

**BEFORE THE INDEPENDENT HEARINGS PANEL  
FOR THE KAPITI COAST DISTRICT COUNCIL PLAN**

**IN THE MATTER** of the Resource Management

Act 1991

**AND**

**IN THE MATTER** of submissions and further  
submissions in respect of Kapiti Coast  
District Council's Proposed Plan  
Change 2: Intensification.

---

**LEGAL SUBMISSIONS ON BEHALF OF THE MANSELL FAMILY (REZONING  
REQUEST- SUBMITTER NO#023)**

**Dated: 24<sup>th</sup> March 2023**

---

---

Bartlett Law  
Level 9, Equinox House  
111 The Terrace, PO Box 10852  
Wellington  
Tel: (04) 472 5579  
Fax: (04) 471 0589

Counsel: P D Tancock  
Harbour Chambers  
Level 2, Solnet House  
70 The Terrace, PO Box 10242  
Wellington  
Tel: (04) 499 2684

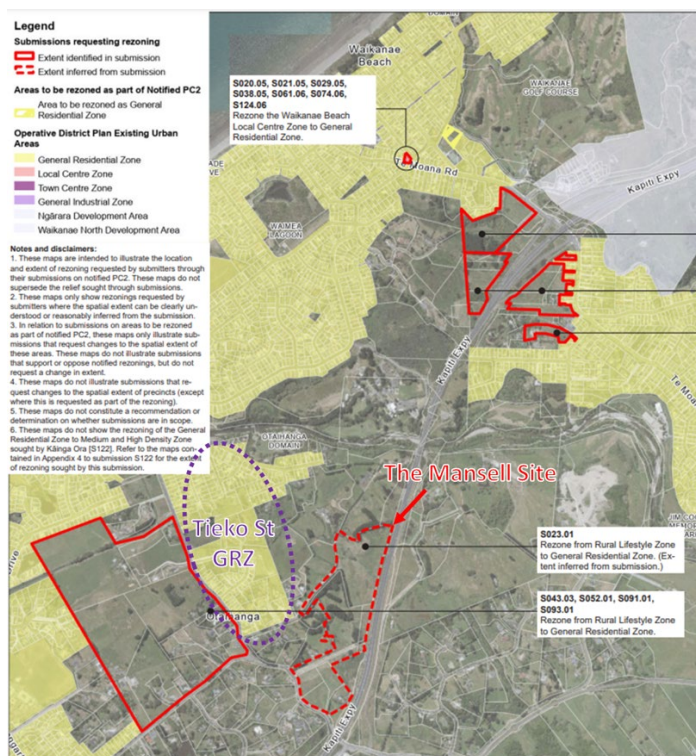
Solicitor Acting: P Ryder-Lewis

E: [phernne.tancock@legalchambers.co.nz](mailto:phernne.tancock@legalchambers.co.nz)

## MAY IT PLEASE THE PANEL:

### 1. INTRODUCTION

- 1.1 These legal submissions are made on behalf of the submitters M R Mansell, R P Mansell and A J Mansell (**the Mansells**). The Mansells own approximately 18 ha of land at Otaihanga (48 and 58 Tieko Street, 141,139 and 147 and 155 Otaihanga Road). The land forms part of the Mansell family farm that was severed by the Expressway.
- 1.2 The Mansells' rezoning request is to rezone their land from Rural Residential to General Residential Zone (GRZ) and to have the Medium Density Residential Standards (MDRS) provisions apply as part of PPC2. The General location of the rezoning request is shown here:



Part of the Mansells' site land abuts the urban environment of the Otaihanga Residential Zone – (referred to in the above map as the Tiekō Street GRZ). The site is part of the old Mansell Family farm that was severed by the Expressway and is now uneconomic to farm. The land is not productive land and is identified in the Councils Land Use Capability mapping as having Capability 6 – non-arable land with moderate limitation for use.

- 1.3 Mr Compton-Moen, the Mansells' urban design and landscape expert, has applied the MDRS provisions to the site, and estimated it would be possible to accommodate approximately 372 new dwellings on-site (if rezoned to

GRZ), while ensuring that stormwater, ecology, natural wetlands and habitat for relocated lizards, are provided for.

- 1.4 The rezoning request provides a significant and unique opportunity to provide for a substantial amount of residential development in Kapiti, within the context of a national housing crisis.

#### **Tieko Street Subdivision - Resource Consent**

- 1.5 The Mansells have obtained non-complying resource consent from KCDC to develop their site into 46 residential lots (“Otaihanga Estate”) on 2 December 2022. This was publicly notified, received 13 submissions and was heard by Commissioners. The decision is under appeal awaiting mediation. They have also obtained Regional Consents from Greater Wellington and bulk earthwork approval from Heritage New Zealand Pouhehre Taonga.

