

# **WAIKATO DISTRICT COUNCIL**

## **Report and Decisions of the Waikato District Plan Hearings Panel**

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### **REPORT 2 Ohinewai Rezoning**

**24 May 2021**

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#### **Commissioners**

Dr Phil Mitchell (Chair)

Mr Paul Cooney (Deputy Chair)

Mr Dynes Fulton

Mr Weo Maag



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## **GLOSSARY OF TERMS**

APL	Ambury Properties Limited
Council	Waikato District Council
Huntly WWTP	Huntly wastewater treatment plant
NPS-UD	National Policy Statement on Urban Development 2020
OLL	Ohinewai Lands Limited
Panel	The Waikato District Plan Hearings Panel
PDP	Proposed Waikato District Plan
TCG	New Zealand Comfort Group Ltd
RL	Reduced Level
RMA	Resource Management Act
RPS	Waikato Regional Policy Statement
Waka Kotahi	Waka Kotahi New Zealand Transport Agency
WRC	Waikato Regional Council

## PART I - INTRODUCTION

### I Introduction

#### I.1 Background

1. Stage 1 of the Proposed Waikato District Plan (PDP) was notified on 18 July 2018. This encompassed the review of all provisions of the Operative Waikato District Plan, except natural hazards and climate change matters, which form part of Stage 2 of the review. Stage 2 of the PDP was notified on 27 July 2020 and the hearing of submissions is imminent.
2. In accordance with section 34A(1) of the Resource Management Act 1991 (RMA), the Waikato District Council (Council) appointed a seven-member Independent Commissioners Hearings Panel (the Panel) to hear and make decisions on the submissions on the PDP. While seven commissioners were appointed to hear and decide the PDP, a subset of four commissioners were tasked to hear and decide the submissions seeking rezoning of Ohinewai:
  - a. Dr Phil Mitchell (Chair)
  - b. Mr Paul Cooney (Deputy Chair)
  - c. Mr Dynes Fulton
  - d. Mr Weo Maag
3. This Decision addresses submissions seeking the rezoning of land at Ohinewai. Ohinewai is located on the eastern banks of the Waikato River, 9km north of Huntly and has a population of approximately 245. The existing development at Ohinewai comprises largely rural land uses and is dissected by the Waikato Expressway and the North Island Main Trunk railway line which run parallel. There is significant dairy and dry stock farming on the eastern side of the Waikato Expressway, as well as smaller lifestyle rural uses with nine dwellings (zoned Village Zone in the PDP) located on the eastern side of Lumsden Road, ranging from 1550m<sup>2</sup> to 5ha in size. Lake Rotokawau Reserve is located on the eastern side also. The more residential part of Ohinewai Village is located on the western side of the Waikato Expressway. It includes the Ohinewai Community Hall, Ohinewai Primary School, former commercial buildings which are now disused, an industrial yard, residential properties on sections in the order of 1000m<sup>2</sup> and a range of rural activities including greenhouses and an orchard. In the wider Ohinewai area there are large industrial uses including a sawmill, transportable house construction and house relocation companies.

#### I.2 Primary Submissions

4. At the close of submissions on 9 October 2018, Council received over 300 submissions seeking some form of rezoning in the district. Seven submissions addressing the zoning at Ohinewai were received from the following submitters:
  - a. Ambury Properties Limited [764];
  - b. Planning Focus Limited [383];
  - c. Shand Properties Limited [738];

