

Commissioners' Recommendation

**PROPOSED VARIATION 3
COUNTY ROAD OTAKI – LOW DENSITY PRECINCT
KAPITI COAST DISTRICT PLAN**

**Report and Recommendation of J Holborow, M Pomare and M St.Clair
Acting as Commissioners appointed by the
Kapiti Coast District Council pursuant to Section 34A of the
Resource Management Act 1991**

1. INTRODUCTION

Context

- 1.1 We were appointed by the Kapiti Coast District Council (KCDC) to hear submissions to, and to consider and make a recommendation on, Variation 3 (the Variation), which varies the zoning at 46-66 County Road, Otaki, from Rural Plains Zone under the proposed Kapiti Coast District Plan to Residential Zone with a County Road Otaki Low Density Precinct overlay.
- 1.2 The Variation has some history, which we will address in due course. The Variation derives from an appeal to the decisions of Council as to the proposed Kapiti Coast District Plan. The Variation has been the subject of a "Section 32" report, consultation with landowners and occupiers, and of course the recent public notification and hearing process, culminating in this report.
- 1.3 Before discussing the details of the Variation and the submissions to it, there are some procedural issues that we need to address.

Report Outline

- 1.4 Having familiarised ourselves with the Variation, including the Section 32 Report and other background material; and having read all submissions, undertaken a site visit, conducted the hearing and heard from the Council officers and submitters, we hereby record our recommendations. In this respect, this report is divided into the following parts:

(a) Background/Variation Outline:

This section includes an outline of the background to the Variation, including the sequence of events leading to this report. It also outlines the main components of the Variation including an overview of the purpose. This background section provides the relevant context to considering each of the submissions to the Variation.

(b) Evaluation of Issues:

This section initially sets out the preliminary statutory requirements under the Resource Management Act 1991 (the RMA) that govern the decision making process in regard to the Variation. We then go on to record the various submissions received to the Variation, outline the concerns of the submitters to the Variation, and, where relevant, amplify on the evidence/statements presented at the hearing. We then undertake an assessment of the aspects of each of the submissions or

groups of submissions and conclude with a recommendation. We conclude having regard to the necessary statutory considerations.

- 1.5 In referring to the submissions throughout the report, we have used the numbering for the submission as identified in Section 5 of the Section 42A Report Background and Process prepared by Ms. Emily Thomson for KCDC, dated 14 November 2019. By way of example, (S1) refers to Submission number '1', and (FS1) refers to Further Submission '1'.

2. BACKGROUND

Procedural Sequence

- 2.1 The background to the Variation is set out in full in the Officer's Report and the proposed Variation documentation, and is held on the Council file. Hence we will not repeat that in detail here.
- 2.2 The Variation resulted from an appeal to the decisions on the proposed District Plan (decision released 22 November 2017) in relation to the use of 66 County Road for residential activities. The Variation was publicly notified on 3 July 2019 with the submission period closing on 2 August 2019. Five submissions were received during that time. There were no late submissions. The summary of those submissions was notified on 28 August 2019, with the period for further submissions closing on 11 September 2019. Two further submissions were received.
- 2.3 Prior to the hearing commencing on 4 December 2019, we issued a minute, dated 31 October 2019, setting out directions for the pre-circulation of the Section 42A Report (s42A Report), submitter's expert evidence, and conferencing between experts. We record that the Section 42A report was pre-circulated in accordance with those directions and that we did not receive any expert evidence from submitters.
- 2.4 Copies of this and other minutes were circulated to all parties and are held on Council's file.
- 2.5 On 4 December 2019, we undertook a site visit of the area subject to the proposed Variation and surrounding area, advising the parties at the commencement of the hearing that we had done so.

The Hearing

- 2.6 The hearing was convened on the 4 December 2019 at the Rotary Hall, 25 Aotaki Street, Otaki. We heard from the following people during the course of the hearing:

Submitters

- Mr. D Hedger, Director of Hedger Greenhouse Limited (HGL), owner of 66 County Road, Otaki – S5 and FS2

Council Officers

- Ms. E Thomson, Policy Planner for KCDC – s42A Reporting officer
- Mrs. S Rushmere, Roding Network Planner for KCDC
- Mr. T Mbona, Stormwater/Coastal Engineer for KCDC

