoning process. The only notification to those property owners was through public notification in the media that they could obtain summaries of submissions. Nothing indicated to those property owners that the zoning of their property might change. The submission was not therefore, on the plan change.

Palmerston North City Council v Motor Machinists Ltd

20. *Motor Machinists* also concerned a proposed plan change which included the rezoning of land along a ring road. Four lots at the end of the respondent's street (which runs off the ring road) were among properties to be rezoned. The respondent, whose land was ten lots away from the ring road, filed a submission seeking that his land be included in the rezoning. The Council found that the submission was not "on" the plan change because the plan change did not directly affect the respondent's land. The Environment Court disagreed.
21. On appeal, the High Court considered that the first limb of the *Clearwater* test requires that the submission must "reasonably be said to fall within the ambit of the plan change"¹⁶. One way of analysing that is to ask whether the submission raises matters that should have been addressed in the s 32 evaluation and report. If so, the submission is unlikely to fall within the ambit of the plan change. Another is to ask

¹⁶ Paragraph [81].

whether the management regime in a district plan for a particular resource is altered by the plan change. If it is not, then a submission seeking a new management regime for that resource is unlikely to be “on” the plan change, unless the change is merely incidental or consequential.

22. The High Court considered that the second limb of the *Clearwater* test requires consideration of whether there is a real risk that persons directly or potentially affected by the additional changes proposed in the submission have been denied an effective opportunity to respond to those additional changes in the plan change process.
23. The Court commented that:

[I]t would be a remarkable position that a plan change might so morph that a person not directly affected at one stage (so as not to have received notification initially under clause 5(1A)) might then find themselves directly affected but speechless at a later stage by dint of a third party submission not directly notified as it would have been had it been included in the original instrument. It is that unfairness that militates the second limb of the *Clearwater* test.
24. Noting the significance of the s 32 report to the second limb of the test, the Court considered that robust, sustainable management of natural and physical resources requires notification of the s 32 analysis of the comparative merits of a proposed plan change to persons directly affected by those proposals. There is a real risk that submissions proposing more than consequential further changes will be inconsistent with that principle. This is because such changes are unaccompanied by the s 32 analysis that accompanies a proposed plan change or variation or because persons directly affected are, in the absence of an obligation that they be notified, simply unaware of the further changes proposed in the submission. Accordingly, a precautionary approach is required to receipt of submissions proposing more than incidental or consequential further changes to a notified proposed plan change¹⁷.
25. The Court concluded that neither limb of the *Clearwater* test was satisfied. The extension of the zone reasonably required coherent long term analysis rather than an opportunistic insertion by submission. The lack of formal notification to adjacent landowners meant that the inclusion of a rezoning of two isolated lots in a side street was found to “come from left field”.
26. The Court allowed the appeal finding that the Council lacked jurisdiction to consider the submission as it was not “on” the plan change.

Well Smart Investment Holding Ltd v Queenstown Lakes District Council

27. The issue in *Well Smart* was whether the Court had jurisdiction to hear parts of four appeals on plan change 50 (“PC 50”) to Queenstown’s Operative District Plan. Queenstown Lakes District Council (“QLDC”) publicly notified PC 50 to extend the existing Queenstown Town Centre Zone through the rezoning of land. The appellants each made submissions on PC 50. The appellants’ land was adjacent or close to, but outside the PC 50 area. The Commissioners at the Council hearing found that there was no scope to consider parts of the submissions because the submissions were not “on” PC 50. On appeal to the Environment Court, Judge Jackson disagreed with the reason that the Commissioners gave for finding the relief to be out of scope, stating:¹⁸

¹⁷ Paragraph [91].

¹⁸ Paragraph [24].

The Hearing Commissioners stated that the further extension land "...does not fall within the area of the district plan that is subject to the proposed plan change" as if that by itself makes the submission out of scope. Indeed they later said as much. I consider that is incorrect as a matter of law because in *Motor Machinists Kos J* expressly stated that zoning extensions by submissions are "...not exclude[d] altogether."

28. On the basis that Appendix A to the s 32 report considered the appellants' land as potentially suitable for rezoning, the Court found that the first limb of the *Clearwater* test had been met.
29. The submissions did not however, meet the second limb of the *Clearwater* test. Judge Jackson considered that the purpose of the second limb is to prevent procedural unfairness to persons who would be more affected by a submission than by the notified plan change. In this case, fair and reasonable notice was not given to those who might be affected. While Appendix A did give some notice to owners and businesses in the area of changes to the zoning of land and of consequential changes to the rules governing land, he held that that was insufficient. That is because while potential submitters should look at the s 32 analysis, it is unfair to expect them to pore over the appendices. Accordingly, Judge Jackson held that the affected parts of all four appeals were not within jurisdiction.

Summary of caselaw

30. To summarise the above authorities on the question of what is "on" a plan change or variation, the following questions are relevant in assessing whether the *Clearwater* tests are met:

First limb

- (a) Whether the submission can be said to reasonably fall within the ambit of the variation? The following questions may assist in answering that question:
 - (i) Whether the submission raises matters that should have been addressed in the s 32 evaluation and report? If so, it is unlikely to fall within the ambit of the plan change. A precautionary approach will be required.
 - (ii) Whether the management regime in a district plan for a particular resource is altered by the variation? If it is not, then a submission seeking a new management regime for that resource is unlikely to be "on" the plan change *unless* the change is merely incidental or consequential.

Second limb

- (b) Whether there is a real risk that persons directly or potentially affected by the additional changes proposed in the submission have been denied an effective opportunity to respond to those additional changes in the variation process?
- (c) Has fair and reasonable notice been given to those who might be affected by the proposed changes in the submission?

Evaluation of Singh submission against PC17

Purpose of PC17

31. Applying the approach in *Option 5*, it is first necessary to consider the purpose of PC17 and the policy behind the plan change. The purpose of PC17 is to rezone land in the Ngaruawahia township, Taupiri, Horotiu, Te Kowhai and Glen Massey villages to provide for the projected population growth in the immediate future (ten year timeframe).¹⁹ The Summary Statutory Report states that beyond the first ten years, to provide for projected population growth for a further 20 years to 2046, additional areas will need to be considered in the Structure Plan process as it progresses. PC17 implements Stage 1 of the Ngaruawahia and Surrounding Villages Structure Plan.
32. In relation to the areas proposed to be rezoned under PC17, the Summary Statutory Report states²⁰:

The identified growth areas have been formed in such a way that they directly relate to the identifiable boundaries of the Ngaruawahia township and Taupiri, Horotiu, and Te Kowhai villages. In particular, the growth areas have been selected to connect to the existing zoned or established residential development to facilitate connectivity and enhance amenity and social coherence.
33. PC17 is limited to rezoning only. No changes to the rural framework are sought for any of the areas proposed to be rezoned under PC17. This means once the areas are rezoned, they can be developed in accordance with the existing zone provisions.

Evaluation of Singh submission

34. As mentioned in the introduction, Mr Singh seeks to re-zone his property at 689 Te Kowhai Road, Te Kowhai from Rural to Country Living. In support of the relief sought, the submission states:

"This property is also west of the Gas Pipeline and naturally sits in with the other proposed area to the north. The south of this lot is naturally marked by a gully."

Clearwater tests

35. We now turn to consider the *Clearwater* tests for determining whether the Singh submission is "on" PC17. The first test is evaluate whether the submission fairly and reasonably falls within the ambit of PC17 as notified.
36. In the villages other than Te Kowhai, PC17 seeks to provide for new Country Living zoned land at Ngauawahia (from Rural zone), Taupiri (from Living zone) and Horotiu (from Industrial and Rural zoned land). At Glen Massey, PC17 seeks to reduce a 40ha area zoned for Country Living and return this land to the Rural Zone.
37. Specifically at Te Kowhai, PC17 seeks to re-zone two areas (totalling approximately 41ha) from Rural Zone to Country Living Zone (Maps 11 and 12). The Summary Statutory Report states:²¹

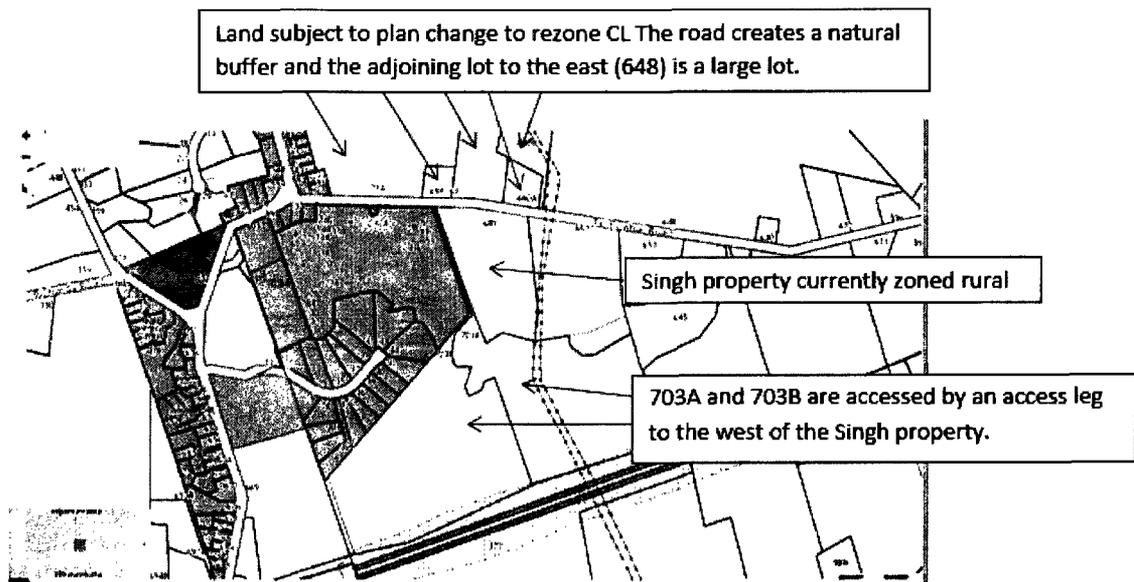
¹⁹ Summary Statutory Report including section 32A analysis, Section 4, Plan Content, page 23.

²⁰ Page 23.

²¹ Page 44.

In order to accommodate growth in the short term two areas have been identified. One is adjacent to existing residential development and is central to the village and the other adjoins the very popular Te Otamanui Lagoon walkway and adjacent to an area already zoned Country Living area. Both areas are well positioned to the existing village and facilities and have sufficient capacity to accommodate anticipated growth for the short term.

38. The first area identified above is illustrated on Map 11 and this second area is shown on Map 10. Mr Singh's property can be seen on Map 11. It is located to the immediate east of the retirement village (zoned Living). On the opposite side of Te Kowhai Road is the first area of land proposed to be re-zoned Country Living under PC17. This area consists of eight properties currently zoned Rural which forms a large block bordering Te Kowhai and Horotiu Roads.
39. To the immediate west of the Singh property is an access leg which is used to access two rear properties, being 703A and 703B Te Kowhai Road. Both these properties are zoned Rural, along with all other surrounding land. The location of Mr Singh's property in relation to the area proposed to be re-zoned and the properties immediately surrounding his land is shown on the map below.



40. Like the appellant's land in the *Well Smart* decision, Mr Singh's land is adjacent or close to, but outside the PC17 area. The Environment Court in *Well Smart* said a zoning extension does not of itself make the submission out of scope. The court in that decision found that the first limb of the *Clearwater* test was met because the section 32 report considered the appellant's land as potentially suitable for re-zoning.
41. In the *Motor Machinists* decision, the respondent wanted the rezoning to extend to include his land located 10 Lots away from the land proposed to be rezoned. The High Court stated that zoning extensions are not excluded altogether. However, unlike in the *Well Smart* decision, the section 32 report did not address the respondent's land. The High Court in *Motor Machinists* found that neither test had been met. It said the

extension of the land required coherent long term analysis rather than an opportunistic insertion by submission.