- d. Ohinewai Land Limited [428];
  - e. Ohinewai Area Committee [793];
  - f. PLB Construction [804]; and
  - g. Ribbonwood Family Trust [863].
5. Planning Focus Limited [383.1] withdrew its submission on 16 March 2020, and consequently we have not considered that submission, nor any associated further submissions.
  6. The submissions seeking a change of zoning in and around Ohinewai could result in a significant change of land use from the current predominantly rural uses. The most detailed proposal was from Ambury Properties Limited (APL), for 178ha of land bounded by Lumsden Road, Tahuna Road and Balemi Road. This is referred to throughout this decision as 'the APL Proposal' and includes the introduction of urban zones, an Ohinewai Structure Plan and customised plan provisions applying to Ohinewai. Although the proposal evolved considerably between the time that the submission was lodged on 9 October 2018 until the closing statement from APL's legal counsel was lodged with the Council on 23 September 2020, the proposal fundamentally comprises of a mix of urban zones and uses:
    - a. 68ha of industrial zoned land, including 37ha for the TCG Sleepyhead factory;
    - b. 13ha of business / commercial zoned land for a service station, discount factory outlet shops, community facilities and a small amount of convenience retail;
    - c. 52ha of residential land for up to 1100 homes; and
    - d. 55ha of public open space including stormwater management areas, recreational facilities, ecological enhancement areas and other community areas.<sup>1</sup>
  7. Directly south of the APL Proposal and also on rural land, Ohinewai Lands Limited (OLL) sought that a further growth area (39ha) be signalled within the Ohinewai Structure Plan proposed by APL ('the OLL Proposal'). No 'live' zoning was sought at this stage, with the intent being to allow for future low density residential use and open space by way of a future plan change.
  8. Shand Properties and Ribbonwood Family Trust sought rezoning of land on the western side of State Highway One, seeking that Country Living Zone be applied rather than Rural Zone.
  9. The Ohinewai Area Committee sought rezoning of five properties in Ohinewai Village identified as Business Zone to Residential Zone to reflect current land use.
  10. The submission from PLB Construction [804] did not explicitly seek rezoning of land, although sought amendments to the PDP to indicate that land to the north of Huntly (in and surrounding the Ohinewai area) possesses suitable qualities for being rezoned to Industrial Zone (e.g. location adjacent to SH1 for transport purposes, flat and sparsely populated).

### **1.3 Procedural Matters**

11. In our first Directions dated 21 May 2019, we invited any submitter who wished to raise any legal or jurisdictional matter that they considered needed to be resolved before the hearings

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<sup>1</sup> Statement of Evidence of John Olliver, 9 July 2020, paragraph 3.8

commenced, to file these in writing by 21 June 2019. Mr Simon Berry, legal counsel for APL, filed a memorandum requesting that the APL submission be heard in May 2020 and that a decision on its submission be released by mid 2020, in advance of the remainder of the decisions on the PDP.

12. We held a pre-hearing conference on 5 August 2019, which was attended by most of the submitters seeking rezoning at Ohinewai, as well as further submitters. The purpose of this conference was to discuss APL's request, as we considered that any expedited process for considering rezoning of Ohinewai would affect other similar submitters, particularly if they were to be heard and considered together. APL advanced its request on the basis that a delay in considering APL's submission would put the proposal in jeopardy, given the expiry of existing leases in Auckland and the inability to find a suitable alternative facility in Auckland.
13. Irrespective of the timing of hearings, all parties supported an integrated, holistic approach being taken when considering future growth proposals for Ohinewai; and agreed that all the information concerning the rezoning proposals needed to be available to parties well in advance of any hearings. One of the key issues discussed at the pre-hearing conference was the timing of the PDP hearings in relation to other growth-related planning initiatives such as the Hamilton to Auckland Corridor, Hamilton Metro Spatial Plan and the Council's own growth strategy. All parties at the pre-hearing conference accepted that the 'big picture' planning initiatives were very unlikely to be completed before the hearings on the PDP had concluded, irrespective of the order in which we consider the rezoning requests at Ohinewai and issuing of our decision. Given the significant economic and social implications of the APL Proposal for the Waikato District, we agreed that the timing of the hearing on Ohinewai rezoning could be expedited, and our decision issued in advance of our decisions on the rest of the PDP.
14. Following the pre-hearing conference, we issued a subsequent minute and directions on 20 August 2019 which:
  - a. set out our formal decision on the request to hear the Ambury submission and the other rezoning requests for the Ohinewai area, earlier than the indicative hearings schedule would otherwise provide for; and
  - b. directed the process and timetable to be followed.

#### **1.4 Re-notification of Rezoning Proposals at Ohinewai**

15. In our consideration of APL's request for an early hearing and early decision, we were mindful that the APL Proposal (and indeed all of the other requests for rezoning) had arisen out of a submission, rather than being part of the notified PDP. Given the significance of the proposal, we decided that the wider Ohinewai community should be afforded the opportunity to be made aware of, and comment on the proposed development.<sup>2</sup> We directed that the six submissions explicitly seeking rezoning at Ohinewai be re-notified to provide an opportunity for further submissions to be lodged. Any further submissions already lodged on the Ohinewai rezoning requests remained valid and did not need to be

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<sup>2</sup> Minute and Further Directions from Hearing Commissioners, 20 August 2019.

resubmitted. Re-notification occurred on 15 October 2019 and further submissions closed on 7 November 2019<sup>3</sup>. A full list of all the further submitters is contained in Appendix 2.

