

BEFORE THE WAIPĀ DISTRICT COUNCIL

IN THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER OF proposed private Plan Change 12 to the Waipā District Council by Sanderson Group Limited and Kotare Properties Limited for the rezoning of Growth Cell T2 from 'deferred residential zone' to 'residential'

LEGAL SUBMISSIONS ON BEHALF OF SANDERSON GROUP LIMITED AND KOTARE PROPERTIES LIMITED

Introduction

1. I appear today on behalf of Sanderson Group Limited and Kotare Properties Limited (the Applicant). The Applicant owns the southern part of the Growth Cell T2 (**T2**), which is the subject site of proposed Plan Change 12 (**PPC12**).

2. Growth Cell T2 is identified as one of several growth cells in the Waipā District Plan (**WDP**). These growth cells derive from the Waipā 2050 District Growth Strategy, a long term integrated approach to managing the significant expected growth within the District.

3. There are a total of 16 growth cells identified in the WDP and these are divided into two categories – for pre 2035 development and post 2035 development. Growth Cell T2 is identified for development post 2035, and as such is zoned deferred residential. This zoning supports the proposition that residential development of T2 is anticipated and appropriate.

4. The WDP provides for situations where a proposal is made to open a growth cell earlier than it is zoned to be developed, by way of a plan change. That is what the Applicant is proposing.
5. The Applicant's proposal will provide Te Awamutu with much needed retirement village capacity to be developed by the industry leading Sanderson Group, in tandem with a high quality residential subdivision to be developed by Kotare. Together the two companies present an integrated development proposal for the southern part of the T2 growth cell.

Decision sought

6. The Applicant seeks that the Council approve PPC12 as notified and subject to two amendments proposed by the Applicant.
7. The first amendment relates to the part of the cell for rezoning. The Applicant originally sought to amend the zoning of the whole T2 cell. However, the Section 42A report recommends changing the zoning of only the southern part of T2. The Applicant has accepted this recommendation and while the structure plan covers the whole T2 cell to ensure integration and consistency, only proposes to change the zoning of the southern part of T2. The second amendment is to notate the location of the Isla Bank house on the structure plan.
8. In terms of the structure of PPC12, no changes are proposed to existing objectives and policies within the WDP. The changes proposed are to:
 - (a) Rules within sections 2 and 15 of the WDP;
 - (b) The introduction of a new Appendix S23 – Te Awamutu T2 Growth Cell Structure Plan; and

- (c) A structure plan for the T2 cell.
9. If PPC12 is approved by the Council, then the zoning on the planning maps will also need updating accordingly.

Legal framework

10. Mr Olliver addresses the legal framework of the RMA in detail in his evidence and I do not propose to repeat his analysis here. Instead, I will run through a few key aspects of the legal framework.
11. The main touchstones within the RMA for consideration of a plan change are:
- (a) Section 31 (Functions of territorial authorities);
 - (b) Section 32 (Requirements for preparing and publishing evaluation reports);
 - (c) Section 74 (Matters to be considered by territorial authority);
 - (d) Section 75 (Contents of district plans); and
 - (e) Section 76 (District rules).
12. PPC12 does not propose any new objectives, or alterations to objectives. It is therefore the objectives of the WDP that are relevant for the purposes of section 32. The evaluation report required by section 32 must:¹
- (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—

¹ RMA, s 32(1)(b). It must also contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal (RMA, s 32(1)(c)).