42. Whether or not the section 32 report addressed the matters raised in the submission was influential in both the *Well Smart* and *Motor Machinists'* decisions in terms of whether a submission reasonably falls within the ambit of the plan change. The potential rezoning of Mr Singh's land is not addressed in the Summary Statutory Report or 32 analysis included in that report. Further, Mr Singh's property and the first area proposed to be rezoned are physically separated by Te Kowhai Road which creates a natural boundary for the plan change area. These factors point towards the submission not meeting the first limb of the test.
43. However, the inclusion or exclusion of matters in the section 32 report is not the only test for the determining whether the submission is reasonably within the plan change. The High Court in *Motor Machinists* said another test is to ask whether the management regime in the District Plan for a particular resource is altered by the plan change. If it is not altered, then a submission seeking a new management regime for that resource is unlikely to be "on" the plan change, unless the change is "merely incidental or consequential".
44. Whilst PC17 does not seek to alter the zoning (management regime) of Mr Singh's land, it could be argued that the rezoning of his land is *incidental or consequential* due to the location of Mr Singh's property immediately adjacent to an existing Living Zone (in the same way the proposed Country Living land across the road from his property adjoins an existing Living Zone) and immediately opposite the proposed Country Living Zone (with the eastern boundary of Mr Singh's property being roughly in line with the south/eastern boundary of the proposed Country Living land). These factors point towards the submission meeting the first limb of the test.
45. Taking all these matters into account, we conclude, on balance, the submission passes the first limb of the test, by the narrowest of margins.
46. Turning to the second limb of the *Clearwater* test, the issue is whether there is a risk persons directly or potentially affected by the change proposed in the submission have not had an opportunity to participate in the plan change process. As set out in *Well Smart*, the purpose of the second limb is to prevent to procedural unfairness to persons who would be more affected by a submission than by the notified plan change.
47. As neither the Summary Statutory Report or the section 32 analysis within that report did not notify or address the potential for Mr Singh's property to be rezoned Country Living, directly and potentially affected persons rights to participate in the plan change are dependent on them seeing the submission or summary of submissions and appreciating the significance of the change from those documents. No further submissions have be lodged in relation to the Singh submission. This indicates other interested parties have not seen the submission. At the very least, the two properties who use the access way to the west of Mr Singh's property would be directly affected by the zone change as their properties would fall between the Living Zone land to the west and Country Living Zone land to the east (if Mr Singh's land was rezoned). Other surrounding Rural land owners are also potentially affected. These parties are not already involved in the PC17 process as submitters.
48. Simply put, no one reading the plan change would have contemplated any change to Mr Singh's property particularly as it is across the road from the properties proposed to be rezoned Country Living and was not addressed in the PC17 documents. As a result, the Singh submission fails the second limb of the *Clearwater* test.

49. As the submission does not pass both limbs of the *Clearwater* test, the submission is not "on" PC17. Accordingly, Council does not have jurisdiction to consider the submission.

Conclusion

50. The submission, on balance and by the narrowest of margins, meets the first limb of the *Clearwater* test as it can be said to reasonably fall within the ambit of PC17.
51. However, the submission clearly fails the second limb of the test as directly and potentially affected persons have not had the opportunity to participate in the plan change process as submitters.
52. As the submission does not meet both limbs of the test, the submission is not "on" PC17 as publically notified. Accordingly, Council does not have jurisdiction to consider the submission.

TOMPKINS WAKE



Bridget Parham
Partner

encl.

LAWYERS



E-MAILED

5/8/16

WESTPAC HOUSE
430 VICTORIA STREET
PO BOX 258
DX GP 20031
HAMILTON 3240
NEW ZEALAND
PH: (07) 839 4771

DDI: (07) 838 6023
FAX: (07) 839 4855
MOBILE: 021 249 3321
bparham@tomwake.co.nz

RECEIVED

- 5 AUG 2016

Partner: Bridget Parham

3 August 2016

Waikato District Council
Private Bag 544
NGARUAWAHIA 3742

SCANNED

Set No _____

Waikato District Council

FILE REF: 204622-584

For: **Betty Connolly**

Dear Betty

Plan Change 17 - Status of Submission by Van Dam

Introduction

1. You have sought advice as to whether Waikato District Council ('Council') has jurisdiction to consider a submission made on Plan Change 17 Ngaruawahia and Surrounding Villages ('PC17') by Rudy and Annelies Van Dam dated 9 May 2016¹. The relevant part of the submission seeks to rezone their 45ha farm property at 2277c Gordonton Road, Taupiri ('the property').
2. PC17 does not propose any zone change to the property.

Executive Summary

3. Pursuant to clause 6 of the First Schedule of the Resource Management Act 1991 ('RMA'), any person may make a submission "on" a plan change.
4. The High Court decision in *Clearwater Resort Limited v Christchurch City Council*² sets out a two limb test for determining whether a submission is "on" a plan change.
5. The submission does not meet either limb of the *Clearwater* test. Accordingly, Council does not have jurisdiction to consider the submission as it is not "on" PC17 as notified.

Relief sought in the submission

6. The relevant part of the submission seeks:
 - (a) Rezoning of the property from Rural to Country Living; and
 - (b) That a small block of land on the property be rezoned from Rural to Service Centre or Business to enable the development of a service centre.

¹ Submission number 4.

² AP34/02, 14 March 2013.

7. The submission asserts that the property is struggling to remain viable as a dairy farm. The 45 hectares is supplemented by an additional 20ha of leased land on the opposite side of Gordonton Road with access being via an old underpass. The submission advises the leased land will be lost to the Huntly Bypass and costly compliance issues (particularly relating to effluent disposal) means the future of the property as a dairy farm hangs in the balance. The submitters' propose to develop the land in stages.
8. In relation to their second relief, the submission states that the development of the service centre is "underway" on the property. It states the developer has already undertaken soil testing, scoping and is in discussion with NZTA. The service centre is proposed to be similar to the service centre at Bombay.

The legal Issue

9. The right to make a submission on a plan change is conferred by clause 6 of the First Schedule of the RMA which provides that once notified, any person may make a submission on a proposed policy statement or plan (which includes a plan change).
10. If a submission is not "on" the plan change, Council cannot amend the plan as sought in the submission.
11. Accordingly, the critical legal issue is whether the above relief sought in the submission is "on" PC17 as publicly notified.

When a submission is "on" a plan change

12. The leading authority on the question of whether a submission is "on" a variation or plan change is the High Court decision of William Young J in *Clearwater Resort Ltd v Christchurch City Council*.
13. William Young J set out the bipartite test for determining whether a submission is on a plan change or variation:³
 - (a) A submission can only fairly be regarded as being "on" a variation if it is addressed to the extent to which the variation changes the pre-existing status quo; and
 - (b) If the effect of regarding a submission as "on" a variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected, this is a powerful consideration against finding that the submission is truly "on" the variation.
14. The *Clearwater* test has been considered and applied in other recent High Court decisions including *Option 5 Inc v Marlborough District Council*⁴ and *Palmerston North City Council v Motor Machinists Limited*⁵. It has also been considered by the Environment Court in the recent decision in *Well Smart Investment Holding Limited v Queenstown Lakes District Council*⁶.

³ Paragraph [66].

⁴ HC Blenheim CIV 2009-406-144, 28 September 2009.

⁵ [2013] NZHC 1290.

⁶ [2015] NZEnvC 214.

Option 5 Inc v Marlborough District Council

15. In *Option 5*, the Council had proposed a variation defining the scope of a Central Business Zone. The variation, as notified, had not rezoned any land apart from some Council-owned vacant land. A submission was made to Marlborough District Council ("MDC") seeking the addition of further land to the zone. MDC agreed with the submission and amended the variation accordingly.
16. On appeal, the Environment Court said that the submission was not "on" the variation. The Environment Court decision was subsequently appealed to the High Court. The High Court accepted the Environment Court adopted the correct approach when assessing whether the submission was on the variation. That approach is to:
 - (a) First, consider the purpose of the variation and the policy behind the variation. The purpose and policy is to be identified from its provisions and not from the content of its public notification. The Council's explanation of the variation may be a relevant consideration, but only in respect of whether there has been any prejudice to any person who might have made a submission but did not do so;
 - (b) Secondly, detail the extent of the submission in question; and
 - (c) Thirdly, acknowledge and apply the consideration suggested by William Young J in *Clearwater* (being the two limb test).
17. The High Court said the first limb of the *Clearwater* test may not be of particular assistance in many cases, but the second limb of the test will be of vital importance in many cases, and may be the determining factor in some cases. It agreed with the Environment Court that so much will depend upon scale and degree. Further it said the analysis of what is "on" and what is not will depend, in part, on what perspective is brought to the proposed variation and the submission by each party.
18. Ronald Young J did not accept the appellants' submission that because the variation involved some rezoning of the Central Business Zone, any submission advocating further extension of that zone would be "on" the variation. He rejected that argument as being "too crude". He reasoned:

So much will depend on the particular circumstances of the case. In considering the particular circumstances it will be highly relevant to consider whether, as William Young J identified in *Clearwater*, that if the result of accepting a submission as on (a variation) would be to significantly change a proposed plan without a real opportunity for participation by those affected then that would be a powerful argument against the submission as being "on".
19. The lack of opportunity for participation was determinative in *Option 5*. The amended variation had the potential to rezone at least 50 residential properties. That would occur without any direct notification to the property owners and therefore without any real chance to participate in the rezoning process. The only notification to those property owners was through public notification in the media that they could obtain summaries of submissions. Nothing indicated to those property owners that the zoning of their property might change. The submission was not therefore, on the plan change.

Palmerston North City Council v Motor Machinists Ltd

20. *Motor Machinists* also concerned a proposed plan change which included the rezoning of land along a ring road. Four lots at the end of the respondent's street (which runs

off the ring road) were among properties to be rezoned. The respondent, whose land was ten lots away from the ring road, filed a submission seeking that his land be included in the rezoning. The Council found that the submission was not "on" the plan change because the plan change did not directly affect the respondent's land. The Environment Court disagreed.

21. On appeal, the High Court considered that the first limb of the *Clearwater* test requires that the submission must "reasonably be said to fall within the ambit of the plan change"⁷. One way of analysing that is to ask whether the submission raises matters that should have been addressed in the s 32 evaluation and report. If so, the submission is unlikely to fall within the ambit of the plan change. Another is to ask whether the management regime in a district plan for a particular resource is altered by the plan change. If it is not, then a submission seeking a new management regime for that resource is unlikely to be "on" the plan change, unless the change is merely incidental or consequential.
22. The High Court considered that the second limb of the *Clearwater* test requires consideration of whether there is a real risk that persons directly or potentially affected by the additional changes proposed in the submission have been denied an effective opportunity to respond to those additional changes in the plan change process.
23. The Court commented that:

[I]t would be a remarkable position that a plan change might so morph that a person not directly affected at one stage (so as not to have received notification initially under clause 5(1A)) might then find themselves directly affected but speechless at a later stage by dint of a third party submission not directly notified as it would have been had it been included in the original instrument. It is that unfairness that militates the second limb of the *Clearwater* test.
24. Noting the significance of the s 32 report to the second limb of the test, the Court considered that robust, sustainable management of natural and physical resources requires notification of the s 32 analysis of the comparative merits of a proposed plan change to persons directly affected by those proposals. There is a real risk that submissions proposing more than consequential further changes will be inconsistent with that principle. This is because such changes are unaccompanied by the s 32 analysis that accompanies a proposed plan change or variation or because persons directly affected are, in the absence of an obligation that they be notified, simply unaware of the further changes proposed in the submission. Accordingly, a precautionary approach is required to receipt of submissions proposing more than incidental or consequential further changes to a notified proposed plan change⁸.
25. The Court concluded that neither limb of the *Clearwater* test was satisfied. The extension of the zone reasonably required coherent long term analysis rather than an opportunistic insertion by submission. The lack of formal notification to adjacent landowners meant that the inclusion of a rezoning of two isolated lots in a side street was found to "come from left field".
26. The Court allowed the appeal finding that the Council lacked jurisdiction to consider the submission as it was not "on" the plan change.

⁷ Paragraph [81].

⁸ Paragraph [91].

Well Smart Investment Holding Ltd v Queenstown Lakes District Council

27. The issue in *Well Smart* was whether the Court had jurisdiction to hear parts of four appeals on plan change 50 ("PC 50") to Queenstown's Operative District Plan. Queenstown Lakes District Council ("QLDC") publicly notified PC 50 to extend the existing Queenstown Town Centre Zone through the rezoning of land. The appellants each made submissions on PC 50. The appellants' land was adjacent or close to, but outside the PC 50 area. The Commissioners at the Council hearing found that there was no scope to consider parts of the submissions because the submissions were not "on" PC 50. On appeal to the Environment Court, Judge Jackson disagreed with the reason that the Commissioners gave for finding the relief to be out of scope, stating:⁹

The Hearing Commissioners stated that the further extension land "...does not fall within the area of the district plan that is subject to the proposed plan change" as if that by itself makes the submission out of scope. Indeed they later said as much. I consider that is incorrect as a matter of law because in *Motor Machinists* Kos J expressly stated that zoning extensions by submissions are "...not exclude[d] altogether."