- 2.7 The hearing commenced with a presentation by the reporting officer Ms. Thomas, introducing the Section 42A Report, outlining matters that had changed since the receipt and distribution of the Section 42A report. We then heard from Mrs. Rushmere, Mr. Mbona and Ms. Thomson as to the details addressed in their various reports. We then heard from the submitter, Mr. Hedger. We record that Mr. Hedger personally spoke to his submission and further submission. Towards the end of his presentation we allowed, at the request of Mr. Hedger, for Mr. B Holmes a planner with the firm Landmatters to respond to some of our questions. At that time, we confirmed with both Mr. Hedger and Mr. Holmes, that Mr. Holmes responses would not be considered expert evidence as no such evidence had been pre-circulated in accordance with our first minute.
- 2.8 We exercised the opportunity to question all persons present.
- 2.9 Having heard from the parties, we adjourned the hearing at 11.40am on Wednesday 4 December 2019 indicating that we wished to have the reply statement from Ms. Thomson by Friday 13 December 2019.
- 2.10 In the afternoon of 4 December 2019, we received an email from the Hearing Administrator, advising that Ms. K Shufflebotham (S1), of 46 County Road, Otaki sent an email to Council on 2 December 2019, requesting an amendment to her submission. The amendment to the submission sought that 46 County Road remain zoned Rural Plains rather than being rezoned Otaki Low Density Precinct. The email from Ms. Shufflebotham did not provide any further reasons as to the request for retaining the Rural Plains zoning.
- 2.11 As a matter of fairness we needed to understand if this request was within scope of the submission, giving submitters and further submitters the opportunity to provide input on the request, and to provide officers the opportunity to assess the implications, if any, to the Variation. There would be some cost in reconvening the hearing. So with that in mind, we issued a Minute #2 dated 4 December 2019, giving all the parties the opportunity for input and requesting that the right of reply be filed in writing on 20 December 2019.

- 2.12 In line with the timeframes set out in Minute #2, we received from Ms. Shufflebotham an explanation as to the change in her submission and from Ms. Thomson in the reply statement. We record that we did not receive any additional material from any other submitters or further submitters. All this material received was distributed to all parties.
- 2.13 Having considered that we had received all the required information, we closed the hearing on 24 December 2019, by way of a minute. (Minute #3).

Submission Scope and Amendments

- 2.14 In the Section 42A Report, Ms. Thomson set out her view that part of the submission by Hedger Greenhouse Ltd (HGL) (S5) was out of scope of the Variation¹. The submission sought;

“Deletion of the area being described as a surface water flow Flood Hazard Area; Reasons: the area is not subject to flooding and any issues of surface water are more related to current infrastructure issues in Te Manuao Road. Any surface water flow is a result of infrastructure not a flood hazard.”

- 2.15 Ms. Thomson notes that the Variation itself is not on or about flood hazards and that issue of flood hazard is wider than the properties affected by the Variation. Mr. Mbona also confirmed in response to our questions that there was no proposal to amend the flood notation as part of the Variation.
- 2.16 At the hearing, in response to our questions, Mr. Hedger stated that he did not have any issue with the officers' assessment and although he was still concerned with what causes surface flooding in the wider area, the issue was not relevant to the hearing or Variation. Mr. Holmes also clarified for us that, as to this matter Mr. Hedger no longer had any issue as a landowner.
- 2.17 We heard no other evidence on this matter.
- 2.18 In terms of a finding on this matter, we concur with Ms. Thomson that that aspect of the submission is not on the Variation. While not referenced in submissions or evidence we observe that this would be consistent with case law². Other submissions relating to stormwater we address in paragraphs 3.22 to 3.28 below.
- 2.19 The submission of Ms. K Shufflebotham, owner of 46 County Road (S1), did not indicate either support or opposition to the Variation.³ As we identified in paragraph 2.10 above, on 4 December 2019 we received an email from Ms. Shufflebotham, amending her submission to

¹ S42A Hearing Report, Paras 51-57

² See Palmerston North City Council v Motor Machinists Ltd [2013] NZHC 1290

³ S42A Hearing Report, Para 69

seek that her property not be rezoned to Residential - County Road Otaki Low Density Precinct. The reasons expressed by Ms. Shufflebotham for the amended relief were, as also set out in her original submission, that she wished to retain the ability to keep a range of domestic and farm animals on her property, including bees.

- 2.20 In reply, Ms. Thomson considered that Ms. Shufflebotham's request was a modified version of her original submission and therefore still within the scope of the original submission.⁴ We received no additional information from any other party in relation to Ms. Shufflebotham's request.
- 2.21 On the material before us, we find that Ms. Shufflebotham's request is within the scope of her original submission. Having dealt with the scope issue, we addressed the substantive matter of the submission request in paragraphs 3.0 – 3.17 below.