- (i) identifying other reasonably practicable options for achieving the objectives; and
 - (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives;² and
 - (iii) summarising the reasons for deciding on the provisions.
13. A detailed Section 32 analysis as required by the RMA has been provided at Table 2 in the Request for Plan Change, and further detail in relation to the proposed plan provisions is attached to Mr Olliver's evidence as Appendix 1.³
14. Section 74(1) references the Council's obligation to prepare and change a district plan in accordance with (amongst other things) the provisions of Part 2 of the RMA. The Section 42A report has assessed this,⁴ while Mr Olliver refrains from falling back to Part 2 on the basis of *King Salmon*, given that the National Policy Statement for Urban Development 2020 (**NPSUD 2020**) and Waikato Regional Policy Statement (**RPS**) are higher order documents that give effect to Part 2. In my submission either approach is open to the Commissioners because reference back to Part 2 in this case does not in any way circumvent or undermine the application of the NPSUD 2020 or RPS.
15. Section 75 of the RMA requires the WDP to give effect to any national policy statement, national planning standards and any regional policy statement. In

² An assessment under s 32(1)(b)(ii) must:

(a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—

(i) economic growth that are anticipated to be provided or reduced; and

(ii) employment that are anticipated to be provided or reduced; and

(b) if practicable, quantify the benefits and costs referred to in paragraph (a); and

(c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions. (RMA, s 32(2)).

³ This provides more specific assessment of alternative plan provisions, and the costs and benefits in respect of each proposed new plan provision.

⁴ Paragraphs 4.3-4.8.

my submission, the only relevant National Policy Statement is the NPSUD 2020 which Mr Olliver considers in his evidence. The proposed plan change in my submission gives effect to the relevant objectives and policies of this national policy statement, in particular by providing choice and competitiveness in the housing market.

16. Te Ture Whaimana o Te Awa o Waikato (the Vision and Strategy for the Waikato River) forms part of the RPS.⁵ Mr Hill has assessed this in his evidence, and considers that PPC12 gives effect to the Vision and Strategy by creating a new wetland area and allowing for the implementation of low impact stormwater design as part of the subsequent developments.⁶ More broadly, I note that the RPS was notified in 2010 and became operative in 2016, with the NPSUD 2020 post dating the RPS. As such the RPS must be considered in light of that development in national policy direction.
17. It is my submission that PPC12 has regard to the relevant statutory obligations imposed under the RMA. That is supported by the evidence provided for the Applicant, including that of Mr Olliver.

Witnesses

18. In support of PPC12, I will call the following witnesses:
 - (a) Nathan Sanderson, Development Manager at Sanderson Group;
 - (b) John Illingswoth, Director of Kotare Properties Limited;
 - (c) Ciaran Murphy, General Manager and Licensed Cadastral Surveyor at Kotare Consultants;

⁵ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.

⁶ Statement of Evidence of Norman Hill, paragraphs 20-22.

- (d) Hayden Vink, Civil and Environmental Engineer at Wainui Environmental Limited;
- (e) Mark Apeldoorn, Traffic Engineer and Practice Leader Transportation Advisory Private Sector at Stantec;
- (f) Mark Bellingham, Principal Ecologist at Ecology NZ;
- (g) Jo Soanes, Principal Landscape Architect at Boffa Miskell;
- (h) Philip Osborne, Economist at Property Economics;
- (i) Norman Hill, Cultural Advisor;
- (j) John Olliver, Planning Manager and Director at Bloxam Burnett & Olliver.

Issues before the Council

- 19. A number of submissions have been lodged on PPC12, and a good proportion of these are in support of the plan change.
- 20. Of those submissions in opposition, it is submitted that these can be distilled into a number of key issues which the Applicant's evidence will address:
 - (a) Whether the opening of the growth cell early will have adverse effects on Waipā District Council's infrastructure;
 - (b) The change of the land from rural to residential and the associated effects of this; and

- (c) Whether there is capacity for further growth cell development in Te Awamutu.