28. On the basis that Appendix A to the s 32 report considered the appellants' land as potentially suitable for rezoning, the Court found that the first limb of the *Clearwater* test had been met.
29. The submissions did not however, meet the second limb of the *Clearwater* test. Judge Jackson considered that the purpose of the second limb is to prevent procedural unfairness to persons who would be more affected by a submission than by the notified plan change. In this case, fair and reasonable notice was not given to those who might be affected. While Appendix A did give some notice to owners and businesses in the area of changes to the zoning of land and of consequential changes to the rules governing land, he held that that was insufficient. That is because while potential submitters should look at the s 32 analysis, it is unfair to expect them to pore over the appendices. Accordingly, Judge Jackson held that the affected parts of all four appeals were not within jurisdiction.

Summary of caselaw

30. To summarise the above authorities on the question of what is "on" a plan change or variation, the following questions are relevant in assessing whether the *Clearwater* tests are met:

First limb

- (a) Whether the submission can be said to reasonably fall within the ambit of the variation? The following questions may assist in answering that question:
- (i) Whether the submission raises matters that should have been addressed in the s 32 evaluation and report? If so, it is unlikely to fall within the ambit of the plan change. A precautionary approach will be required.
 - (ii) Whether the management regime in a district plan for a particular resource is altered by the variation? If it is not, then a submission seeking a new management regime for that resource is unlikely to be

⁹ Paragraph [24].

“on” the plan change *unless* the change is merely incidental or consequential.

Second limb

- (b) Whether there is a real risk that persons directly or potentially affected by the additional changes proposed in the submission have been denied an effective opportunity to respond to those additional changes in the variation process?
- (c) Has fair and reasonable notice been given to those who might be affected by the proposed changes in the submission?

Evaluation of the submission against PC17

Purpose of PC17

31. Following the three step approach in *Option 5*, it is first necessary to consider the purpose of PC17 and the policy behind the plan change. The purpose of PC17 is to rezone land in the Ngaruawahia township, Taupiri, Horotiu, Te Kauwhai and Glen Massey villages to provide for the projected population growth in those areas in the immediate future (10 year horizon)¹⁰. The Summary Statutory Report states that beyond the 10 year timeframe, additional areas will be considered in subsequent stages of the structure plan process. PC17 implements stage 1 of the Ngaruawahia Surrounding Villages Structure Plan.

32. In relation to the areas proposed to be rezoned under PC17, the Summary Statutory Report states¹¹:

The identified growth areas have been formed in such a way that they directly relate to the identifiable boundaries of the Ngaruawahia township and Taupiri, Horotiu, and Te Kowhai villages. In particular, the growth areas have been selected to connect to the existing zoned or established residential development to facilitate connectivity and enhance amenity and social coherence.

33. PC17 is limited to rezoning only. No changes to the rural framework are sought for any of the areas proposed to be rezoned under PC17. This means once the areas are rezoned, they can be developed in accordance with the existing zone provisions.

Evaluation of the submission

34. The relevant parts of the Van Dam submission seeks to rezone their 45ha farm property at Taupiri from Rural to Country Living. It also seeks that a small block of land within the farm property be rezoned from Rural to Service Centre or Business.

Clearwater tests

35. We now turn to consider the “Clearwater” tests for determining whether the submission is “on” PC17. The first test is whether the submission fairly and reasonably falls within the ambit of PC17.

¹⁰ Summary Statutory Report including section 32A Analysis, Section 4, Plan Content, page 23.

¹¹ Page 23

36. Within the Taupiri area, PC17 proposes limited Country Living zoning. It seeks to rezone only part of one property (accessed off Te Putu and Gordonton Road) from Living to Country Living (Map 7). This rezoning reflects the zoning over the balance of the land (Country Living) and the land owners aspirations not to develop the land for intensive urban development under the current Living Zone.
37. PC17 also seeks to rezone 8 separate areas from Rural to New Residential (Map 7). Of these 8 areas, 7 areas are located to the immediate south of the Taupiri village and the 8th area is a small portion of a larger rural property off Murphy Lane (Murphy block). All of the Taupiri areas proposed for rezoning under PC17 currently adjoin a Living Zone.
38. The Van Dam's property is not identified on Map 7 in PC17. It falls entirely outside the areas proposed to be rezoned at Taupiri. The property is located adjacent to that part of the Murphy block which is to retain the current rural zoning. It is not adjacent to the areas proposed to be rezoned either Country Living or New Residential. It is surrounded by Rural Zoned land. As identified at paragraph 32 above, the areas proposed for rezoning under PC17 have been selected to connect to the existing zone to establish residential development to facilitate connectivity and enhance amenity and social coherence.
39. The Environment Court in *Naturally Best New Zealand Limited and Shotover Park Limited v Queenstown Lakes District Council*¹² held, in reliance on a passage of the full High Court¹³ that a submission may seek fair and reasonable extensions to a notified variation or plan change. In that case, the Court upheld a submission by a neighbouring landowner to extend a proposed new zone to an additional part of their land. Part of the submitter's land already fell within the proposed new zone and was therefore related to the proposed variation.
40. The Van Dam property is not immediately adjacent to the land proposed to be rezoned. The Court in both *Wellsmart* and *Motor Machinists* held that this fact by itself does not make the submission out of scope.
41. The issue is whether the submission reasonably falls within the ambit of PC17. PC17 proposes to rezone only 5.4 hectares for country living development at Taupiri to cater for the short term population growth. By contrast, the submission seeks to rezone a 45 hectare block for country living (9 times the size of the proposed zoning under PC17). The rezoning of an additional 45 hectares is not required to accommodate the population growth of Taupiri in the short term. Further, the section 32 report did not consider the submitters' property as potentially suitable for rezoning. Nor did the report address the potential rezoning of any other land at Taupiri for any purpose.
42. In the *Option 5* case, the High Court found the modest intent of variation of 42 was to support the Central Business Zone ('CBZ'). By contrast, the submission in that case to rezone an additional 4 blocks of land was to prepare for the long term expansion of the CBZ. The purpose of the variation was not to review the boundaries of the existing CBZ to address long term expansion (notwithstanding the variation did rezone two discreet parcels of land CBZ). For that reason, the submission was not held to be sufficiently connected to the variation.
43. There are similar parallels between the purpose of PC 17 and the Van Dam submission in relation to the request to rezone the property to Country Living. PC17 takes a short

¹² C49/2004 Judge Jackson, 20 April 2014

¹³ Countdown Properties Limited v Dunedin City Council [1994] NZRMA 145

term approach by rezoning sufficient land to accommodate the short term population growth. By contrast, the submission seeks to rezone 45 hectares which is proposed to be developed in stages over a longer period of time.

44. For the above reasons, we do not consider the request to rezone the property Country Living meets the first limb of the *Clearwater* test as it cannot reasonably be regarded as being "on" PC17.
45. Turning to that part of the relief in the submission which seeks a Service Centre/Business zoning, there is no discussion whatsoever in the section 32 report regarding the potential need for a Business zoning at Taupiri to accommodate the future growth of the area in the short term. In the circumstances this part of the relief does not reasonably fall within the ambit of PC17. Accordingly, both parts of the relief fail the first limb of the test.
46. We now turn to consider the second limb of the *Clearwater* test. The issue is whether fair and reasonable notice has been given to those who might be directly or potentially affected by the relief sought in the submission to rezone the property Country Living and a portion of it Service Centre/Business. The purpose of the second limb is to prevent procedural unfairness to persons who would be more affected by a submission than by the notified plan change.
47. PC17 as notified did not give any notice regarding the need for additional Country Living or a Service Centre/Business zoning at Taupiri. The relief sought by the submission can be regarded as coming out of "left field" for which there is little or no scope for public participation. It cannot be said with any degree of certainty that those who may have an interest in the relief sought are already involved in the plan change process as a submitter. Owners of surrounding rural land would not have contemplated from reading PC17 as notified, or the Summary Statutory Report (including the section 32 report) that rural land adjacent to them may be rezoned Country Living and Service Centre/Business. The land uses that could establish under either zoning will have adverse effects on neighbouring rural productive activities.
48. The High Court in *Clearwater* and *Motor Machinists* has established that, in cases where a submission proposes something novel, such as the service centre concept, caution is required before concluding a submission is "on" a plan change. In our view, the subject matter of a service centre at Taupiri would have broad public interest and there is real risk that those who may be interested in the relief sought have been denied an opportunity to respond to the plan change process. You instruct no further submissions have been received against the Van Dam submission. This could indicate that potentially affected persons were not aware of the relief sought in the submission.
49. For the above reasons, we do not consider relief sought in the submission meets the second limb of the *Clearwater* test. As the relevant parts of the submission do not meet either limb of the *Clearwater* test, those parts of the submission are not "on" PC 17. Accordingly, Council does not have jurisdiction to consider the relief sought.

Conclusion

50. Council does not have jurisdiction to consider those aspects of the Van Dam submission which seeks to rezone the property from Rural to Country Living and a smaller portion to Service Centre/Business as the relief sought is not "on" PC17. Those aspects of the submission do not meet either limb of the *Clearwater* test.

51. Even if the Commissioners determining PC17 were to find that the relief sought met the first limb of the test, it would still fail the second limb. As the High Court said in *Option 5*, the second limb will in many cases be the determining factor.

Yours faithfully
TOMPKINS WAKE



Bridget Parham
Partner

Attachment 2

Rationale for Plan Change 17 (PC17) - Ngaruawahia Structure Plan (NSP)

Note 1: References to policies in this paper refer to the respective RPS policies.

Note 2: The narrative below should be read in conjunction with the relevant maps in the Plan Change.

Comments for Future Proof (FP), Hamilton (HCC), Waikato Regional (WRC) and Waipa (WaipaDC) councils in regards to rationale for changes in PC 17.

Background: Preparation of the NSP has been in progress since 2014 and takes into account the wider Ngaruawahia area (refer to plan change document for context map). There has been considerable community consultation in the process of compiling the draft plan (document still being finalised). The draft plan endorses the community and landowners aspirations as well as takes into account the need to provide for projected population growth in line with Policy 6.14. Proposed zone changes in PC17 are in accordance with Policy 6.14 and also take into account Policy 6.19 which indicates that a review is required as growth has varied from table 6-1. The plan change is only stage one of the proposed zoning changes identified in the draft structure plan. It addresses the immediate residential need for the next 10 years and mitigates against the risk of Council having to deal with private plan changes being lodged by developers outside of an integrated community-wide planning approach. The remaining changes will be addressed through the District Plan Review.

Current Waikato District Plan Zones: There are three zones in the Waikato Section and the structure plan area where development of either a residential nature or large lot could occur.

- **Living Zone (includes New Residential Zone)** caters for single dwelling suburban residential development and occurs in areas that are able to rely on council services. The only exceptions are some un-serviced small areas carried over from previous district plans (i.e. Gordonton and Te Kowhai ex Waikato and Waipa County Council). Current rules provide for minimum lot size of 450m² with average of 600m² in the New Residential Zone.
- **Country Living Zone** caters for large lot semi-rural lifestyle residential areas and current rules provide for a minimum lot size of 5000m². These areas are not, in general, serviced for wastewater or water supply and are required provide for services on site.

There have been no additional areas zoned for this type of residential development since the 2004 Waikato District Plan Review. Our evidence indicates that areas currently zoned Country Living within the wider Hamilton periphery are either at or nearing capacity. Refer table 2 – The Hamilton Urban Area.

- **Rural Zone** caters for productive farming uses. Historically WDC rules were more lenient around subdivision which resulted in a number of smaller lifestyle

developments (often clusters) occurring in the wider Hamilton peripheral area. Although Waikato District Council's plan change for rural and coastal subdivision (PC 2) has effectively put steps in place to stop further land fragmentation, there are still a number of vacant CTs (approximately 1346) in the rural and coastal zone that can still be taken up for residential use either as of right (i.e. already have existing certificates of title but have yet to have a house built), or by compliance with the district plan rules. It should be noted that some of these lots may be subject to restraints such as access, policy overlays or be in areas where there is no demand.

Under the current DP regime both the Rural and County Living zones effectively fulfil the lifestyle demand.

Future Proof Settlement Pattern (urban limits): Apart from one of the growth areas in Te Kowhai all proposed changes for plan change 17 are inside the indicative urban limits in accordance with RPS map 6-2 Indicative growth areas. In accordance with Policy 6.19 and 6.14 Waikato District is working with Future Proof partners on revising the urban limit maps and Population and Household projections. The revisions are in accordance with the principle of alterations occurring at the time a council does a structure plan/spatial plan when the area is fully accessed and best location is determined. The proposed areas for rezoning in the structure plan are within the proposed urban limits to be incorporated as part of the Future Proof Review.

Government directive: Central Government has just released the Proposed National Policy Statement (PNPS) on Urban Development Capacity under the RMA. This PNPS requires local authorities in high population growth areas such as the area in and around Hamilton to provide sufficient¹ development capacity to meet residential and business demand in the short to long term. PC 17 has taken the initiative in this respect by rezoning land to accommodate short term projections.