Outline of Variation

- 2.22 As mentioned above, the purpose of the Variation is set out fully in the Variation documentation⁵ which is held on the Council file. We found the Section 32 evaluation to provide the best summary of the purpose of the Variation, which is as follows;

- “3. The purpose of this proposed plan variation is to facilitate appropriate residential development on 46-66 County Road in Ōtaki. County Road is a small road, which will be turned into a cul-de-sac as a result of the construction of the Peka Peka to Ōtaki Expressway. Maps of the area and the affected properties are included as Appendix 1.*
- 4. This variation has resulted from an appeal to the Proposed District Plan in relation to the use of 66 County Road for residential activities. The scope of the variation is proposing the rezoning several adjoining properties (46-66 County Road), as adjoining property owners indicated they would also like their land to be considered for rezoning alongside 66 County Road during the consultation process.*
- 5. The decision version of the Proposed District Plan zones the land at County Road as Rural Plains. This zone allows for subdivision as a restricted discretionary activity, provided it creates lots with a minimum average area of 6 hectares across the subdivision and a minimum individual lot area of 1 hectare.*

⁴ Reply Statement, Para 7

⁵ Section 42A (S42A) Hearing Report

6. *This plan change proposes that a small number of properties at County Road be rezoned from Rural Plains to a newly created "Ōtaki Low Density Precinct". It proposes that this precinct has the following controls:*

- a. the minimum average lot area for the subdivision shall be 700m²;*
- b. the number of residential lots created by subdivision of the land contained in Lot 37 DP1429 shall not exceed 20 (including any balance of Lot 37 DP1429);*
- c. the protection of ecological site (K212) shall be secured via an encumbrance on the new lots within which K212 is located; and*
- d. an integrated traffic assessment must be undertaken for all subdivisions creating more than six lots with vehicle access only onto County Road."*

2.23 The documentation forming the Variation, includes a schedule of the changes to the proposed Kapiti Coast District Plan, Volume 1 provisions and Volume 2 Maps. We note that the documentation also included an evaluation report under Section 32 of Resource Management Act 1991, which we refer to as the Section 32 Report.

2.24 In reviewing the Variation itself, we noted that Table 5A.3 Restricted Discretionary Activities, Standard, Minimum and average lot sizes, 2 h) re-lettered as i) read as follows:

i) ~~h)~~ for all other land in the Residential Zone or Beach Residential Zone where the land to be subdivided is greater than 3,000m² in size:

- i. at least 50% of all front lots in the subdivision shall have a minimum lot area of 550m² and at least 25% of all front lots in the subdivision shall have a minimum lot area of 700m²; and*
- ii. at least 50% of all rear lots in the subdivision shall have a minimum lot area of 650m² (exclusive of access) and at least 25% of all rear lots in the subdivision shall have a minimum lot area of 800m² (exclusive of access);*

2.25 Firstly, we note that above standard, while included in the Variation is not proposed to be amended by the Variation, other than a consequential re-lettering. Secondly, we note that in the proposed Kapiti Coast District Plan, Volume 1, Appeals Version March 2018, Table 5A.3 Restricted Discretionary Activities, Standard, Minimum and average lot sizes, 2 h), states;

h) for all other land in the Residential Zone or Beach Residential Zone where the land to be subdivided is less than 3,000m² in size:

- i. the minimum lot area shall be 450m² (exclusive of access); and*
- ii. the minimum average lot area for the entire subdivision shall be 600m² (exclusive of access);*

2.26 Finally, we note that there no submissions on this provision.

2.27 This is clearly an error in the preparation of the Variation as to the wording of Table 5A.3 Restricted Discretionary Activities, Standard, Minimum and average lot sizes, 2 h). We recommend that Council correct the Variation as notified to reflect the wording in the Kapiti Coast District Plan, Volume 1, Appeals Version March 2018. We have made this correction in **Appendix 2** attached, noting that it is not specifically identified in anyway.

3. EVALUATION OF ISSUES

3.1 For the purposes of this evaluation, we have generally adopted the format for consideration of submissions as set out in the s42A Report by grouping our discussion of the submissions and the reasons for accepting, rejecting, or accepting them in part by the matters to which they relate⁶ – rather than assessing each issue on a submitter by submitter basis.

3.2 In addition, we have provided a submission topic and submitter-by-submitter summary of decisions requested in **Appendix 1**, which includes our recommendation on each specific relief point sought.

3.3 Our discussion of the issues is as follows:

- Issue 1 – General Rezoning Issues
- Issue 2 – Traffic and Access
- Issue 3 – Impact on Existing Rural Activities
- Issue 4 – Impact on Neighbours' Amenity Values
- Issue 5 – Stormwater
- Issue 6 – Impacts on Heritage Features and Trees

⁶ Clause 10 (2)(a) of Schedule 1 of the RMA

Preliminary Statutory Framework

- 3.4 Before addressing the evaluation of the individual issues, we set out in summary the relevant statutory matters that our evaluation covers, recording that these were identified in the reply statement of Ms. Thomson⁷.
- 3.5 These matters, having been derived from the Environment Court's Colonial Vineyards decision⁸, include the following considerations:

General Requirements:

- a. the District Plan should be designed in accordance with⁹, and assist the Council to carry out, its functions¹⁰ so as to achieve the purpose of the Act;¹¹
- b. when preparing/changing the District Plan, the Council must:
 - i. give effect to any NPS¹², the NZCPS¹³ or any RPS^{14, 15}
 - ii. have regard to any proposed RPS;¹⁶
 - iii. have regard to any management plans and strategies under any other Acts and to any relevant entry on the NZ Heritage List and to various fisheries regulations (to the extent relevant), and to consistency with plans and proposed plans of adjacent authorities;¹⁷
 - iv. take into account any relevant planning document recognised by an iwi authority;¹⁸
 - v. not have regard to trade competition;¹⁹
 - vi. be in accordance with any regulation;²⁰
- c. in relation to regional plans:
 - i. the District Plan must not be inconsistent with an operative regional plan for any matter specified in s30(1) or any water conservation order;²¹ and
 - ii. shall have regard to any proposed regional plan on any matter of regional significance;²²
- d. the District Plan must also state its objectives, policies and the rules (if any) and may state other matters;²³
- e. the Council has obligations to prepare an evaluation report in accordance with section 32 and have particular regard to that report;²⁴

⁷ Ms. Thomson, Right of Reply Statement

⁸ Colonial Vineyard Ltd v Marlborough District Council, [2014] NZEnvC 55

⁹ S74(1), RMA

¹⁰ S31, RMA

¹¹ SS 72, 74(1), RMA

¹² National Policy Statement

¹³ New Zealand Coastal Policy Statement (NZCPS)

¹⁴ Regional Policy Statement for the Wellington Region (as it would apply to Variation 3 before us)

¹⁵ S75(3)(a)-(c), RMA

¹⁶ S74(2), RMA

¹⁷ S74(2)(b)-(c), RMA

¹⁸ S74(2A), RMA

¹⁹ S74(3), RMA

²⁰ S74(1)(f), RMA

²¹ S75(4), RMA

²² S74(2)(a), RMA

²³ S75(1)-(2), RMA

- f. the Council also has obligations to prepare a further evaluation report under s32AA where changes are made to the proposal since the s32 report was completed;

Objectives

- g. the objectives of the Variation are to be evaluated to the extent which they are the most appropriate way to achieve the Act's purpose;²⁵

Provisions

- h. the policies are to implement the objectives, and the rules (if any) are to implement the policies;²⁶
- i. each provision is to be examined as to whether it is the most appropriate method for achieving the objectives of the KCDC proposed District Plan, by:
 - i. identifying other reasonably practicable options for achieving the objectives;²⁷
 - ii. assessing the efficiency and effectiveness of the provisions in achieving the objectives²⁸, including:
 - a) identifying and assessing the benefits and costs anticipated, including opportunities for economic growth and employment opportunities that may be provided or reduced;²⁹
 - b) quantifying those benefits and costs where practicable;³⁰
 - c) assessing the risk of acting or not acting if there is uncertainty or insufficient information about the subject matter of the provisions;³¹

Rules

- j. in making a rule, the Council shall have regard to the actual or potential effect on the environment of activities, including (in particular) any adverse effect;³² and

Other Statutes

- k. the Council may be required to comply with other statutes

- 3.6 We note that the further evaluation under s32AA is required only in respect of any changes arising since the Variation was first notified and that it must contain a level of detail that corresponds to the scale and significance of the effects that are anticipated from the implementation of the provisions as amended. To this end we have assessed the appropriateness of any further amendments to the Variation in terms of s32AA within this report itself.

²⁴ Schedule 1, Part 2, Clause 22, RMA

²⁵ S32(1)(a), RMA

²⁶ S75(1), RMA

²⁷ S32(1)(b)(i), RMA

²⁸ S32(1)(b)(ii), RMA

²⁹ S32(2)(a), RMA

³⁰ S32(2)(b), RMA

³¹ S32(2)(c), RMA

³² S76(3), RMA

- 3.7 In considering all of the matters above, we record that our recommendation is based upon our consideration of the following documents:
- the notified Variation and s32 evaluation,
 - the submissions and further submissions received,
 - the Council s42A report,
 - the statements/presentations from all parties appearing before us, and
 - the formal responses to the Minutes issued.
- 3.8 In terms of setting out our recommendations we have adopted the Table from Section 5 of the Section 42A Report and have annexed it to this report as to a summary of accept, accept in part, or reject. See **Appendix 1**.