#### **Reasons for the rezoning request**

- 1.6 The Mansells have made a rezoning request because:
- (a) The land has been identified by KCDC as being within a larger area intended for urban development in the medium term.
  - (b) Their site adjoins the existing urban environment (**Otaihanga GRZ**) meaning it is in an ideal and logical location for further urban growth in Otaihanga – the consent reinforces this transition from rural to more intensive residential.
  - (c) Development of the site will achieve a compact and efficient urban form with excellent connectivity - it is well serviced by car and pedestrian/shared path/cycleways and is within cycling distance from amenities.
  - (d) The site is well serviced by existing infrastructure –can be connected to power, internet, sewer, reticulated water, wastewater. These networks have sufficient capacity to service more intensive residential development of the site.
  - (e) The Mansells have worked closely with Atiawa ki Whakarongotai as manu whenua of the site and cultural impact assessment and archaeological assessments were completed as part of the bulk earthworks approval from Heritage New Zealand Pouhehre Taonga. Atiawa supported the subdivision application (and their further submission on PPC2 supports the Mansells’ rezoning request).
  - (f) Unlike other rezoning requests, this site has very recently been through a robust district and regional consent process. The characteristics of the site are well understood. That included peer

review of technical assessments and the evidence tested by the hearing panel. The district and regional consents obtained for the site for 46 dwellings mean that the suitability for residential development has already been confirmed. The Panel can place significant weight and have a high degree of confidence in those assessments.

- (g) From a hazards perspective, the necessary assessments have confirmed the site is in a sensible location for GRZ; there are no flooding or ponding issues, no waterways, the land is not highly productive land, it is geotechnically suitable for residential development and is not subject to liquefaction risk and can be developed to ensure hydraulic neutrality.
- (h) The mature Kanuka stands and four natural wetlands have been assessed and delineated and accommodated in detail design.
- (i) The Mansells' experts have also considered further assessment of the site's suitability for increased residential intensification as part of PPC2, in light of the Panel's Minute 1. All have determined that, in their expert view, there are no barriers to rezoning the site GRZ that cannot be resolved at detail design phase, they have considered the costs and benefits of doing so, and confirmed that the proposed GRZ/MDRS provisions could be applied to the site without amendment.
- (j) If rezoned, the land could be developed at higher density, more efficiently, in line with its intended (medium term) zoning. This would add significant development capacity and contribute to the well- functioning urban environment.

### **The need for further capacity**

- 1.7 The Mansells are concerned that the Council has not got the split between existing and newly zoned GRZ greenfield land right. Part 3 of the NPS-UD sets out mandatory measures that Council "must do" to implement the NPS-UD. That includes providing sufficient development capacity for housing to meet expected demand, in existing and new areas (both standalone and attached dwellings) in the short, medium and long term.
- 1.8 "Sufficient demand" is defined as being plan enabled,<sup>1</sup> infrastructure ready,<sup>2</sup> feasible and reasonably expected to be realised, with an appropriate competitiveness margin (in the short term of 20%)<sup>3</sup>.
- 1.9 Mr Foy, the Mansells' economic expert, has noted that there is projected to be a large undersupply of residential dwelling capacity according to

---

<sup>1</sup> NPS-UD Part 3 cl.3.4 defines land as plan enabled (a) in relation to the short term, it is on land zoned for housing in the operative district plan (b) in relation to medium term, either paragraph (a) applies, or it is on land zoned for housing in a proposed district plan.

<sup>2</sup> NPS-UD Part 3 cl.3(d) Development capacity is infrastructure ready if (d) in relation to the short term, there is adequate existing development infrastructure to support the development of the land.

<sup>3</sup>Ibid cl 3.22.

KCDC's assessment, and only sufficient existing capacity for around 14 years of projected growth – “less than half of what is needed under the NPS-UD.”<sup>4</sup> In his view the Council has not struck the correct balance between greenfield and brownfield/infill development.

- 1.10 The Mansell's rezoning request would enable significant residential additional residential capacity. The Mansell site is estimated to provide (372 dwellings) nearly 30% of Paraparaumu's growth needs under the NPS-UD over the medium term, and would sufficiently alleviate KCDC's projected shortfall.
- 1.11 Mr Foy has noted that while development will become more enabling of higher densities as a result of PPC2, there is no certainty that those rules will significantly increase supply as it is uncertain how much infill or brownfield redevelopment the new rules will actually stimulate. If development occurs it is likely to occur slowly over many years – because it is dependent on uptake by individual owners who are likely to be unmotivated to develop – to bridge the gap in housing supply, (or do not simply do not have the resources to do so).<sup>5</sup>
- 1.12 Approving the requested rezoning would, would help ensure PPC2 achieves its objectives,<sup>6</sup> and “give effect to” Policy 3 of the NPS-UD. The rezoning would also contribute to a well-functioning urban environment – as covered in the evidence of Mr Foy<sup>7</sup> and Mr Hansen.
- 1.13 The Mansell's site is infrastructure ready, available for immediate development, should be rezoned to help achieve those targets. The Mansell Family have many years' experience as a both a commercial (Coastlands Mall) and residential developer in the district. They consider that there is still good demand for affordable new homes in Otaihanga and are confident that more intensive development can be realised in the short term.