Impact on Hamilton City: Hamilton City and the northern Hamilton periphery are interlinked and should not be seen in isolation. This is largely due to the fact that the lower area of the Waikato district does not have any large business or retail areas such as that enjoyed in Waipa district with Cambridge or Te Awamutu. Realistically, much of the development in the district southwards from Huntly will in some degree have some interdependence on Hamilton for employment, entertainment, servicing, business requirements and retail as well as in some cases schooling and community facilities. Put in context, this is similar to those who travel out of Hamilton for employment and recreation in neighbouring areas. At an overall level any development in the Waikato area around Hamilton will be beneficial to the wider Hamilton, Waikato district and sub-regional economy.

¹ Sufficient means 20% over and above projected short and medium-term residential and business demand, and 15% over and above long term residential and business demand.

PC 17 changes:

Ngaruawahia: A mixture of zone changes is provided for as detailed in the plan change document. It should be noted that additional residential development is adjacent to existing similarly zoned areas and servicing can or is already provided. The additional country living is within the current or proposed urban limits. Mitigating features of this country living zone include protection for an existing rural activity (chicken farm) and the creation of a green belt on the periphery of the town to delineate areas of urban and rural.

Taupiri: Residential rezoning is adjacent to similarly zoned areas and servicing can be provided. New areas are within current urban limits.

Glen Massey: The amendments in this area reduce that area currently zoned Country Living by 40ha as much of the zoned area is regarded as having a poor development potential due to physical land constraints.

Te Kowhai: Two areas for future Country Living are proposed. Both adjoin current development and both are in the current or the proposed urban limit. It should be noted that this development sits outside the Policy 6.15 yield threshold of 8-10 households per hectare for rural villages because the Te Kowhai area is not reticulated. There are no plans to provide reticulation in the foreseeable future as costs would be prohibitive to do so.

As previously noted there have been no additional areas zoned for Country Living since the 2004 District Plan Review resulting in limited Country Living Zone capacity remaining in the Hamilton periphery area (refer Part 2: The Hamilton Urban Area). Over the last 10 years Waikato District has experienced a significant growth in demand for this form of residential development and the Country Living Zone in Tamahere is nearing capacity. The existing Country Living Zones on SH 23 (Whatawhata), Lake Rotokauri and Horotiu Road (Te Kowhai) are also nearly at full capacity. Due to pressures around transportation in the Tamahere area it is not suitable at this time to allow for more lifestyle development in that vicinity. Te Kowhai has been identified as the area to meet this latent demand due to its close proximity to Hamilton as the area has good transport networks and connectivity and is able to be accessed by a number of connections (Ngaruawahia Rd, Horotiu Rd, Te Kowhai Rd, SH39, SH 23) allowing traffic to disperse more easily than in the Tamahere area. The proposed development is focused around the existing village which has strong community connections. It also helps provide more diversified residential options for the Future Proof sub-region.

Horotiu: Horotiu is a small area that is undergoing huge change and Council needs to respond to these changes to ensure that the community can make the most of the opportunities that are now available to them. The area has always been under-developed and there has not been zoning changes for many years. The new industrial development that is occurring will provide employment along with opportunities for residential growth and local convenience business as well as ease of access to the Waikato Expressway.

The Horotiu Industrial Park has a long history and overall the outcome has been advantageous for some in the community. However, those properties in the eastern section ² have been disadvantaged in that there are restrictions as to when the land can be developed for industrial activities leaving owners with few opportunities other than the status quo. The two points to note is that a) unlike the western section ³ of the industrial park, this land is under fragmented ownership with the lots ranging from 2000m² to the largest of the land holdings being a private owner with 5.5ha and Perry Development with 10.3ha and b) the western section was of a rural density due to the large landholdings and their productive use previously to the change of zone to industrial, whereas the eastern section was and still is used for residential/lifestyle purposes. The well-attended Horotiu School is also within this eastern block. Taking these aspects into consideration the amended zoning to reflect the current use is appropriate. The loss of industrial land is approximately 13 hectares. With regards to table 6.2 in the RPS there is sufficient supply of industrial land in the Waikato sub-region out to 2061 as indicated below. Therefore the loss of the 13. ha is minimal.

Table 6-2: Future Proof industrial land allocation

Strategic Industrial Nodes located in Central Future Proof area (based on gross developable area) ¹	Industrial land allocation and staging (ha)			Total Allocation 2010 to 2061 (ha)
	2010 to 2021	2021 to 2041	2041 to 2061	
Rotokauri	85	90	90	265
Ruakura	80	115 ²	210 ²	405
Te Rapa North	14	46	25	85
Horotiu	56	84	10	150
Hamilton Airport	74	50	0	124
Huntly and Rotowaro	8	8	7	23
Hautapu	20	30	46	96
TOTAL HA	337	423	388	1148

¹ Gross Developable Area includes land for building footprint, parking, landscaping, open space, bulk and location requirements and land for infrastructure including roads, stormwater and wastewater facilities.

² Development beyond the 2021 period is subject to completion of the Waikato Expressway.

Table 6-2: Future Proof industrial land allocation Strategic Industrial

Horotiu is a lifestyle village, much like Taupiri. People choose to reside there to enjoy an alternative lifestyle to that of medium/high density residential available in other areas. Effects from industrial living will be minimised on the eastern section with low density lifestyle development as opposed to providing for higher density residential development.

² Eastern Section refers to the area bounded by Horotiu Bridge Rd/Waikato River/Expressway and Great South Road as shown on Map 8 of the Plan Change document.

³ Wester Section refers to the area West of the Great South Road, known as Horotiu Industrial Park, as shown on Map 8 of the Plan Change document.

Historic Trends for Residential and Lifestyle development:

Subdivision Applications Issued between 01-Jan-06 and 31-May-16		
Census Area Unit	Number of Applications	Number of Additional Lots
Eureka	80	163
Gordonton	25	44
Horotiu	20	53
Matangi	65	128
Ngaruawahia	48	193
Tamahere-Tauwhare	196	574
Taupiri Community	5	7
Te Kowhai	57	127
Whatawhata	88	167
Total	584	1456

Table 1: Subdivision applications issued in the last 10 years

Table 1 above shows the number of subdivision applications along with anticipated additional lots that have been issued by census area units in the Hamilton periphery over the last 10 years. It is important to note that once an application has been issued the applicant has 8 years to complete their subdivision before titles are issued so in this 10 year time period some of these additional lots have not yet been created. Some of these census area units have low application numbers due to a mix of factors such as land owners land banking their land for future development aspirations, limited suitably zoned areas available for further development and the effects of PC 2.

Dwelling Building Consents Issued between 01-Jan-06 and 31 May-16

Census Area Unit	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	Total
Eureka	21	24	15	10	9	7	7	18	13	13	4	141
Gordonton	6	10	6	4	10	2	0	4	7	6	6	61
Horotiu	9	3	3	2	4	2	1	7	5	9	1	46
Matangi	22	29	18	7	18	9	14	20	17	17	8	179
Ngaruawahia	18	30	13	15	13	6	16	23	31	18	12	195
Tamahere-Tauwhare	64	55	55	37	55	46	41	72	62	56	30	573
Taupiri Community	5	2	0	2	0	0	1	0	0	0	0	10
Te Kowhai	18	13	13	5	6	4	11	18	14	9	8	119
Whatawhata	34	28	14	17	12	14	15	19	15	16	6	190
Total	197	194	137	99	127	90	106	181	164	144	75	1514

Table 2: Dwelling building consents issued in the last 10 years.

Table 2 above shows the number of building consents issued for new dwellings by census area unit in the Hamilton periphery over the last 10 years. This is across all zones within each census area. The above table correlates with the lack of suitable zoned land i.e. Taupiri has few suitable land parcels available for residential use.

Conclusion:

Taking all the above into consideration WDC staff do not consider that the amendments in Plan Change 17, Stage 1 of the Ngaruawahia Structure Plan, or any additional stages from this structure plan to be outside any of the policies or directions under the RPS. Furthermore this plan change is taking into account the current high demand to meet pressure from both Hamilton and Auckland markets, the future directions from Central Government to release land to meet demand and in line with the PNPS on Urban Development Capacity and to meet the aspirations of the local communities and landowners.

The Hamilton Urban Area

A preliminary assessment of Country
Living and Residential land capacity

13 July 2016

Introduction

The population projection figures that have been used in the Section 32 Analysis for Plan Change 17 are based on the revised NIDEA 2015 population projection model. This model provided the population statistics used by the Council and the Future Proof review at that time. Since preparing these population projection figures, further modelling work has been done on household and population projections which will also be used to inform the review of Future Proof. Council anticipates an update of these figures in October 2016.

Table I below outlines projected population growth by Census Area Unit (CAU) within each of the towns and villages identified within the structure plan area.

Table I. Projected Population Growth by CAU for Plan Change 17 – Stage I of the Ngaruawahia & Surrounds Structure Plan

Location	2015	2020	2025	2030	2035	2040
Ngaruawahia	5440	5550	5585	5620	5790	5960
Horotiu	800	830	840	850	860	870
Taupiri	440	570	595	620	635	650
Te Kowhai	1570	1580	1600	1620	1645	1670
Glen Massey*	270	280	280	280	280	280

Source: NIDEA 2015 rounded to the nearest ten.

**Glen Massey NIDEA 2014 at the time of projections the split between rural and urban census area units (CAU) for the 2015 data had not been completed. Glen Massey is a small settlement area within a large rural CAU and no growth is forecast.*

For the purposes of Plan Change 17, this assessment focuses on the Country Living , Living and New Residential within the Hamilton Urban Area as defined by Statistics New Zealand (Figure I).

The Country Living Zones currently located in the Hamilton Urban Area (Statistics NZ) are;

- Scotsman Valley (Tamahere-Tauwhare CAU)
- Tauwhare (Tamahere-Tauwhare CAU)
- Tamahere (Tamahere-Tauwhare CAU)
- Te Awa (Tamahere-Tauwhare CAU)
- Holland Road (Eureka CAU)
- Eureka (Eureka CAU)
- Taupiri (Taupiri CAU)
- Ngaruawahia (Ngaruawahia and Kainui CAU's)
- Horotiu (Horotiu CAU)
- River Road (Kainui CAU)
- Te Kowhai (Te Kowhai CAU)
- Rotokauri (Whatawhata CAU)

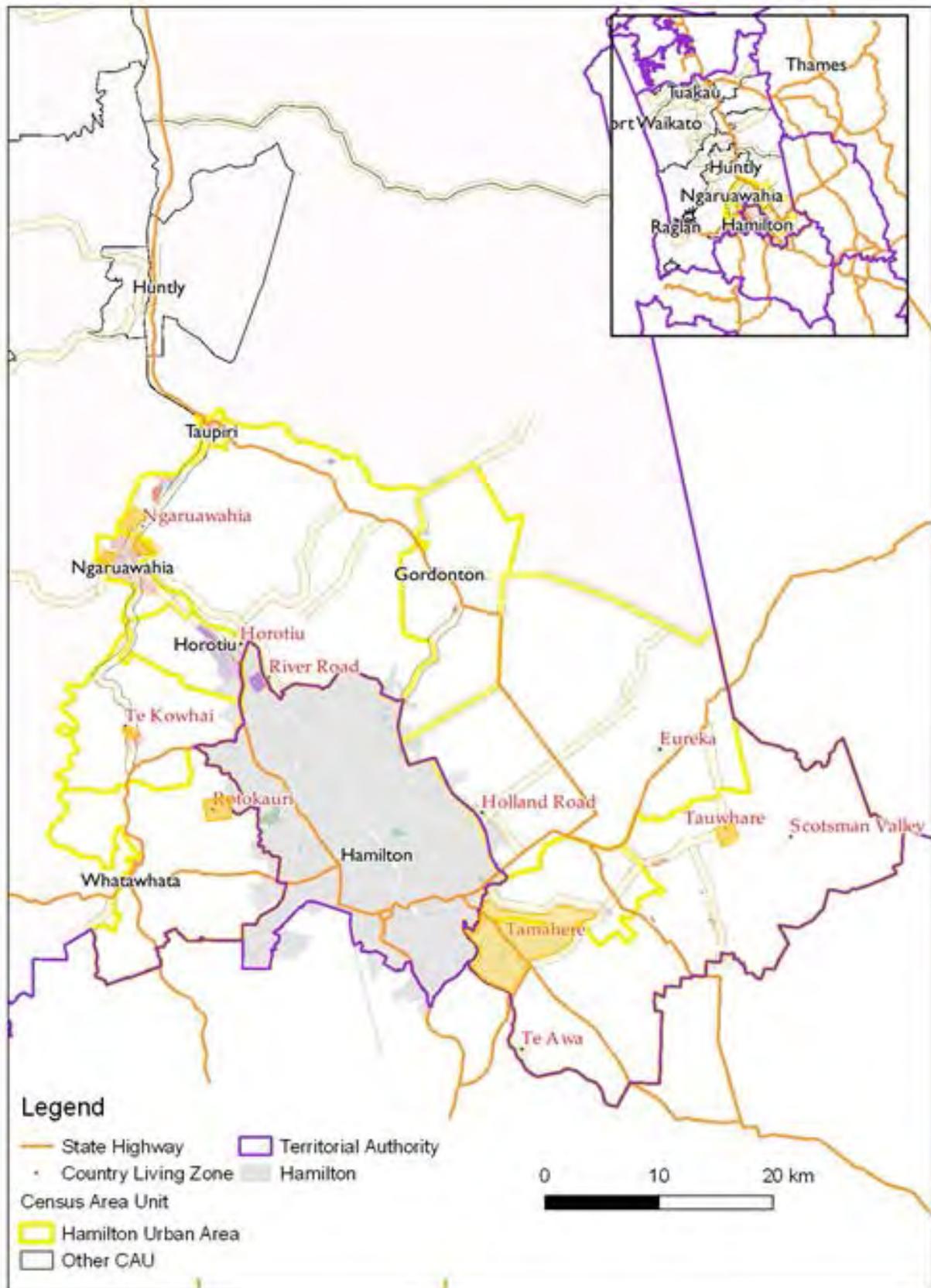


Figure 1: Map Showing Country Living Areas and Census area units (CAU's) in the Hamilton Urban Area.