16. We amended the standard timetable and process for exchange of technical information, and made it specific to the Ohinewai rezoning submissions as set out in our directions of 20 August 2019. This required each of the Ohinewai submitters requesting rezoning to provide all technical reports and supporting documents, including section 32AA assessments, to the Council and all the submitters in advance of the s42A report being prepared. Mr Berry sought an adjournment to the scheduled start date of the hearing and a consequential adjustment to the dates for the exchange of evidence.<sup>4</sup> We considered there was merit in expert conferencing being undertaken to narrow any areas of disagreement between experts, and therefore a delay to the start of the hearing. Expert conferencing was held from 15-26 June 2020 and was organised by technical discipline. We appreciate the open and helpful way in which the experts representing APL, the Council, Future Proof, Mercury NZ Limited, Auckland Waikato Fish and Game Council, Waikato-Tainui and Waikato Regional Council participated in the conferencing. Their contribution helped clarify our understanding of the key issues considerably. The joint witness statements are available on the Council's website.
17. The hearing was held from 14-16 September 2020 via Zoom, with the closing legal submissions from APL's legal counsel being lodged on 23 September 2020. A full list of all the submitters and their representatives who attended the hearing is contained in Appendix I, and all of the relevant information pertaining to this hearing (such as the Section 42A Report and evidence) is contained on the Waikato District Council website.
18. We heard from a range of submitters during the hearing and appreciate the organised and helpful way in which legal counsel, technical experts and residents all expressed themselves.

## **1.5 Decision**

19. Our initial intention was that this decision would address all of the submissions which addressed zoning at Ohinewai. Upon further consideration, we realised that a more appropriate approach is to record our decision making on just the APL Proposal at this stage of the process, simply because we need to consider the other submissions seeking zones such as Country Living Zone and Residential Zone in the wider context of future growth throughout the district. Other than the APL submission, decisions on the other submissions seeking rezoning will be incorporated into our Hearing 25 decision, as this provides us with the opportunity to comprehensively consider at that point the submissions and evidence from:
  - a. Shand Properties Limited [738];
  - b. Ohinewai Land Limited [428];
  - c. Ohinewai Area Committee [793];
  - d. PLB Construction [804]; and

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<sup>3</sup> Section 42A Report Chloe Trenouth, 13 March 2020, paragraph 19

<sup>4</sup> Memorandum from Simon Berry, 27 March 2020



e. Ribbonwood Family Trust [863].

20. Therefore, this decision only records our consideration and findings on the submission from APL [764] and the attendant further submissions.
21. This document records our findings on the submission from APL seeking rezoning at Ohinewai in accordance with Clause 10 of Schedule 1 of the RMA. While we are aware that Clause 10(3) of Schedule 1 of the RMA does not require us to address each submission individually, we have structured our decision around key issues rather than each submission; although this has the effect of addressing each submission. We have organised our decision into four sections as follows:

Section 1 – Introduction

Section 2 – Key issues, effects and findings

Section 3 – Provisions

Section 4 – Statutory assessment

## **2 The APL submission**

### **2.1 Zoning in the Proposed District Plan**

22. The existing Ohinewai village (population approx. 245) is located between the Waikato River and west of State Highway One. The village features dwellings and commercial buildings, limited number of industries, a community hall and a primary school. These are surrounded by lifestyle residential lots and productive rural activities.
23. The PDP as notified maintains the zones identified in the Operative Waikato District Plan: Waikato section for the area of Ohinewai. There is no growth identified at Ohinewai through any change in zones between the Operative and Proposed District Plans. The existing zones are predominantly Rural, with some Country Living identified along Ohinewai South Road. Several sites are zoned Village along the western side of Lumsden Road adjacent to the North Island Main Trunk Rail line, and also in the vicinity of the existing community hall. There are approximately six small sites zoned Business centrally located within the village on the corner of Ohinewai North Road.