## **2. PURPOSE OF THE ISPP**

- 2.1 The Government's stated purpose for the ISPP and Enabling Housing Supply Amendments, is to urgently address the housing crisis. Increasing the supply of houses is one of the key actions that the Government can take to improve housing affordability. The ISPP is a streamlined planning process designed to rapidly implement the NPS-UD (2022 Update) to urgently increase the housing supply by enabling faster intensification. In response to this urgency, Cabinet decided:

*“the intensification enabled by the NPS-UD needs to be brought forward and strengthened to given the seriousness of the housing crisis and this can be done by amending the Resource Management Act.”*

---

<sup>4</sup> Mr Foy, Statement of Evidence at paragraph 4.2.

<sup>5</sup> Mr Foy, Statement of Evidence at paragraphs 4.4 and 4.5.

<sup>6</sup> Mr Foy, Statement of Evidence at paragraph 4.6.

<sup>7</sup> Mr Foy Statement of Evidence at paragraph 8.5.

- 2.2 Section 77G imposes a mandatory duty upon the Council. It must incorporate MDRS into every relevant GRZ, and in every residential zone in an urban environment, it “must give effect to” Policy 3 NPS-UD in that zone.

### **Creation and expansion of residential zones as part of PPC2**

- 2.3 KCDC has chosen to incorporate the MDRS into the existing GRZ and rezone 14 Green and Brownfield sites as part of PPC2(N). In carrying out its function under s77G to incorporate the MRDS and give effect to Policy 3, under s 77G(4) the Council ‘*may create new residential zones or amend of existing zones,*’

- 2.4 Section 80E(1)(b) also provides that a IPI may also amend or include:

“(ii) *related provisions, including objectives, policies, rules, standards or zones, that support or are consequential on-*

(A) *the MDRS;*

(B) *Policies 3,4 and 5 of the NPS-UD, as applicable.”*

- 2.5 Rezoning land as GRZ to implement the MDRS and Policy 3 is within scope of the IPI and part of the toolbox that the Council has available to it, if, it is for the purpose of giving effect to Policy 3.<sup>8</sup> This is confirmed by the Ministry Guidance to Territorial Authorities on the Intensification Streamlined Planning process (ISPP) notes:<sup>9</sup>

*“that greenfield development can be incorporated into an IPI (s77g(4) and s80E(1)(b)(iii) of the RMA-EHS. The RMA-EHS enables an IPI to include new residential zones that implement the MDRS and related provisions which support or are consequential on the MDRS.”*

- 2.6 As noted by Mr Conway, rezoning residential land and the extension of existing zones is contemplated by PPC2.

### **The Mansells’ rezoning request is within scope**

- 2.7 The Mansells agree with the Council’s overall conclusion that it’s rezoning request is within the scope of PPC2<sup>10</sup> and Council’s assessment of the law.<sup>11</sup> The focus of the following paragraphs is to correct remarks made by the Officer in reaching that assessment.<sup>12</sup>

- 2.8 In *Motor Machinists Limited* the Court found that the *Clearwater* tests will not altogether exclude zoning extensions by submission. It found that

<sup>8</sup> Matt Conway, Libby Neilson and Madeline Ash dated 22 February 2022 – what does the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 enable? Paragraph 2.

<sup>9</sup> Ministry Guidance to Territorial Authorities on the Intensive Streamline Planning Process.

<sup>10</sup> Officers Report at para 4.16 page 236.

<sup>11</sup> Counsel for KCDC Opening Legal Submissions para 3.10 -3.14

<sup>12</sup> Officers Report page 251.

incidental or consequential extensions of zoning changes proposed in a plan change are permissible, provided that no substantial further s32 analysis is required to inform affected persons of the comparative merits of that zoning change.<sup>13</sup> As acknowledged by the Chair, the authorities suggest that each case must be determined on its own facts and there is no clear line – it is a matter of fact and degree in a particular case.<sup>14</sup>

- 2.9 The Officer's assessment of the Mansells' site notes that it "*does not request a consequential amendment to adjacent rezoning.*"<sup>15</sup> The site touches the Otaihanga GRZ urban area, that is subject to PPC2. If developed, the site would extend the Otaihanga urban area, and in my submission is sufficiently connected to that area to be treated as a consequential change as it extends an existing zone boundary.