Many of these country living areas are historic from the notified Waikato District Plan in 1993. Council's current monitoring system is unable to analyse data prior to 2006 and we are therefore unable to provide an accurate analysis but it is estimated that these would have reached capacity within the first 10 – 15 years of being zoned for example, Te Awa, Tauwhare (*Tamahere-Tauwhare CAU*), Eureka (*Eureka CAU*).

The average number of additional lots created each year in the Country Living Zones by CAU (figure 1) reflects the limited amount of zoned land available for subdivision. For example, in the Whatawhata, Te Kowhai, Kainui and Eureka CAU's there have been under 5 additional lots created each year simply because there is such limited remaining zoned land available for subdivision.

Tamahere is the best example of demand for lifestyle lots in the Hamilton periphery with current subdivision rates of 37 additional lots per year based on historic trends. The issue for the future is where else demand for lifestyle lots in the Hamilton periphery will be provided once Tamahere reaches capacity.

Explanatory Notes for Tables 2 and 3

The year 2016 has been prorated for the number of additional lots and new dwellings for the full calendar year (January to December).

The Waikato District Council's capacity model is continuously in development and the figures presented in this capacity assessment are accurate as of the date of this report.

The capacity model is based on a theoretical analysis and has limitations in its assumptions such as:

- Assuming that all lots that can be subdivided will be subdivided;
- All locations are treated equal;
- Market demand is not considered;
- Lot shape and physical constraints (slope, flooding, gullies) are only partially considered and
- A lack of reticulated services is not considered.

It should be noted that residential areas in the Waikato district provide a "sought-after" small town village lifestyle alternative to the more dense residential development available in Hamilton City and for this reason limited brownfield infill has occurred to date.

It should be noted that in Glen Massey the council is proposing to reduce the Country Living area available for subdivision by 40 ha due to lack of demand, location, lack of services and topographic constraints.

COUNTRY LIVING CAU Names within Hamilton Urban Area (stats nz)	Average Number of new dwelling consents issued each year (2006-2016)	Average Number of Additional lots created each year (2006-2016)	Total number of lots possible in current CLZ zone by CAU	Total number of Current lots in CLZ zone by CAU occupied or vacant	Total number of lots still to be created in CLZ zone by CAU Total lots - Current Lots	Number of years of supply left from January 2017
Taupiri	1	0	10	8	2	2 Years
Kainui	3	2	82	70	12	6 Years
Ngaruawahia	1	0	160	92	68	68 Years This zoned land supply is largely in areas that are unlikely to be developed due to physical constraints for example the old sand pit in town and the area at the foot of the Hakarimata ranges. The zoning of some of this land is under consideration in the District Plan Review, we know that we do not have 68 years supply.
Horotiu	0	0	0	0	0	0 Years
Te Kowhai	1	1	26	23	3	3 Years
Whatawhata	3	1	99	87	12	12 Years It is important to note that the available land is in the Lake Rotokauri area.
Eureka	1	0	43	24	19	19 Years This is one land owner currently in productive farming.
Matangi	2	2	2	2	0	0 Years
Tamahere-Tauwhare	37	37	1478	1140	338	9 Years. There are constraints on this capacity due to difficulties of getting road access and Hamilton Airport subdivision restrictions.

Table 2: Average number of additional lots created, new dwellings created and capacity in the Country Living Zone by CAU's in the Hamilton Urban Area for 2006-2016.

RESIDENTIAL CAU Names within Hamilton Urban Area (stats nz)	Average Number of new dwelling consents issued each year (2006-2016)	Average Number of Additional lots created each year (2006-2016)	Total number of lots possible in Residential zones by CAU	Total number of Current lots in residential zones by CAU	Total number of lots still to be created in residential zones by CAU	Number of years Supply left
Taupiri	1	1	400	174	226	226 Years 117 of the 174 possible lots are in the ownership of one land owner who has chosen not to develop to date and is actively farming this land.
Ngaruawahia	19	14	3156	1789	1367	97 Years This supply is largely based on an unlikely intensification of existing residential areas which is not an outcome supported by the residents or the Council.
Horotiu	2	2	221	107	114	57 Years This zoned supply is restricted by a lack of reticulated services and unlikely to be connected in the future it also is reliant on intensification of which we have not experienced any of in Horotiu.
Te Kowhai	0	0	109	81	28	0 Years Subdivision in Te Kowhai urban cannot occur without reticulated wastewater. Council has no plans for wastewater reticulation
Whatawhata	1	1	66	66	0	0 Years
Gordonton	1	0	29	29	0	0 Years
Matangi	1	0	183	93	90	0 Years Subdivision in Matangi urban cannot occur without reticulated wastewater. Council has no plans for a wastewater reticulation extension

Table 3: Average number of additional lots created, new dwellings created and capacity in the Living Zone and New Residential Zone by CAU's in the Hamilton Urban Area for 2006-2016.

Attachment 3

14 Sept 2016

Waikato District Council – Policy Department - by email

Attention: Betty Connelly, David Totman (cc Surya Pandey)

Postal Address
Private Bag 544, Ngaruawahia 3742
New Zealand

0800 492 452
www.waikatodistrict.govt.nz

Dear Betty and David

Re: Further Submission to Plan Change 17 – Taupiri Rezone Rural to New Residential – Howard Lovell

Thank you for your request to the Waikato District Council Water Asset Team (Waters Team) for comment on the above submission, which seeks greater area for residential re-zoning with suggested filling of the gully system and low lying areas (see Image 1). In particular, the view of the Waters Team was sought in respect to stormwater and hydrological matters that could accompany the suggested gully filling concept.

To provide such comment, a revised catchment management plan would be required as a supporting document to the submission. The range, intensity of effects, and mitigation that could accompany the filling activity, would then be understood. Comment is therefore not appropriate until any such an investigation is presented. In saying this, there would appear to be a number of critical matters that would first need addressing which could include (but not be limited to):

- Cultural consideration and acceptance, given the significance of the area to Iwi, and;
- Consistency of proposed increased density with wider district and sub regional growth planning i.e. as detailed within the Waikato Regional Policy Statement and the Future Proof Growth Strategy.

In order to avoid unnecessary work being undertaken, it would not be recommended that any additional catchment management investigation is undertaken in support of the submission, until all fundamental matters influencing potential for increased rezoning are first addressed.

In addition to the above, any alternative residential zoning beyond proposed plan change provisions should be supported by an updated water and wastewater technical assessment. This enables an understanding of any impacts on the existing network and the implications of the greater demand for services. Again, it is considered that preparation of any such assessment in support of the submission should only occur after addressing overarching matters (including those listed above) which are likely to have a more direct influence on the feasibility of additional residential areas sought.

Regards



Stephen Howard
Senior Planner- WDC Water Assets

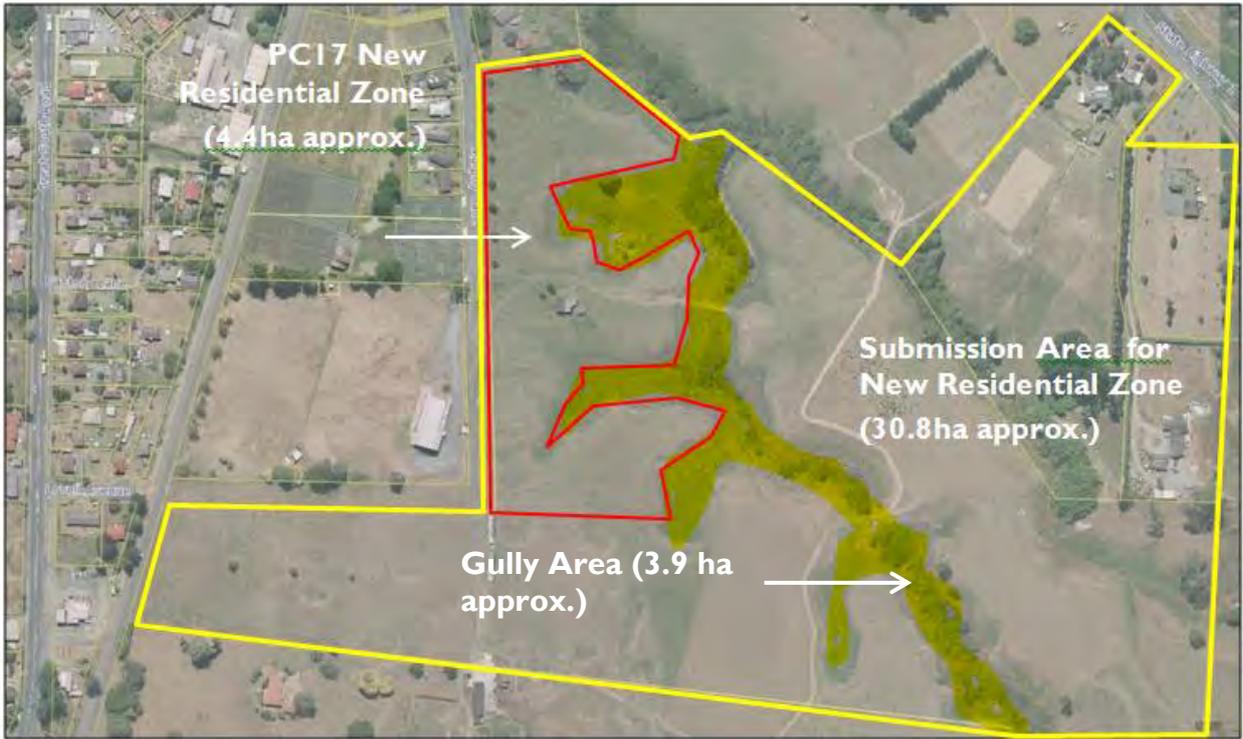
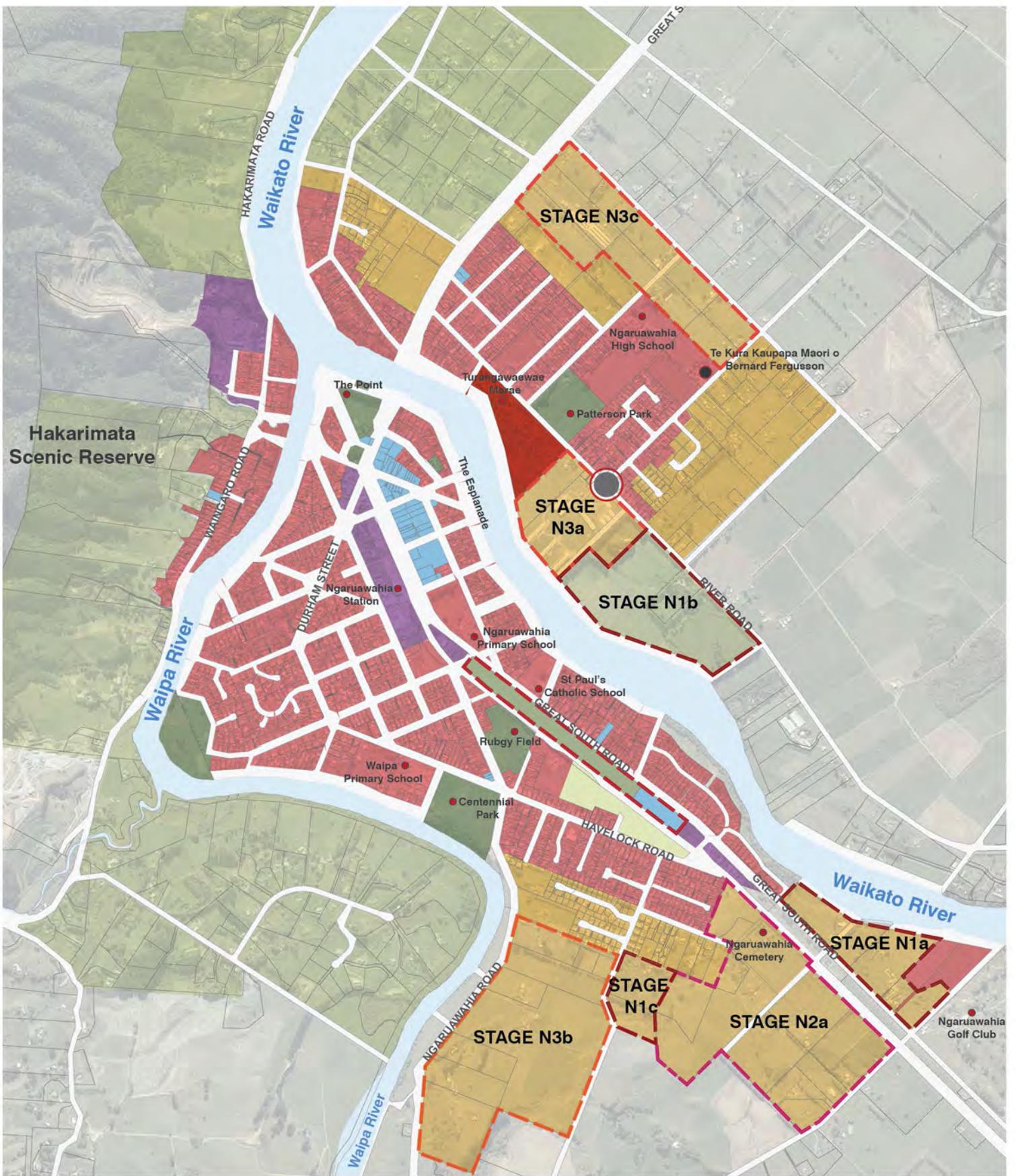