ISSUE 1 – General Rezoning

- 3.9 A range of submissions addressed issues relating to General Rezoning matters including submissions from Ms. K Shufflebotham (S1), Mr. P Carr (S2), Mr. D Ledson (S3), Ms. A Hodgson (S4), and HGL (S5). Ms. Thomson, in the s42A Report, identified the relevant issues raised by submitters which we briefly summarise as follows:
- Ms. K Shufflebotham (S1) – Neither support or oppose³³
 - Mr. P Carr (S2) – Support³⁴
 - Mr. D Ledson (S3) – Neither support or oppose, but preference for situation to remain the same, noting traffic and stormwater issues³⁵
 - Ms. A Hodgson (S4) – Support if access points amended³⁶
 - HGL (S5) – Support – with amendment seeking that written approvals not be required and a review of the section 32 analysis was required³⁷
- 3.10 Ms. Thomson set out a general analysis of this group of submissions noting that she would deal with the specific amendments as to access, traffic and stormwater later in her report³⁸. In terms of the issues raised by HGL (S5)³⁹, Ms. Thomson did not consider it appropriate to treat notification in the Low Density Precinct any differently to that in any

³³ S42A Report, Para 69

³⁴ S42A Report, Para 70

³⁵ S42A Report, Para Not numbered – top of Page 17

³⁶ S42A Report, Para 71

³⁷ S42A Report, Paras 62-73

³⁸ S42A Report, Paras 74 - 75

³⁹ S42A Report, Paras 74-82

other residential zone and that it should remain to be determined on a case by case basis⁴⁰.

- 3.11 As to the review of the Section 32 assessment sought by HGL (S5) which related to costs and benefits in relation to flood management and traffic, Ms. Thomson's view, in summary, was that those matters had been adequately addressed.
- 3.12 We do not address these matters in any further detail, for the reason that at the hearing Mr. Hedger amended his submission as to opposition of the flooding and traffic analysis and evidence from the Council officers. Mr. Hedger, in response to our questions, indicated that he was no longer opposed to the flood management provisions and conceded the need for an integrated traffic assessment in accordance with the provisions as notified, noting that the hearing was more about rezoning. Mr. Holmes speaking for Mr. Hedger confirmed our understanding of Mr. Hedger's position.

Discussion and Findings

- 3.13 Considering all the matters above, we agree with Ms. Thomson as to the general analysis of the submissions, the adequacy of the notification process and Section 32 evaluation, noting Mr. Hedger's amended position. We heard no other evidence on these matters.
- 3.14 We therefore recommend that;
- a) the submissions seeking the rezoning be approved as notified be accepted.
 - b) the submissions and further submissions seeking that the rezoning be approved with amendments be rejected.
 - c) the submission expressing a preference to retain the status quo be rejected.

ISSUE 2 – Traffic and Access

- 3.1 Three submissions raised concerns in relation to traffic, which we summarise as follows:
- Support for integrated traffic assessment for more than 6 lots. Mr. P Carr (S2) - opposed by HGL (FS2) and remove

⁴⁰ S42A Report, Para 76

- requirement for integrated traffic assessment for more than 6 lots. HGL (S5);
- Concern as to County Road's ability to safely and efficiently handle any material increase in traffic volumes without widening the road. (Mr. D Ledson (S3)) - opposed by HGL (FS2), Supported by R Higgott (FS1)
 - Access to new zone should be via any lots on 66 County Road through to Oriwa Crescent. (Ms. A Hodgson (S4) – opposed by HGL (FS2)).⁴¹
- 3.2 At the hearing, in evidence and in her Section 42A Report, Mrs. Rushmore (Roading Network Planner for KCDC) set out her views as to the need for an independent traffic assessment as a requirement for larger subdivision proposals to address safety issues relating to the narrow carriageway and lack of pedestrian facilities such as footpaths on County Road.⁴²
- 3.3 Mrs. Rushmore, was also of the view that there was sufficient road reserve for the provision of a wider carriage, up to 5.5m in width, to provide for traffic, cycles and pedestrians, noting that this would apply regardless of whether there were 40 new lots or 60 new lots from any development of the precinct.⁴³
- 3.4 Relying on Mrs. Rushmore's evidence, Ms. Thomson recommended that the submission points seeking to remove the requirement for an integrated traffic assessment for more than 6 lots, and the concerns as to carriageway width, be rejected.
- 3.5 During the hearing, we found helpful Mrs. Rushmore's responses to our questions as to the existing traffic environment and the future situation in relation to the New Zealand Transport Agency's Otaki to Pekaapeka Project
- 3.6 As noted above, at the hearing, Mr. Hedger withdrew his opposition to the requirement for the integrated traffic assessment for subdivisions over 6 lots.
- 3.7 In addressing the submission of Ms. A Hodgson seeking vehicle access from 66 County Road, through to Oriwa Crescent, Ms. Thomson's view was that this was not an option open to us. The reason being that it required access across third party land and there was no agreement in place for such access. Ms. Thomson further advised that it was not appropriate for Council to require access across land that an applicant does not have control of.⁴⁴

⁴¹ S42A Report, Paras 87 - 94

⁴² Hearing Evidence, Mrs. R Rushmore, Paras 4.2 – 4.4

⁴³ Hearing Evidence, Mrs. R Rushmore, Paras 3.2 – 3.4 and 4.7

⁴⁴ S42A Report, Para 96

Discussion and findings

- 3.8 In considering all the material presented to us on this matter we concur with the expert evidence of officers that the integrated traffic assessment for more than 6 lots is appropriate and that the current width of the carriageway is not an impediment to the rezoning proposal. Similarly, we concur that it is not appropriate to require access across land owned by a third party, noting that that land is outside the area subject to the Variation.
- 3.9 We therefore recommend that;
- a) submissions supporting the inclusion of a transport assessment be accepted.
 - b) submissions and further submissions seeking to amend the Variation to remove the traffic assessment be rejected.
 - c) submissions requiring access from Oriwa Crescent only be rejected.