### Section 32 Assessment

- 2.10 The Mansells have:
- (a) filed a submission dated 2 May 2022 on the Draft PPC2 requesting rezoning of their land;
  - (b) this was assessed generally in the Council's s32 Report section on rezoning requests,<sup>16</sup>
  - (c) Council's detailed assessment and response to the Mansell's zoning request – was at point 154 (page 70) of Appendix B to the section 32 Evaluation Report.
  - (d) the Mansell's' site, as part of the wider OH-01 site, was identified as a future urban study area, supporting the s32 analysis in Part 2, Appendix N to PC2(N).<sup>17</sup>
- 2.11 As noted by Mr Hansen the Council's s32 Report assesses the benefits and costs of incorporating new zoning into PPC2, at high level on a district wide basis.<sup>18</sup> Councils s32 assessment can apply to the Mansell's site – without change.
- 2.12 Another key consideration when assessing the effects of the rezone request, is the direction in Policy 6 NPS-UD which directs decision-makers to have particular regard to the following matters:

---

<sup>13</sup> Kos J Court in *Motor Machinists* at [81] set out instances where rezoning by submission is permissible:[81]...*Yet the Clearwater approach does not exclude altogether zoning extension by submission. Incidental or consequential extensions of zoning changes proposed in a plan change are permissible, provided that no substantial further s32 analysis is required to inform affected persons of the comparative merits of that change. Such consequential modifications are permitted to be made by decisionmakers under schedule 1, clause 10(2). Logically they may also be the subject of submission.*'

<sup>14</sup> *Well Smart Investments v Queenstown Lakes District Council* [2015] NzEnvC 214 at [16]

<sup>15</sup> Officers Report at 236.

<sup>16</sup> S32 Report, page 119-121.

<sup>17</sup> Appendix N – Kapiti Coast Urban Development Greenfield Assessment (Boffa Miskall 2022) Part 1 has the assessment, and Part 2 Maps the area assessed.

<sup>18</sup> Mr Hansen Statement of evidence at paragraphs 7- 7.6

- (b) *that the planned urban built form in those RMA planning documents may involve significant changes to an area, and those changes:*
- (i) *may detract from amenity values appreciated by some people but improve amenity values appreciated by other people, communities and future generations, including by providing increased and varied housing densities and types; and*
  - (ii) *are not, of themselves an adverse effect.*

### Public Participation

- 2.13 Council noted that the Mansell's request "*only marginally passes*" the second test because "*it is uncertain as to how many people are affected by the change and whether they have had sufficient opportunity to participate*"<sup>19</sup> This fear is unfounded.
- 2.14 Mansell's have pursued a rezoning at every opportunity available in the process. In addition to providing comments on the Draft PPC2, When PPC2 was notified they:
- (a) filed a submission (#S023) on PPC(N) requesting that the site be rezoned.
  - (b) Their submission was correctly summarised and included by the Council as a rezone request in the summary of further submissions.
  - (c) KCDC also mapped and published on the KCDC website under the title '*Maps showing submitter rezoning request*' as part of the further submission process.<sup>20</sup> The Mansells' site was included in that Map.
  - (d) Three submitters chose to participate in the Mansells' rezoning request in PPC2 by filing further submissions (2 in support and 1 opposed).
- 2.15 The Mansells' intention to pursue rezoning the site under PPC2 was made clear throughout the resource consent process for Otaihanga Estates. Details of that are contained in **Appendix A**. Those who were sensitive to increased density of this area were directly advised of the rezoning request, during the consent process. In that that process, they received notice and were forewarned that the Mansells intended to seek to rezone the land giving parties sufficient opportunity to participate by filing a further submission on PPC2 if they wished to do so.
- 2.16 Applying Justice Young's comments in *Clearwater*,<sup>21</sup> the rezoning request has not "*come out of left field*" and cannot be said to be "*a submission*"

<sup>19</sup> Officer Report at 236.

<sup>20</sup> <https://www.kapiticoast.govt.nz/media/5uefat34/pc2-rezone-requests-map.pdf>

<sup>21</sup> Summarised by Justice Kos in *Motor Machinists* at [55].