Image I: Proposed New Residential Zoning and Gully Areas

Attachment 4



NGARUAWAHIA

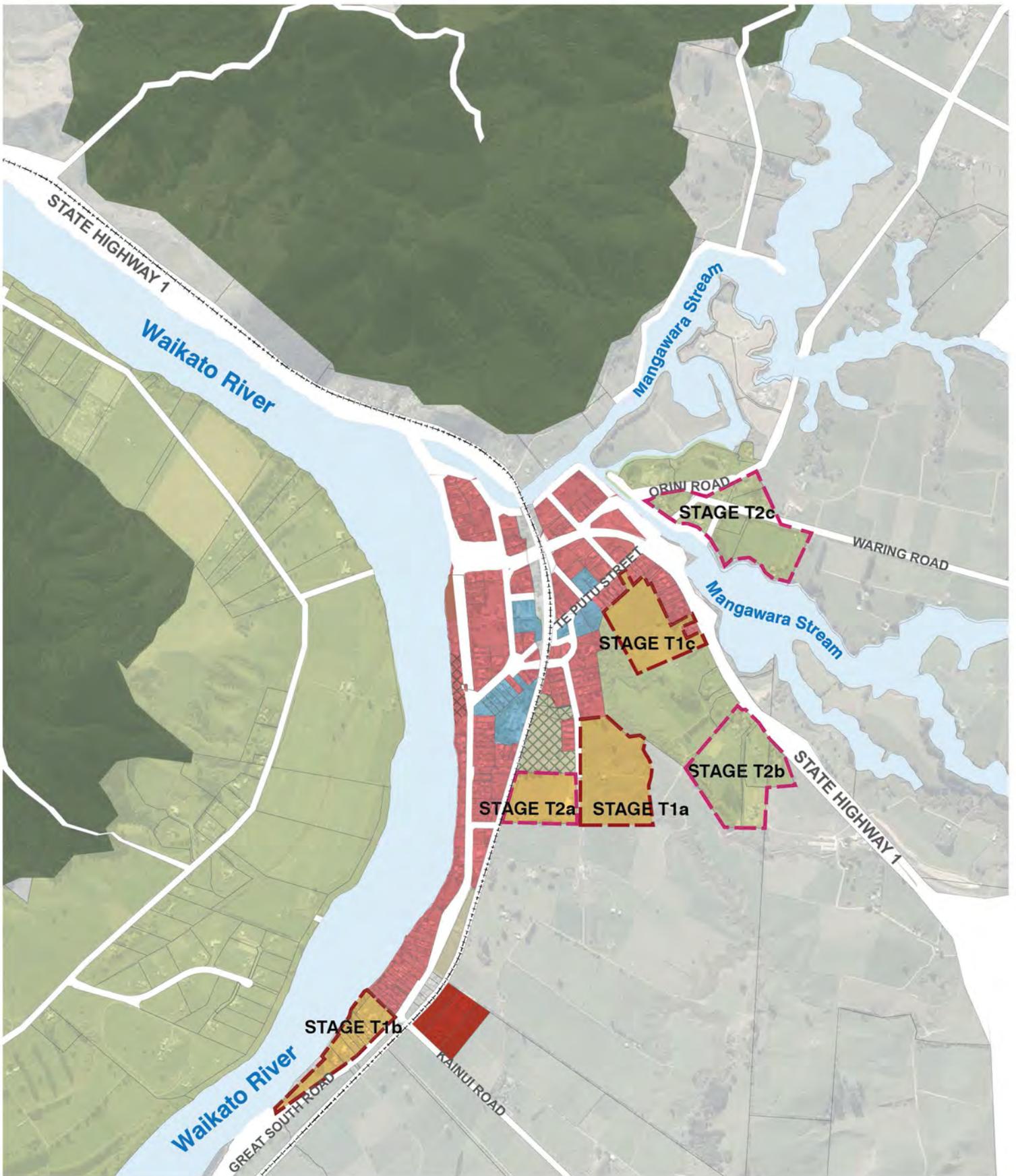
Proposed Land Use Zoning



- Living (Existing Residential)
- Living (Proposed Residential)
- Country Living
- River & Streams
- Recreation / reserves

- Business
- Heavy Industrial
- Light Industrial
- Industrial Park
- Pa (Waikato)