ISSUE 3 - Impact on Existing Rural Activities

- 3.10 S1 from Ms. K Shufflebotham, sought to ensure that existing rural activities including the keeping of farm animals could continue after the rezoning of the land. This was supported by HGL (FS2).
- 3.11 In the s42A Report, Ms. Thomson's view was that such activities could continue after the land was rezoned as per the Variation, noting that existing use rights would apply to Ms.Shufflebotham's property, within the limitations of section 10 of the Resource Management Act 1991⁴⁵.
- 3.12 We addressed above the change in Ms. Shufflebotham's position to now seeking that her property at 46 County Road not be rezoned. We recorded above that the change in position was within scope of her submission⁴⁶.
- 3.13 As to the rationale for the request for her property to be excluded from the rezoning, Ms. Shufflebotham's reasons were the same as those made in her original submission.
- 3.14 In reply, Ms. Thomson addressed the implications of the withdrawal of 46 County Road from the precinct, noting that the withdrawal of the property would make it more difficult to develop the precinct in a

⁴⁵ S42A Report, Paras 102-105

⁴⁶ See paragraph 2.21 of this report

comprehensive manner and result in less housing⁴⁷. Ms. Thomson also provided a Section 32AA analysis considering the exclusion of 46 County Road from the precinct⁴⁸.

Discussion and Findings

- 3.15 Having carefully considered the s32AA assessment prepared by Ms. Thomson and the reasons put forward by Ms. Shufflebotham, we are not convinced that the exclusion of 46 County Road from the precinct is the appropriate planning response. We place weight on the Section 32 assessment for the Variation and find that the removal of 46 County Road from the precinct would not provide for a comprehensive planning approach within the geographical context of County Road and the surrounding environs.
- 3.16 Furthermore, the principle reason cited for requesting the exclusion of this property is the same as the original submission opposing the variation, namely concerns around the continuation of existing rural activities. As we have outlined above, we rely on the advice of Ms. Thomson that existing use rights could apply to Ms. Shufflebotham's property (within the limitations of section 10 of the Resource Management Act 1991⁴⁹) regardless of whether the property was to be included within the Variation or not. However, this would not extend to new rural activities or to an increase in the scale and intensity of existing activities. There is a difference here between existing and future activities that the Variation cannot address.
- 3.17 We therefore recommend that;
- (a) submission S1 as it relates to 46 County Road being excluded from the rezoning be rejected.
 - (b) submission S1 and FS2 as they relate to continuation of existing rural activities be rejected in part

ISSUE 4 – Impact on Neighbours' Amenity Values

- 3.18 Mr. D Ledson (S3) raised concerns in relation to amenity issues, including privacy and quality of life, including the costs of any future fencing⁵⁰. A further submission from HGL (FS2) opposed that original submission.
- 3.19 Ms. Thomson's view was that issues of privacy, between properties, was more appropriately addressed at the subdivision consent stage

⁴⁷ Reply Statement, Ms. E Thomson, Para 8

⁴⁸ Reply Statement, Ms. E Thomson, Appendix 5

⁴⁹ S42A Report, Paras 102-105

⁵⁰ s42A Report, Para 108

and that fencing was not a RMA matter *per se*, although fence height is controlled under the District Plan⁵¹.

- 3.20 Ms. Thomson also advised that the subdivision provisions of the proposed Variation provide for the consideration of amenity effects under matters of discretion for subdivisions and that other matters such as construction effects were adequately controlled by other District Plan provisions⁵².

Discussion and Findings

- 3.21 We note that Mr. Ledson did not wish to be heard, so we were unable to further test his submission. Therefore, for reasons set out by Ms. Thomson above we recommend that;

- a) submissions expressing concerns about amenity values of neighbours be rejected.
- b) the submissions and further submissions seeking that the rezoning be approved be accepted.

ISSUE 5 - Stormwater

- 3.22 Three submissions raised concerns in relation to stormwater, which we summarise as follows:

- Concern as to surface water from one property to another (Ms. Shufflebotham S1);
- Increased numbers of dwellings exacerbating risk of stormwater issues (Mr. D Ledson S3)
- Stormwater ditch maintenance issues (Mr. A Hodgson S4)

- 3.23 All of the submissions above were opposed by HGL (FS2).