*proposing something that was completely novel.*” Having been a recipient of the information in **Appendix A** there is very little risk of persons affected not apprehending the significance of the Mansells’ submissions on the plan change, as opposed to the original plan change itself.<sup>22</sup>

- 2.17 This is similar to the situation, commented on by Honour Kos J in *Motor Machinists Ltd*, as being an example where a rezoning submission may be in scope [83]:

*“Plainly, there is less risk of offending the second limb in the event that the further zoning change is merely consequential or incidental, and adequately assessed in the existing s32 analysis. Nor if the submitter takes the initiative and ensures the direct notification of those directly affected by further changes submitted.”*

- 2.18 These reasons, bolster and confirm the Council’s assessment that the Mansell’s’ rezoning request is within scope of PPC2.
- 2.19 Should the Panel have residual concerns about that, then it has a broad discretion to make recommendations on the IPI that are not limited to matters that are within scope.<sup>23</sup>

#### **Criteria used by Council to assess sites**

- 2.20 KCDC PPC2(N) sought to rezone some new residential land as part of PPC(N) and in response to submissions under PPC(R). Council developed criteria to aid that assessment.<sup>24</sup> There has been little explanation as to the reasons for those criteria.
- (i) The site is located next to an urban area that is connected to infrastructure services.
  - (ii) The site has a relatively low degree of constraints (any existing constraints can be managed through existing District Plan rules).
  - (iii) The site is not sufficiently large or complex enough to require a structure plan approach.
  - (iv) The site would provide a notable contribution to plan-enabled housing supply.
- 2.21 While criteria are helpful to inform decision-making, care should be taken in applying these to ensure out of fairness that it is done consistently. It is important to focus on the merits of a site and not lose sight of the wide discretion afforded to Council, the aims of the IPI and NPS-UD, and the opportunity to provide more homes.

---

<sup>22</sup> The Court in *Halswater* at [44]

<sup>23</sup> S99(2)(b) RMA

<sup>24</sup> Officer Report page, 221 paragraph (606).

### **Council's Assessment of Mansells' rezoning request**

- 2.22 The Mansell land has been included as part of a wider area Otaihanga OH-01 which is an area that the Council has identified as Priority Group 2A.<sup>25</sup> It is part of an area that the Council has earmarked as a candidate for medium- long term development.<sup>26</sup>
- 2.23 Council agree that the Mansell site meets criteria (ii) and (iv) in that it has a relatively low degree of constraints and any existing constraints can be managed through the existing district plan rules, and that the site would provide a notable contribution to plan enabled housing supply, but have concluded it does not meet criteria (i) and (iii).<sup>27</sup> This is plainly wrong.

### **The site is located next to an urban area that is connected to infrastructure services**

- 2.24 Council's assessment is incorrect. It lists the Mansell site as being on the western side of Tieka Street, when it is on the eastern side of Tieko Street. This error appears to have contributed to the Officer's incorrect assessment that it is "*not serviced by infrastructure*" and is not "*adjacent to an existing GRZ zone*", when it abuts the Tieko Street GRZ.
- 2.25 Mr Martell has completed an infrastructure assessment for the site. Kapiti District Council's own information shows the site is well serviced by existing infrastructure (power and internet) and has sewer, wastewater and reticulated water supply,<sup>28</sup> and that those networks can accommodate the additional capacity.<sup>29</sup>

### **The site is not sufficiently large or complex enough to require a structure plan approach**

- 2.26 The site is smaller than one of the other areas that has been rezoned and is not complex. As noted by the Mansells' experts (and accepted by Council) there is no need for bespoke rules to develop the site, the existing GRZ can be applied. The Mansells have provided all the necessary assessments required to rezone its land now as part of PPC2. It is hard to know what, if any, additional benefit or planning outcome would be achieved by following a structure planning approach.
- 2.27 The consent decision, found that, enabling residential development of the Mansell site now will not preclude a structure plan approach for the wider area (if it is needed). Both the three waters infrastructure and roading patterns and locations for the Mansell site are well established in the vicinity of the site - much of the neighbouring land is privately held in smaller lots as it has already been subdivided and developed and will not change as a result of that process.

---

<sup>25</sup> Mr Hansen Statement of Evidence at para 7.10.

<sup>26</sup> Appendix N Kapiti Coast Urban Development Greenfield Assessment has a focus on increasing in approx. 32,000 people by 2051.

<sup>27</sup> Officers Report at page 241, paragraph (632).

<sup>28</sup> Mr Martell, Statement of Evidence at paragraph 26-27.

<sup>29</sup> Mr Martell, Statement of Evidence at paragraph 20 -23.

- 2.28 The location of roads and services in that area are already settled by those pre-existing and well-established property ownership patterns in the western side of Otaihanga. It is not considered that a structure plan process is needed as a precursor to rezoning or developing the site. Rezoning the land now would not preclude structure planning of a wider Otaihanga OH-01 area at a later date.