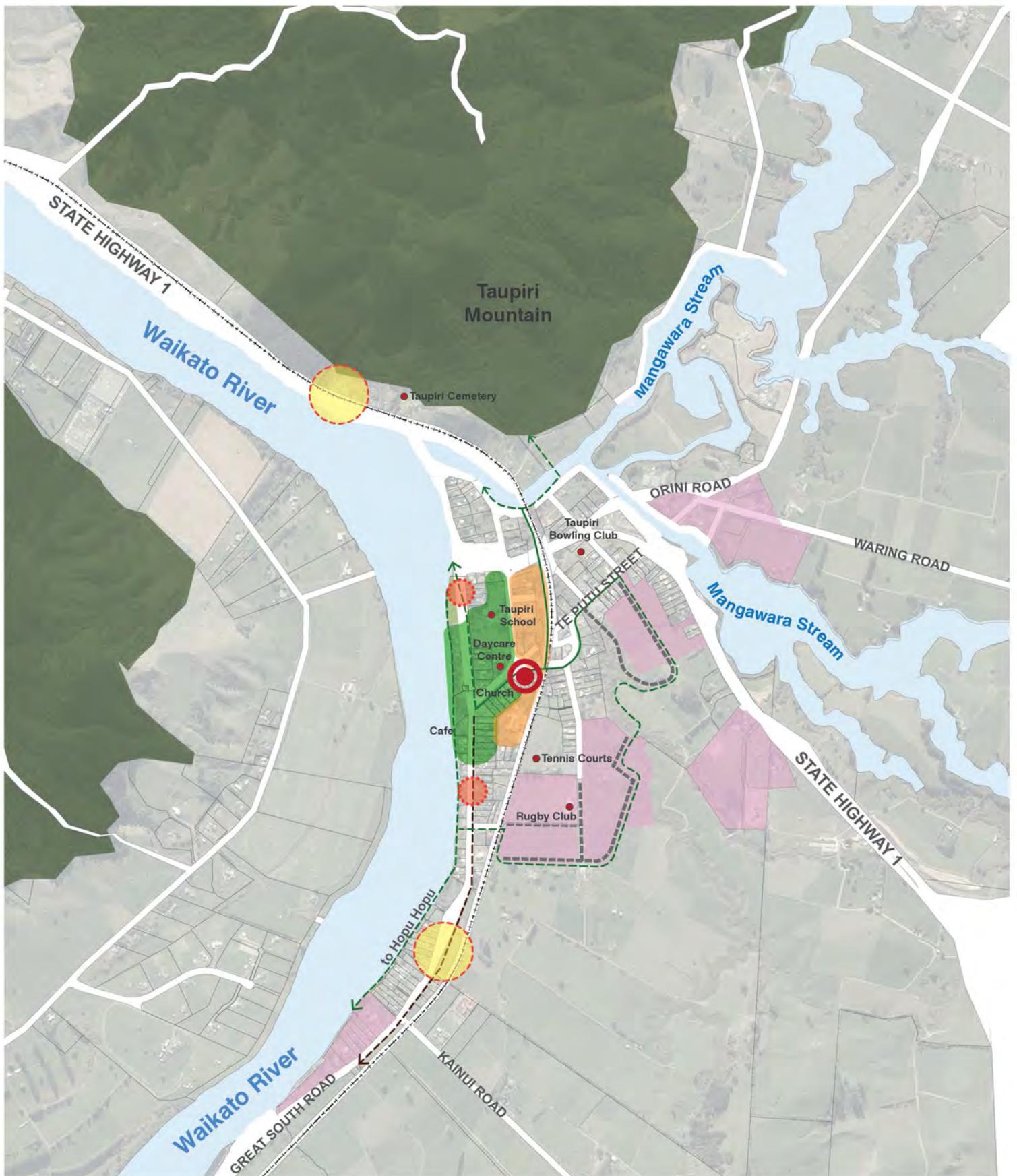
- Stage 1
- Stage 2
- Stage 3



TAUPIRI

Proposed Land Use Zoning

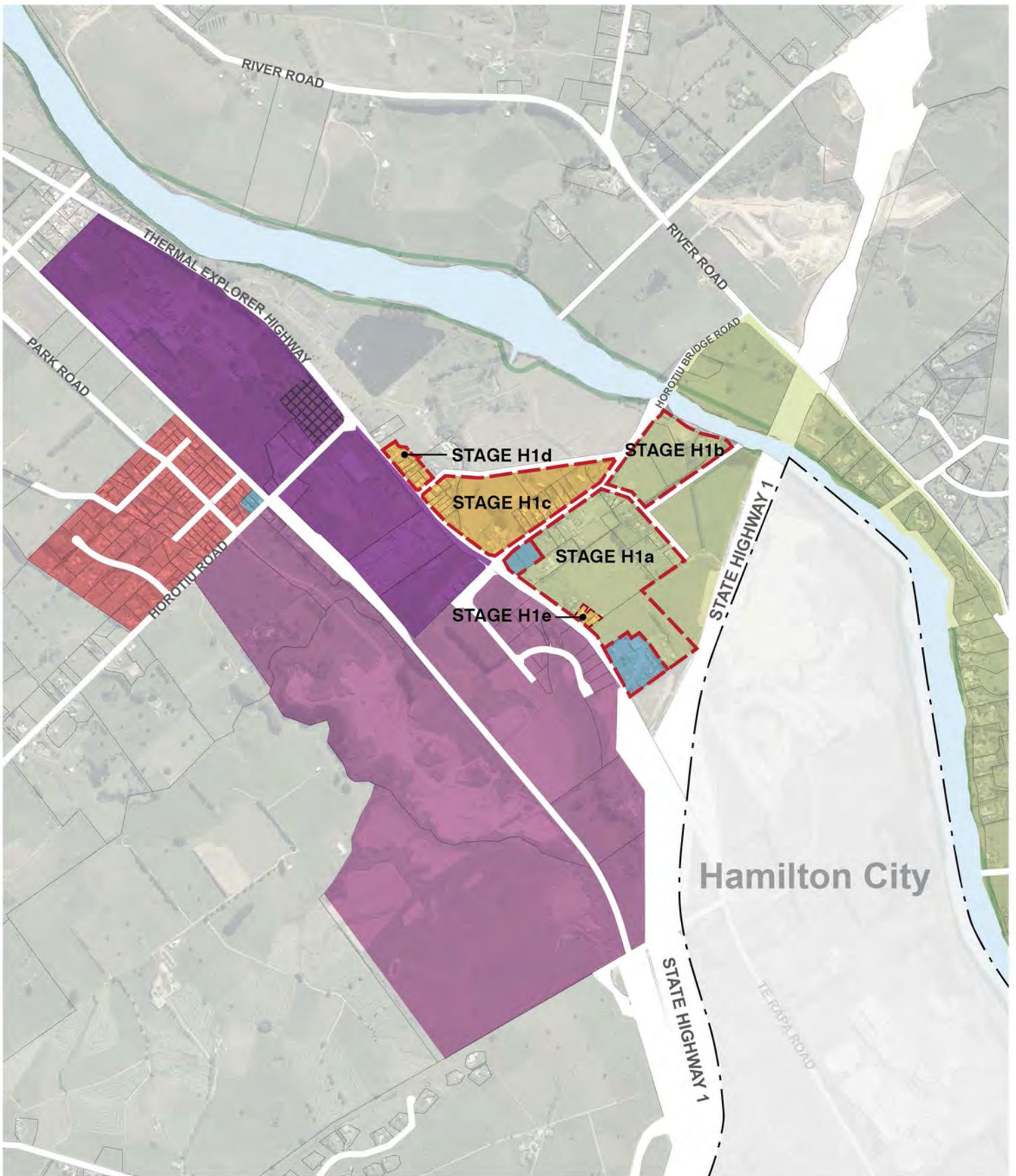
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|--|-----------------------|---|------------------|---|---------|
|  | Living (Existing) |  | Business |  | Stage 1 |
|  | Living (Proposed) |  | Heavy Industrial |  | Stage 2 |
|  | Country Living |  | Light Industrial |  | Stage 3 |
|  | Rivers & Streams |  | Industrial Park | | |
|  | Recreation / reserves |  | Pa (Waikato) | | |



TAUPIRI

Key Moves

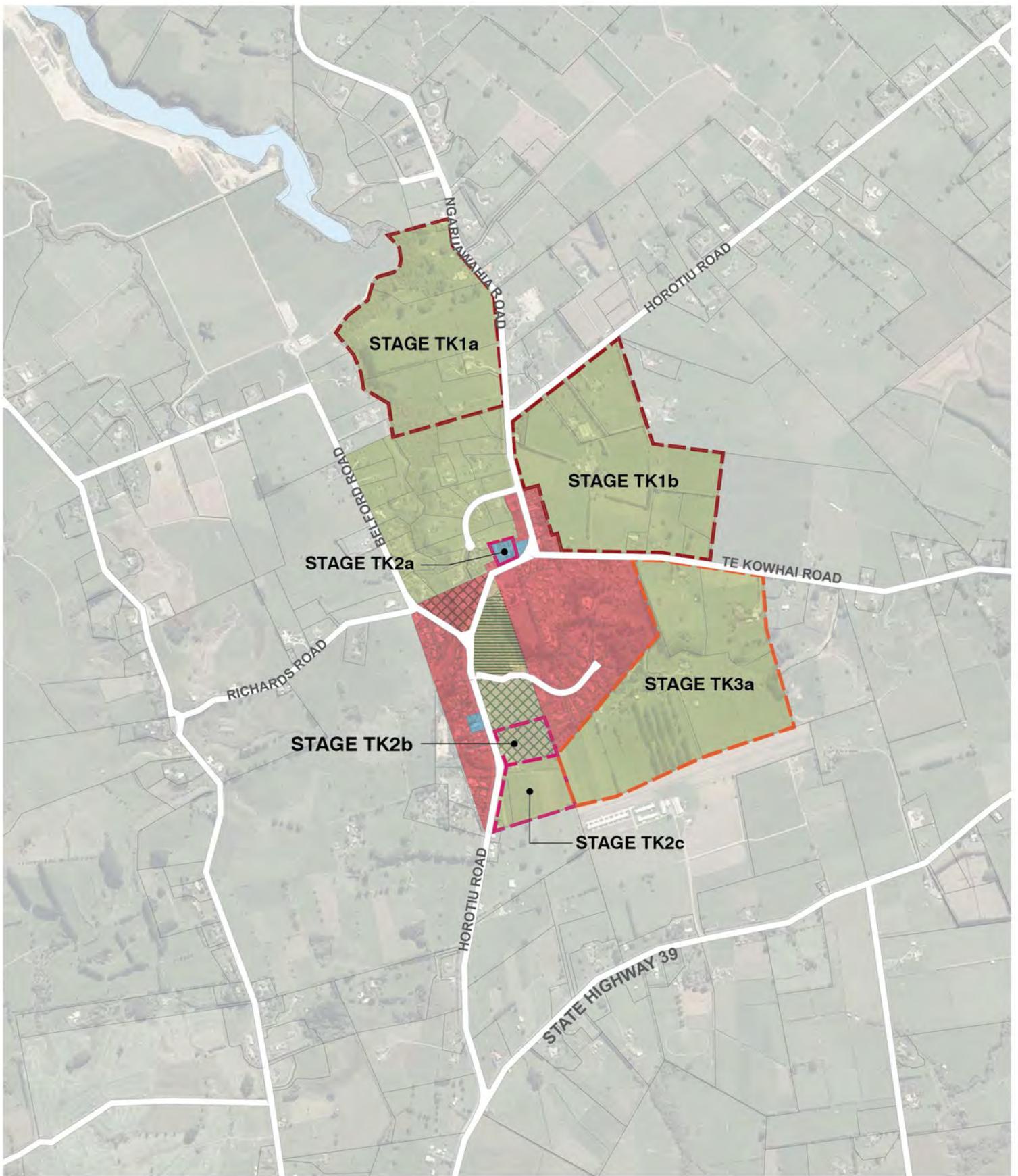
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|--|------------------------------|---|---|---|---|
|  | Rivers & Streams |  | Existing/ Potential Walking and Cycle Trail |  | Town Centre Gateway |
|  | Existing Reserves |  | Potential On-road Cycle Route |  | Township Gateway |
|  | Natural Environment |  | Potential Road Connections |  | Town Centre as a Focal Point |
|  | Future Employment Focus |  | Rail Line |  | Indicative Location for Future Neighbourhood Centre |
|  | Community Amenities Focus |  | Proposed / Enhanced Green Spaces |  | Opportunity for Cultural Art Installation |
|  | Future Residential Expansion | | | | |



HOROTIU

Proposed Land Use Zoning

- | | | | | | |
|--|-----------------------|---|------------------|---|---------|
|  | Living (Existing) |  | Business |  | Stage 1 |
|  | Living (Proposed) |  | Heavy Industrial |  | Stage 2 |
|  | Country Living |  | Light Industrial |  | Stage 3 |
|  | Rivers & Streams |  | Industrial Park | | |
|  | Recreation / reserves |  | Pa (Waikato) | | |