Infrastructure

21. On the first of these issues, the Applicant's submission is that the infrastructure in place and proposed to be developed by the Council has the capacity for the proposed plan change and its development will not result in issues for other existing or planned open growth cells in the area.
22. The evidence of Mr Vink, Mr Murphy and Mr Apeldoorn supports this proposition. It is also worth noting that the proposal is a cell of land which is planned for development post-2035. It is not an area of land which the Council, and in fact the community, never envisaged would be developed. The Council's infrastructure planning has taken it into account.
23. In relation to stormwater, a discharge consent has already been obtained from the Waikato Regional Council which confirms the capacity in the stormwater catchment for the site. Mr Vink confirms that the preliminary stormwater design and management plan adhere to typical best practice stormwater management requirements, and will not have any adverse effects on the environment that would be more than minor.⁷
24. In relation to waste water and water supply, Mr Murphy's evidence confirms that works being undertaken by the Council currently at the Te Awamutu Wastewater Treatment Plant and planned future upgrades will ensure sufficient wastewater capacity in the district to accommodate the development of the site.⁸ In relation to water supply, the Council has confirmed that there is adequate water supply in the Council system, particularly with the Parallel Road Water Treatment Plant to be completed this

⁷ Statement of Evidence of Hayden John Vink, paragraph 15.

⁸ Statement of Evidence of Ciaran Murphy, paragraph 21.

year.⁹ Development contributions associated with the development of the site will assist appropriately with the funding of this infrastructure.¹⁰

25. Managing the transport effects of the site will be important and in my submission the proposal and associated structure plan does that. As compared to the full site being developed for residential subdivision, the use of the site partly for a retirement village reduces the traffic impacts of the development of the site. Mr Apeldoorn has made recommendations as to how traffic should be managed in his evidence, and noted that many of the detailed level transport effects are more appropriately addressed through consent conditions at the consenting stage.¹¹ The Council's section 42A report confirms that some of the mitigation measures proposed by Mr Apeldoorn such as kerbing and lighting of Frontier Road are proposed by the Council, and are to be funded through the Council's long term plan.¹²
26. It is important to remember when considering these issues that the development of the site will be considered again by the Council when resource consent applications for the subdivision and the retirement village are made. Conditions on those consents will ensure that any adverse effects from the individual developments are mitigated to an acceptable level. In my submission, it is therefore appropriate for the Commissioners to focus their attention on the issues associated with changing the zoning of the site from rural to residential ahead of the intended time period.

Change in Land Use

27. The change in land use will undoubtedly change the landscape at the site and in surrounding areas. However, that change is anticipated by the Waipā District Plan. Ms Soanes' evidence has considered the effects on this change on the

⁹ Statement of Evidence of Ciaran Murphy, paragraph 24.

¹⁰ Statement of Evidence of Ciaran Murphy, paragraph 13.

¹¹ Statement of Evidence of Mark Apeldoorn, paragraph 35.

¹² Paragraph 5.79.

landscape, concluding that as with any urbanisation, a substantial change will be introduced over time. However, the site will retain a response to the natural landscape and environmental features and have the potential to create a moderate to low landscape effect.¹³

28. The ecological adverse effects of the development are assessed to be minimal in relation to birds and reptiles, and appropriately mitigated in relation to bats in line with the recommendations proposed by Dr Bellingham. Some of these mitigation matters are, as above, more appropriately dealt with by consent conditions.¹⁴

Capacity

29. In relation to the question of capacity, it is important to note the comments of Mr Sanderson and Mr Illingsworth in their evidence.¹⁵ This proposal has come about against the backdrop of market uncertainty following the beginning of the Covid-19 pandemic.
30. While originally the intention of Sanderson was to develop the site into a retirement village, a reassessment following the pandemic's arrival in New Zealand led to Sanderson seeking to bring on board a development partner. Kotare was selected for their high quality residential subdivisions, which Sanderson felt matched the quality of their retirement villages. The two individual companies and their respective plans for the site form an interconnected proposal, and without one the other would not come forward.
31. The demand for a retirement village and further residential capacity at Te Awamutu is supported by Mr Osborne, and Mr Olliver¹⁶ in their evidence.

¹³ Statement of Evidence of Joanna Soanes, paragraph 45.

¹⁴ Statement of Evidence of Dr Robert Bellingham, paragraphs 26-30.

¹⁵ Statement of Evidence of Nathan Sanderson, paragraphs 22-24; Statement of Evidence of John Illingsworth, paragraphs 33-38.

¹⁶ Statement of Evidence of John Olliver, paragraphs 80-87.