### The cost of deferring to another planning process

- 2.29 There is inconsistency between the Government's intended outcome of the IPI process to improve housing supply by "*removing restrictive planning rules*"<sup>30</sup> and Council's recommendation to put off rezoning to allow for structure planning of the wider area and a further plan change. The Mansell site is ready for development, extends the existing Otaihanga urban GRZ area and is located in an area where this is envisaged in the medium term (3-10 years).<sup>31</sup>
- 2.30 The Ministry for the Environment Council Guidance reinforces the Policy intention of s80E of the RMA to use of the IPI process, to deliver a comprehensive and immediate change to the district plan, to avoid further plan changes and to reduce the cost of developing land:

*"The policy intent of section 80E is that the IPI provides for a comprehensive change to the relevant district plan. This plan change should sufficiently provide for the implementation of the MDRS and policies 3, 4 or 5 of the NPS-UD, **without requiring additional supporting plan changes.**"*

- 2.31 Not taking the opportunity to rezone the land now results in uncertainty, cost, delay and would require unnecessary structure planning and planning processes over the next decade, in order to achieve a result that using the ISPI could be implemented in August 2023 via PPC2.
- 2.32 This is entirely contrary to the urgency and enabling purpose of the Resource Management (Enabling Housing and other matters) Amendment Act 2021 and the NPS-UD. The Environment Court recently emphasised this in *Middle Hill Ltd v Auckland Council*.<sup>32</sup>

*"[33]... The NPS-UD has the broad objective of ensuring that New Zealand's towns and cities are well functioning urban environments that meet the changing needs of New Zealand's diverse communities. **Its emphasis is to direct local authorities to enable greater land supply and ensure that planning is responsive to changes in demand, while seeking to ensure that new development capacity enabled by Councils is in a form and in locations that meet diverse needs of communities and encourage well-functioning, liveable urban environments. It also requires Councils to remove overly restrictive rules that affect urban development outcomes in New Zealand cities...**"*

<sup>30</sup> Cabinet Legislative Committee LEG-21-MIN-0154 at paragraph [6].

<sup>31</sup> "Medium term" is defined in the NPS-UD as between 3-10 years.

<sup>32</sup> "long term" is defined as being between 10-30 years.

- 2.33 The Panel has the opportunity to rezone the site now and should do so. Council has failed to provide adequate reasons as to why zoning the Mansell site, which is development ready, should await a structure plan and further plan change process.

### **Responsive planning – for “out of sequence” development**

- 2.34 To the extent that the Mansells’ rezone request can be viewed to be “*out of sequence with planned land release*”, on the basis that Council has classified it as part of the Otaihanga OH-01 area Priority Group 2A Medium – Long Term, rather than short term status, it is submitted that, Policy 8 NPS-UD is applicable.

“Policy 8: Local authority decisions affected urban environments are responsive to plan changes that would add significantly to development capacity and contribute to well -functioning urban environments, even if the development capacity is:

- unanticipated by RMA planning documents; or
- out of sequence with planned land release.”

- 2.35 Decision-makers (including the Panel) should be “*be responsive*” to the Mansell’s’ rezone request, as it would add significantly to housing supply. As noted by Mr Foy, it has the potential to provide 29% of the medium term development capacity the District needs to provide.<sup>33</sup> Further guidance is provided in Subpart 2 of the of NPS at cl.3.8:

- “(1) This clause applies to a plan change that provides significant development capacity that is not otherwise enabled in a plan or not in sequence with planned land release.
- (2) Every local authority must have particular regard to the development capacity provided by the plan change if that development capacity:
- (a) would contribute to a well-functioning urban environment;
  - (b) is well connected along transport corridors; and
  - (c) meets the criteria set out in (3).
- (3) Every regional Council must include criteria in its regional Policy Statement for determining what plan changes will be treated for the purposes of Policy 8, as adding significantly to development capacity.”

- 2.36 Greater Wellington has introduced its Proposed Regional Policy Statement. (RPS PC-1). Policies 55 and 56 of the RPS give effect to the matters set

---

<sup>33</sup> Mr Foy, Statement of Evidence paragraph 9.9.

out above. The difficulties of RPS-PC-1 and PPC2 being notified within a day of each other timing directives for the two processes, particularly the decision date for the PPC2 and the enormity of that task, are acknowledged.<sup>34</sup> However, the Panel is required “to have regard to” a proposed RPS when changing a district plan.<sup>35</sup>

- 2.37 Policies 55 and 56 are helpful when considering rezoning, because they contain matters that the Panel should have particular regard to “*in determining whether a variation is a suitable candidate for new urban development outside of an existing area*”<sup>36</sup> and provide transitional guidance to decision-makers on variations and plan changes for new residential areas where there is no Future Development Strategy in place. This is discussed in Mr Hansen’s evidence in more detail.
- 2.38 The Panel will need to consider the weight it should afford PPC-1 due to its infancy. Relevant considerations were recently summarised by the Environment Court in *Guthrie v Queenstown Lakes District Council*:<sup>37</sup>

“(a) The extent to which the provisions of a proposed plan are relevant should be considered on a case by case basis, and might include:

- (i) The extent to which a provision has been exposed to independent decision-making.
- (ii) Circumstances of injustice.
- (iii) The extent to which the new measure, or absence of one might implement a coherent pattern of objectives and policies in a plan.
- (iv) In assessing weight, each case should be considered on its merits.
- (v) Where there has been a significant change in Council Policy, and the new provisions are in accord with Part 2 the Court may give more weight to the proposed plan.”