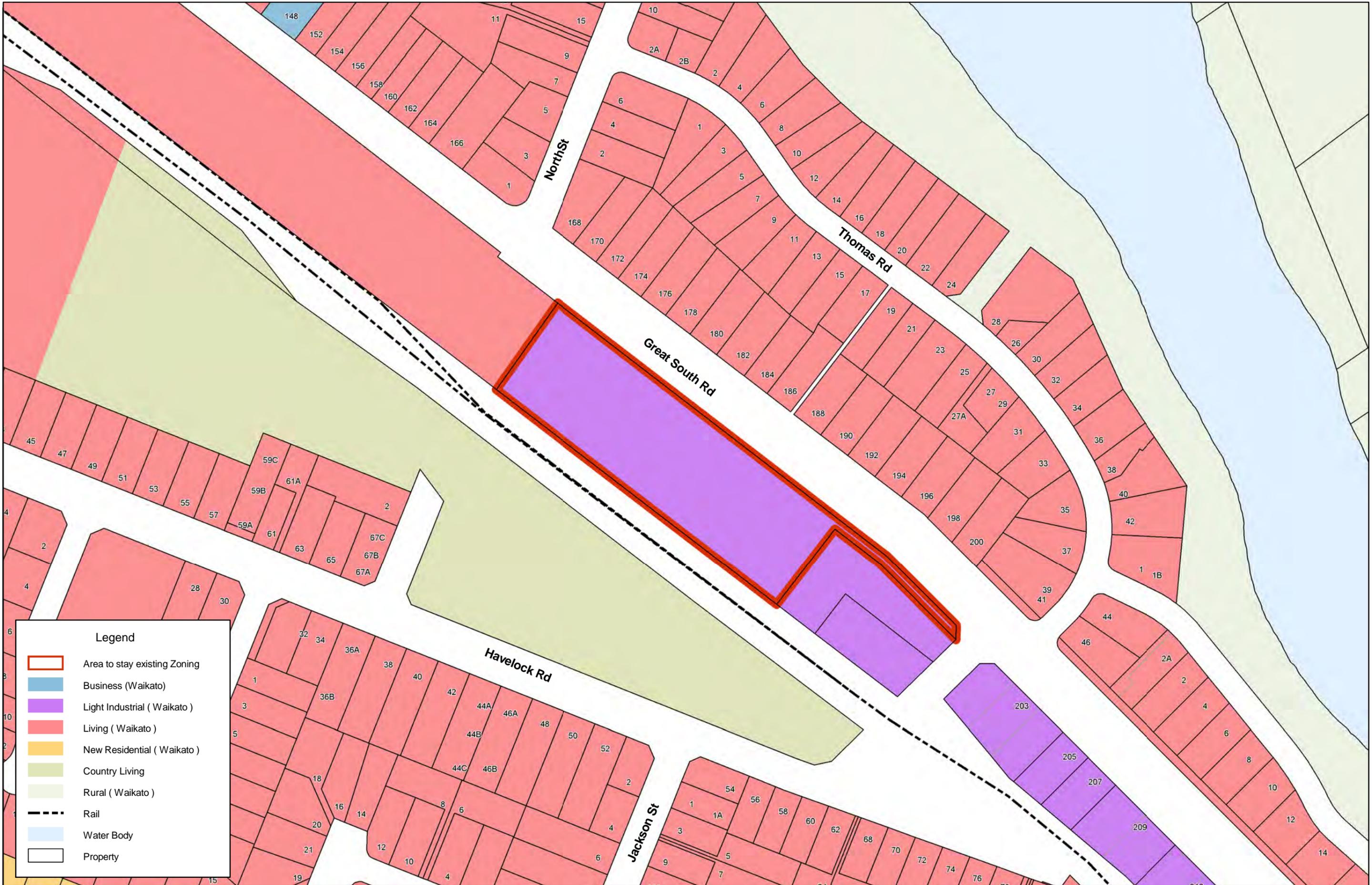


TE KOWHAI

Proposed Land Use Zoning

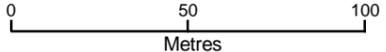


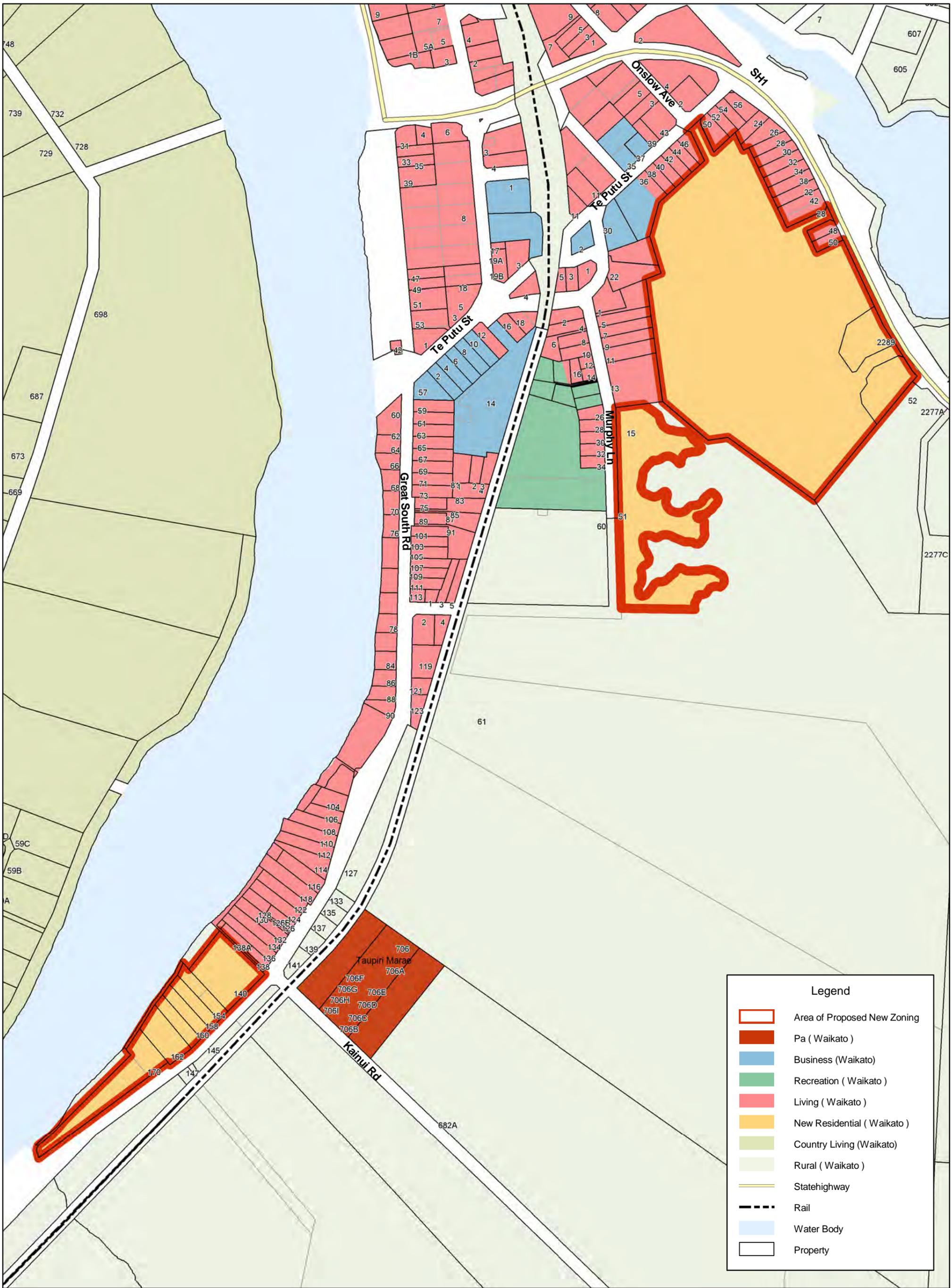
Attachment 5



Legend

- Area to stay existing Zoning
- Business (Waikato)
- Light Industrial (Waikato)
- Living (Waikato)
- New Residential (Waikato)
- Country Living
- Rural (Waikato)
- Rail
- Water Body
- Property





Legend

- Area of Proposed New Zoning
- Pa (Waikato)
- Business (Waikato)
- Recreation (Waikato)
- Living (Waikato)
- New Residential (Waikato)
- Country Living (Waikato)
- Rural (Waikato)
- Statehighway
- Rail
- Water Body
- Property



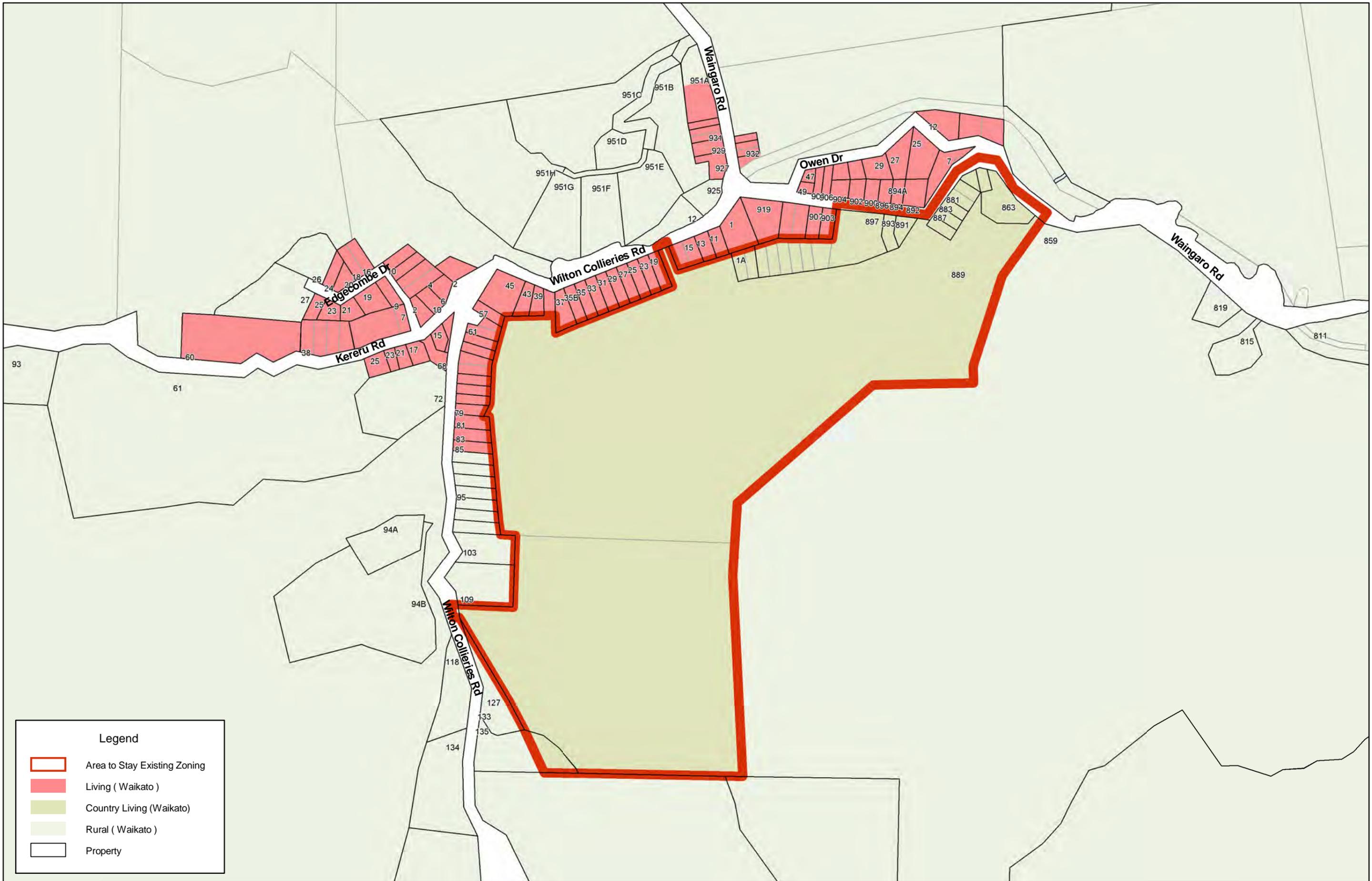
Legend

- Area of Proposed New Zoning
- Business (Waikato)
- Industrial Park (Waikato)
- New Residential (Waikato)
- Country Living (Waikato)
- Rural (Waikato)
- Property
- Water Body
- Statehighway



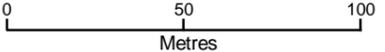
Legend

- Area of Proposed New Zoning
- Country Living (Waikato)
- Rural (Waikato)
- Water Body
- Property



Legend

- Area to Stay Existing Zoning
- Living (Waikato)
- Country Living (Waikato)
- Rural (Waikato)
- Property



Attachment 6

No.	Name	On Behalf Of	Organisation	Address
1 (FS)	Howard Lovell			2277 Gordonton Rd,RD1,Taupiri,New Zealand,3791
2	Howard, Blair and Loryn Lovell			2277 Gordonton Road,RD1,Taupiri,New Zealand,3791
3 (FS)	Craig Blackmore	Perjuli Developments Ltd	Bloxham Burnett & Olliver	PO Box 9041,Hamilton,New Zealand,3240
4	Rudy and Annelies van Dam			2277c Gordonton Road,RD1,Taupiri,New Zealand,3791
5 (FS)	Mark de Lautour	Jonathan Brown	BCD Group	PO Box 9421,Waikato Mail Centre,Hamilton,New Zealand,3240
6	RM Briggs		Beverage Developments Ltd	41 Parkhaven Drive,Rosehill,Papakura,New Zealand,2113
7	Janene Harris			140 Great South Rd,Taupiri,New Zealand,3700
8	Andrew McFarlane	Foster Develop Ltd		PO Box 9041,Hamilton ,New Zealand,3204
9	Paramjeet Singh			8 Karl Michael Crescent,Flagstaff,Hamilton,New Zealand,3210
10	Carmen Allen			18 Kernott Road,RD 8,Hamilton,New Zealand,3288
11	John Allan	John and Margherita Allan	NA	25 Rangimarie Road,Ngaruawahia,3720
14	Andrew Hill	The Ministry of Education (Horotiu Primary School)	Beca Limited	PO Box 903,Tauranga,New Zealand,3140
15 (FS)	Trevor G Reid			PO Box 58,Horotiu,Horotiu,New Zealand,3262
16 (FS)	Collette Brown			14 Caincross St,Gladstone,Queensland,Australia,4680
17 (FS)	Kathleen M Reid			PO Box 58,Horotiu,Horotiu,New Zealand,3262
18	Gavin Crook			485a Ngaruawahia Road,Te Kowhai,Hamilton,New Zealand,3288
19	Mark Reid			6 Washer Rd,Horotiu,Horotiu,New Zealand,3288
20	Matt Bulbeck			28 Winchester Place,Rototuna North,Hamilton,New Zealand,3210
21	Trudy Bulbeck			28 Winchester lace,Rototuna North,Hamilton,New Zealand,3210
22	Rochelle Douglas			26 Divers Rd,RD8,Hamilton,New Zealand,3288
23	Cameron Scott			158 Great South Road,Taupiri,New Zealand,3720

No.	Name	On Behalf Of	Organisation	Address
24	LA & DAT Coombes		McCracken Surveys Ltd	PO Box 19182,Hamilton,New Zealand,3244
25 (FS)	Gary Solly			38 Washer Road,RD 8,Hamilton,New Zealand,3288
26	Arna Neivandt		Ports of Auckland	PO Box 1281,Auckland,New Zealand,1140
27	Doug and Maria Barker			170 Great South Road,Taupiri,New Zealand,3721
29	Gloria Hoddle		Harkness Henry	Private Bag 3077,Hamilton,New Zealand,3240
30 (FS)	Graeme Lee	C/- Bloxham Burnett Olliver	Northgate Industrial Park	PO Box 9041,Hamilton,New Zealand,3240
31 (FS)	Mark Brougham		Hamilton City Council	Private Bag 3010,Hamilton,New Zealand,3240
32	Carolyn McAlley		Heritage New Zealand Pouhere Taonga	PO Box 13339,Tauranga,New Zealand,3141
33	Dave McCracken		McCracken Surveys Ltd	PO Box 19182,Hamilton,New Zealand,3244
35	Mark Gilberd		MRG Cor Trust	5 Westvale Lane,RD8,Hamilton,New Zealand,3288
36	Ross Johnston			PO Box 85,Ngaruawahia,New Zealand,
37	RM & DR Kempthorne			849 Ngaruawahia Road,RD8,Hamilton,New Zealand,
39	Caroline Landon			162 Great South Road,Taupiri,New Zealand,
40	Greg Morton		Waikato Regional Council	Private Bag 3038,Waikato Mail Centre,Hamilton,New Zealand,3240
41	Christian McDean	Alstra (2012) Limited	Opus	Private Bag 3057,Waikato Mail Centre,Hamilton ,New Zealand,3240
42 (FS)	Graham McBride		Te Kowhai Community Group	New Zealand,
43	Lana Gooderham		NZ Transport Agency	PO Box 973,Waikato Mail Centre,Hamilton,New Zealand,3240
44	Bevan Houlbrooke		CKL Planning Engineering Surveying	PO Box 171,Hamilton,New Zealand,
45	EL & R Ching			154 Great South Rd,Taupiri,New Zealand,
46 (FS)	Barry Brooks			88 Horotiu Bridge Road,RD8,Hamilton,New Zealand,
47 (FS)	Fay Marie Brooks			88 Horotiu Bridge Road,RD8,Hamilton,New Zealand,

No.	Name	On Behalf Of	Organisation	Address
48	Robyn Place			169 River Road,Hamilton East,Hamilton,New Zealand,3216
49	Andrew McFarlane	Foster Develop Ltd	Bloxam Burnett and Olliver	18 London Street,Hamilton,New Zealand,3204
50 (FS)	Andrew McFarlane	Foster Develop Ltd	Bloxam Burnett and Olliver	18 London Street,Hamilton,New Zealand,3204