- 3.24 Mr. Mbona for KCDC provided responses to the submissions in evidence, noting that stormwater is controlled for subdivisions to ensure that any development requires attenuation so as not to exceed pre-development volumes⁵³; that flood risk is separately controlled under the District Plan⁵⁴, and that maintenance of stormwater systems is also controlled by conditions of consent⁵⁵.

- 3.25 Relying on Mr. Mbona's evidence, Ms. Thomson recommended that the submissions as to concerns relating to stormwater be rejected⁵⁶.

⁵¹ S42A Report, Para 110 - 112

⁵² S42A Report, Paras 113 - 115

⁵³ Hearing Evidence, Mr. T Mbona, Paras 4.2 – 4.3

⁵⁴ Hearing Evidence, Mr. T Mbona, Para 4.4

⁵⁵ Hearing Evidence, Mr. T Mbona, Para 4.5

⁵⁶ S42A Report, Para 126

- 3.26 At the hearing, Mr. Mbona helpfully provided clarification to a number of our questions relating to the background s32 Report, the hydrological situation around the proposed precinct, and details of the Council's works programme as to flood management.

Discussion and findings

- 3.27 In considering all the material presented to us on this matter, we concur with the expert evidence that stormwater is adequately addressed through the existing provisions in the District Plan. We note that as part of the Section 32 Report, Wellington Regional Council were consulted and they were satisfied with the provisions as to stormwater and flooding.
- 3.28 Adopting the reasoning set out above, we recommend that the submissions expressing concerns about stormwater be rejected.

ISSUE 7 – Impacts on Heritage Features and Trees

- 3.29 The submission from Ms. A Hodgson (S4) raised concern as to the potential upgrade of the driveway on the access to 66 County Road, "... would endanger the root systems of the 3 Heritage Listed Oak trees which border the driveway."
- 3.30 Ms. Thomson confirmed that the trees are identified in the District Plan and that in her view the existing rules in Chapter 10 adequately provide for the protection of the trees⁵⁷. Ms. Thomson, in response to our questions at the hearing, further clarified that this protection relates to trees both above and below ground, including disturbance to the root systems.

Discussion and findings

- 3.31 We concur with Ms. Thomson that the Proposed District Plan rules adequately address this issue and as such we recommend that this aspect of the submission be rejected.

4. STATUTORY CONSIDERATIONS

- 4.1 Drawing on our consideration of the Variation material, the submissions and further submissions, and the evidence presented at the hearing, this section of our report addresses the statutory requirements outlined at the beginning of Section 3 above.

We have adopted a thematic approach to presenting our findings in this respect, using the Colonial Vineyards criteria as a guide. In particular, we rely on (and do not repeat) the detailed reasoning in Section 3 in

⁵⁷ S42A Report, Paras 130 - 131

providing what is essentially a 'high level' response to the criteria and questions prompted by the Colonial Vineyards case. We record that in submissions and in evidence that no submitters provided expert planning evidence to challenge the effectiveness of the provisions⁵⁸ in giving effect to the higher order documents or to the appropriateness of the objectives in achieving the purpose of the RMA, or the appropriateness of the provisions in achieving the objectives. Therefore, for the most part, we rely on the views of Ms. Thomson as the basis for determining the statutory considerations of relevance to this Variation.

Are the proposed objectives the most appropriate way to achieve the purpose of the Act?

- 4.2 The Variation does not include any new objectives, rather the provisions of the Variation are derived from the existing residential objectives in the proposed District Plan. Therefore, in our view, with no objectives being proposed, such an assessment is not required.

Are the provisions the most appropriate way to implement the "objectives," having regard to their efficiency and effectiveness, actual and potential environmental effects and reasonable alternatives?

- 4.1 In relation to our consideration of provisions, we note that the Variation does not contain any new policies, relying instead on existing policies within the Proposed District Plan. However, the Variation does include new rules and planning maps. An assessment of the rules as to the policies and objectives is detailed in the accompanying Section 32 report⁵⁹. We find that the proposed provisions have been explicitly designed to be effective and efficient in implementing the proposed objectives of the Plan and that they also align with the policies.
- 4.2 Our evaluation in Section 3 finds that the rules effectively and efficiently implement the already established policy direction through a range of activities, standards and resource consent requirements that apply to the County Road Otaki Low Density Precinct. In addition, having considered the evaluation of the rules themselves⁶⁰, we find that the maximum number of lots, protection of the ecological site, and integrated traffic assessment requirements are crucial to the effective implementation of the policy direction.
- 4.3 As described in the issue evaluation above, no amendments to the provisions arising since notification have been made for the purposes of improving clarity and/or effective implementation.

⁵⁸ We record that the Variation does not contain any new objectives.