- 2.39 The matters in (iii)-(v) are key considerations here. Caselaw suggests that proposed changes to a regional policy statement may be given more weight than might be given to other planning instruments at an early stage. The basis for this approach is that to the extent changes to a RPS accord with the principles of the RMA (they are unlikely to change to any significant degree during the submissions and hearing process).

---

<sup>34</sup> S80F requires Tier 1 Territorial Authorities to publicly notified an IPI on or before 20 August 2022, using the ISPP in accordance with clause 95 of schedule 1.

<sup>35</sup> Section 74(2)(a)(i) RMA. But under an ISPP it can ignore the components of an operative RPS – where it is inconsistent with and has not yet given effect to the NPS-UD.<sup>35</sup>

<sup>36</sup> Noting that GWRC RPS-PC1 ‘defines urban areas’ as those in existence at August 2022 and rural areas as rural zones as rural areas.

<sup>37</sup> [2021] EZEVC 79 at [68].

- 2.40 Logically, the same principle should apply to changes to a RPS that accords with a higher order instrument such as the NPS-UD. That is, RPS-PC1 can be given more weight to the extent it implements the NPS-UD directions, because those aspects of the Proposed PC1 have limited scope to change.

**Mansells' requested Amendments to PPC2 Objectives and Policies:**

- 2.41 The Mansells have submitted on Objectives and Policies of PPC2(N):
- (a) Objective D03 Development Management;
  - (b) Objective D0-011 Character and Amenity Values; and
  - (c) Policy UFD-P1 Growth Management, Policy UFD-P3 Managing Intensification, Policy UFD- P4 Residential Development and Policy UFD -P11 Amenity Values.
- 2.42 Their primary concern is that PPC2(R) does not give effect to the NPS-UD because the proposed amendments have not removed the restrictive consolidation approach enshrined in the ODP. The existing ODP provisions are aimed at maintaining and mimicking existing development patterns and densities to avoid effects on the status quo, and actively discourage development outside of the centres.
- 2.43 The wording of these objectives and policies, needs further amendment, because of the role that they play a role in enforcing the consolidatory approach by restricting growth outside of identified centres, to the detriment of the district. Based on their own lengthy experience of developing land in the district, the Mansells consider this has been a key contributor to lack of sufficient, suitable and affordable housing supply in Kapiti today.
- 2.44 The change in direction signalled by the NPS-UD in conjunction with the RMA – HAS is to enable growth, by requiring Councils to provide development capacity to meet the diverse needs of communities, address overly restrictive rules and encourage quality liveable urban environments.
- 2.45 The wording of these provisions needs to reflect that change, to provide for the new approach to amenity effects,<sup>38</sup> and to retain direction around flexibility to allow decision-makers to be responsive to development, rather than getting caught up in another rigidly applied plan.
- 2.46 The Mansell's are concerned that allowing the legacy wording to live on in the PPC2's Objectives and Policies, will mean it will continue to be used to deter would be developers and stymie growth regardless of the merits of their proposed development (particularly outside of the GRZ).

---

<sup>38</sup> Policy 6 of the NPS-UD provides that decision makers making a planning decision that effects an urban environment should have particular regard to the fact that the planned built form in those RMA documents, 'may involve, significant change to an area,' and those changes (a) 'May detract from amenity values appreciated by some people but improve amenity values appreciated by other people, communities and future generations by providing increased and varied densities and housing types; and (b) are not in themselves, an adverse effect.'

**Witnesses to be called in support of submission**

- 2.47 In response to the Panel's Minute 2 the Mansell's have filed further evidence from their experts in support of their rezone request.
- 2.48 The submitter will call the following expert witnesses:
- (a) Cameron Wylie (Geotechnical)
  - (b) Dave Compton- Moen (urban design and landscape);
  - (b) Harriet Fraser (Transport);
  - (d) Nick Goldwater – (ecology); and
  - (e) Craig Martell – (Stormwater, Flood hazard and Infrastructure);
  - (e) Derek Foy (economics);
  - (f) Chris Hansen – (Planning).
- 2.49 Mr Hansen has undertaken a detailed planning assessment of the Mansells' rezoning request. That has included a s32AA evaluation of the site and also comments on changes sought to the objectives and policies of the plan.