32. In fact, Sanderson's motivation for seeking to develop a retirement village came about as a result of comments made by Te Awamutu residents about the lack of retirement options, and their interest in Sanderson's Tamahere Country Club development in Hamilton.
33. Mr Osborne comments on the aging population in Te Awamutu and the limited capacity of its retirement living options. He also notes the significant benefits in the region are on going, estimated to be \$1 million per annum, providing at least 17 full time jobs.¹⁷
34. Mr Osborne also notes the economic benefits of the residential housing, including increasing the affordable housing available and offering market choice.¹⁸ The need for further housing capacity in Te Awamutu is supported by the Council's Section 42A report, indicating that there are only two effective open growth cells, with capacity sitting below the projected demand of 169 households per annum.¹⁹
35. In conclusion, as is supported by Mr Olliver's evidence and the Council's Section 42A report, it is my submission that the plan change should be approved.

Submissions/changes not within scope of Plan Change

36. The Section 42A report concludes that there are a number of submissions which are not within the scope of the Plan Change and should therefore not be accepted.
37. In addition to those identified by the Council, I wish to draw your attention to Heritage New Zealand's submission which requests that the Heritage Schedule of the WDP is amended to include the full extent and setting of Isla Bank. As

¹⁷ Statement of Evidence of Philip Osborne, paragraph 28.

¹⁸ Statement of Evidence of Philip Osborne, paragraph 14.

¹⁹ Paragraph 5.49.

the Heritage Schedule within the WDP is not the subject of the Plan Change, nor are any changes proposed in relation to Heritage related provisions of the Plan, it is my submission that the request to amend the heritage schedule is not 'on the plan change' and therefore in accordance with case law this request is outside of the scope of matters which can be addressed through the Plan Change.²⁰ However, as outlined in Mr Olliver's evidence it would be appropriate to note the location of the Isla Bank house on the structure plan, for information purposes. This strengthens the internal consistency of the WDP.

Plan Change 13 – Uplifting Deferred Zones

38. For completeness, it is prudent to mention proposed Plan Change 13, public notification of which commences today. Key aspects of Plan Change 13 are that it removes reference to uplifting Deferred Zones via Council resolution, rezones the pre-2035 growth cells to their live zoning, and requires all post 2035 growth cells to undergo a plan change process to uplift the Deferred Zoning.
39. In terms of the relationship of Plan Change 13 to PPC12:
- (a) The rules in Plan Change 13 have no legal effect, as this will only occur once decisions on submissions have been made;²¹
 - (b) *Proposed plans* are not prescribed as a relevant consideration when considering proposed changes to an operative district plan.²² In any event, Plan Change 13 is at such an early stage that even if it were a relevant consideration, very little (if any) weight would be able to be placed on it.

²⁰ *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290 at [19].

²¹ RMA, s 86B(1).

²² RMA, s 74.

40. The Applicant has acknowledged the pending plan change.²³ Plan Change 13 also deletes the assessment criteria and preconditions for the uplifting of Deferred Zones that are in rules 14.4.1.10 and 21.2.14.1. Whilst those provisions were clearly designed for the Council resolution process, Mr Olliver has referred to them in his evidence as relevant guidance for a plan change.²⁴ The Frontier Developments Limited submission references them as a matter of compliance to be demonstrated by the Applicant.
41. While Plan Change 13 remains in its infancy, it is my submission that it is a sensible approach to regard the assessment criteria in rules 14.4.1.10 and 21.2.14.1 as relevant guidance as discussed by Mr Olliver.

Conclusion

42. In conclusion, I ask that based on the application and the evidence to be called in support, the Council make the decision sought and approve proposed Plan Change 12 subject to the two amendments sought by the Applicant.

DATED at Tauranga this 22nd day of March 2021



Vanessa Jane Hamm
Counsel for Sanderson Group Limited and Kotare Properties Limited

²³ Statement of Evidence of John Olliver, paragraph 77.

²⁴ Paragraphs 77-93.