⁵⁹ Section 32 Report, Pages 12 - 17

⁶⁰ Section 32 Report, Pages 21 - 22

- 4.4 We have also assessed alternative methods to implement the Variation, as proposed by some submitters and identified in the Section 32 Report⁶¹. However, we find that alternative methods are generally less effective and/or efficient in the implementation of the objectives.
- 4.5 For these reasons, we find that the proposal is more appropriate than the status quo, being Rural Plains Zone, at achieving the Plan's proposed objectives on the whole.

Is the Variation designed to accord with, and assist the Council to carry out its functions so as to achieve the purpose of the Act?

- 4.6 Variation 3 involves the establishment of methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources for the County Road Otaki Low Density Precinct adjoining the township of Otaki. In addition, the Variation aims to control the actual or potential effects of the use, development, or protection of land particularly in relation to compatibility with adjoining established residential to the north and the enabling of development whilst preserving the ecological site (K212).
- 4.7 Accordingly, we find that the Variation is designed to accord with and assist the Council to carry out its s31 functions.

Does the Variation give effect to any NPS or the NZCPS?

- 4.8 The National Policy Statement for Urban Development Capacity (NPS-UDC) is the only NPS that is directly relevant to the Variation.
- 4.9 We consider the focus of the NPS-UDC on encouraging additional urban development capacity is provided for by way of the Variation. In addition, in the s42A Report, Ms. Thomson considered that the NPS – UDC is implemented through the opportunity provided for additional housing in the Otaki area and that the area can be serviced with adequate infrastructure.⁶² We concur with this view and consider that there are no additional amendments required to give effect to the NPS – UDC beyond the notified provisions.

Does the Variation give effect to the Regional Policy Statement?

- 4.10 As noted above, no party contended that the Variation does not give effect to the Regional Policy Statement (RPS). We contrast this with the

⁶¹ Section 32 Report, Page 17 - 20

⁶² S42A Report, Para 38

evaluation in the Section 32 Report for the Variation, which sets out reasons as to how the proposal is aligned with the RPS.

Is the Variation consistent with any regional plans or proposed regional plans?

- 4.11 No party challenged the consistency of the Variation with the Greater Wellington Proposed Natural Resources Plan or the operative Regional Plans. This is not surprising given the separate functions of regional councils and territorial authorities as set out under s30 and s31 of the RMA. With no evidence to the contrary, we consider that the Variation is not inconsistent with the Greater Wellington regional plans or proposed regional plan.

What (if any) regard should be given to relevant management plans and strategies under other Acts, including any relevant entry in the Historic Places Register?

- 4.12 We acknowledge that the Section 32 Report identifies the proposed Ngati Raukawa Otaki River and Catchment Iwi Management Plan (2000) as having some relevance to the site, noting the Variation is generally aligned with the principles outlined in the Iwi policy statement. In response to our questions and in reply⁶³, Ms. Thomson also clarified that iwi consultation had occurred in relation to the proposal.
- 4.13 The Section 32 Report further identified the KCDC Development Management Strategy (2006) and the KCDC Greater Ōtaki Vision (2005) as relevant to the Variation; noting that the Variation is consistent with the intent of the strategy and similarly that the proposal will consolidate the residential zone on the Otaki Plateau in line with the vision statement⁶⁴.
- 4.14 In our evaluation, and for the reasons set out above, we find the Variation is consistent with the overall direction set out in the identified plans and strategies above.

To what extent does the District Plan need to be consistent with the plans or proposed plans of adjacent territorial authorities?

- 4.15 The proposal, at the closet point, is some distance from the adjacent the territorial authority boundary of Horowhenua District Council. We are satisfied that the proposal does not need to be consistent with the Horowhenua District Plan, given the connectedness of the proposal to the residential land on the Otaki Plateau.

⁶³ Reply Statement, Para 2.2

⁶⁴ Section 32 Report Paras 43 – 44

5. OVERALL RECOMMENDATION

5.1 Pursuant to the powers delegated to us by the KCDC under s34A of the RMA 1991; and based on our consideration of all the material before us, including the Section 42A report, submissions, further submissions, evidence presented at the hearing and following consideration of the requirements of Section 32 and other relevant statutory matters, we recommend to the Council that:

(a) the Variation be accepted as notified (set out in **Appendix 2**) and that all submissions on the Variation be accepted or rejected to the extent set out above (and summarised in **Appendix 1**); and

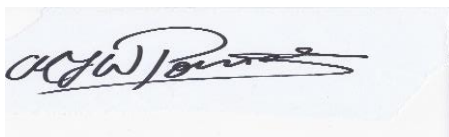
(b) pursuant to Clause 10 of the First Schedule of the Resource Management Act 1991, Council give notice of its decision on submissions to Variation 3.



M St.Clair
Independent Hearing Commissioner (Chair)



J Holborow
Independent Hearing Commissioner



M Pomare
Independent Hearing Commissioner

21 February 2020