**3. REQUESTED RELIEF**

- 3.1 The Mansells respectfully request that the that the Panel grant the their rezoning request, and make the amendments to the objectives and policies detailed by Mr Hansen.



---

**P D TANCOCK**  
Counsel for the applicant

**Dated:** the 24<sup>th</sup> day of March 2023

## Appendix 1

### Summary of information provided in the resource consent process about Mansell's rezoning request on PPC2

The application was publicly notified on 14 October 2021. It received 13 submissions. A number of approvals were also provided by neighbours to the site.

- (a) KCDC also sent a letter to neighbours and others who it considered may be affected by the proposal to alert them to the resource consent application.
- (b) The Mansell's provided comments on the draft plan change 2 to Council in a submission on the draft plan dated 2 May 2022, seeking rezoning of their land to General Residential.
- (c) The Mansell's' intention to seek rezoning of the site to GRZ was widely discussed by Mr Hansen in his planning evidence at the hearing in August 2022.
- (d) PPC2 notified on 18 August 2022 and as a result became a significant issue. The Hearing Panel in Minute 2 requested an in depth and focused analysis of PPC2(N) be provided by the planners.<sup>39</sup> It was well attended by submitters in person and was also live streamed. Mr Hansen, the Mansell's' planning expert in supplementary evidence filed on 2 September 2022, stated:

*[5.2] Analysis: **Proposed PC2-1 has now been notified with submissions closing 5pm Thursday 15<sup>th</sup> September.** The focus of proposed PC2-1 is to incorporate the MDRS into the operative district plan as required by the NPS-UD. Proposed PC2-1 applies to most sites in the GRZ, and rezones some smaller areas adjacent to existing urban areas to GRZ. Proposed PC2-1 also introduces "qualifying matters" as provided for in the NPS-UD.*

*[5.3] **The Applicant provided informal comment (i.e. this was not part of the formal statutory process) on the draft proposed PC2-1 that requested the application site (i.e. the Mansell Farm west of the Expressway) be rezoned GRZ on Planning map 9, and to include reference to the Mansell farm in any relevant provisions subject to Proposed PC2-1. The Applicant offered to meet and discuss with the Council officers any specific provisions that may be relevant to***

---

<sup>39</sup> Minute 2 of the Commissioners.



meeting its request. This offer was not taken up by Council Officers.

- [5.4] Council did prepare a summary of the feedback to the informal consultation undertaken, and a response to the matters raised. The Council Officers made the following response to the Applicant's comments.

*"The area is part of a larger , "medium priority growth area identified in Tu Tupu Pai (The District Growth Strategy). If urban development is considered to be appropriate in this area, the area is of a sufficient size and complexity to require structure planning in order to enable cohesive future urban development. It would be more appropriate to consider this area through urban development plan change, rather than as part of PC2."*

- [5.5] The response recorded the submission as being noted, and no changes made. Interestingly, the section 32 Report accompanying proposed PC2-I includes a large number of appendices, including 'Kapiti Coast Urban Development Greenfield Assessment' that identified a number of future study area' including OH-01 that incorporate the subject site. I have included a copy of this plan in **Annexure 2**.

[..]

- [5.7] Currently, the application site is not included in those sites that are to be rezoned General Residential Zone and have the MDRS applied to them. Following on from the informal comment made by the Applicant to the draft proposed PC2-I (outlined above), **the Applicant has subsequently filed a submission with the Council seeking the application site be included in PPC-I. As part of the submission, the Applicant has assessed the application site against the assessment criteria included in the s32 Report (and appendices) to demonstrate why the site should be included in proposed PC2-1. Whether the applicant's submission will be successful will not be known for some time."**

(Emphasis added)

- (e) The extract above would have alerted parties to the consent hearing to the fact that they have sought rezoning of their property but have also referred them to the draft plan, and the Officer's s32 Report, including Appendix B. A copy of Mr

Hansen's evidence was also published on the hearings page by the Council. Similar issues were covered by the Council planner and the planner for a submitter in their evidence.

- (f) KCDC extended the notification period for submissions on PPC2 until 27 September 2022.
- (g) A copy of the Mansells' PPC2 submission was provided to the Panel along with the Applicant's right of reply on 6 October 2022, and was referred to by counsel in that reply.
- (h) Reference to the Mansells lodging a submission seeking that the site be included in PPC2 is also referred to in the Panel's Decision Report<sup>40</sup> which was released on 2 November 2022 on the Council's website and served on all submitters.<sup>41</sup>
- (i) The further submission period for PPC2 ran from 10 November until 24 November 2022.

---

<sup>40</sup> at paragraph [15.6.9].