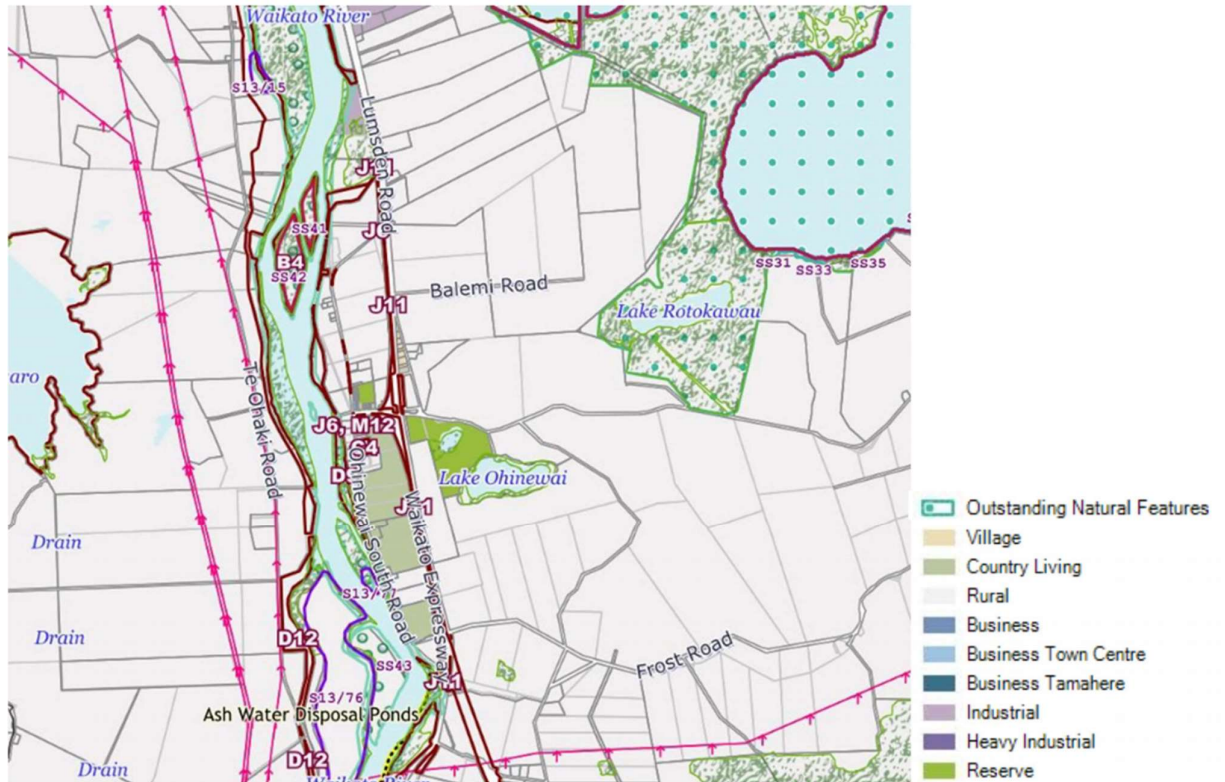


Figure 1: Proposed District Plan zoning of Ohinewai

## 2.2 APL's Proposal

24. The submission from APL was summarised as following:

764.1	Amend the zoning of the property at 231 Tahuna Road and 52, 56 and 58 Lumsden Road, Ohinewai from Rural Zone to Industrial, Business and Residential Zone as shown on the plan attached to the submission (see Attachment I of the submission). AND Add the Ohinewai Structure Plan attached to the original submission in a new 'Appendix 13' within the Proposed District Plan. AND Amend the Proposed District Plan as necessary to support the relief set out in the submission.
764.2	Amend Objective 4.1.2 Urban growth and development as follows: (a) Future settlement pattern is consolidated in and around existing <u>and planned</u> towns and villages in the district. AND Amend the Proposed District Plan as necessary to support the relief set out in the submission.
764.3	Amend Policy 4.1.3(a) Location of development as follows:

	<p>(a) Subdivision and development of a residential, commercial and industrial nature is to occur within <u>existing and planned</u> towns and villages where infrastructure and services can be efficiently and economically provided for.</p> <p>AND</p> <p>Amend the Proposed District Plan as necessary to support the relief set out in the submission.</p>
764.4	<p>Add a new policy for Ohinewai to provide a policy framework for the subdivision, use and development of the Industrial, Business and Residential Zoned land at 231 Tahuna Road, 52, 56 and 58 Lumsden Road, Ohinewai, as sought in the submission.</p> <p>OR</p> <p>Amend Policy 4.1.13 Huntly to provide a policy framework for the subdivision, use and development of the Industrial, Business and Residential Zoned land at 231 Tahuna Road, 52, 56 and 58 Lumsden Road, Ohinewai, as sought in the submission.</p> <p>AND</p> <p>Amend the Proposed District Plan as necessary to support the relief set out in the submission.</p>
764.5	<p>Amend objectives and policies to enable the subdivision, use and development of the property at 231 Tahuna Road, 52, 56 and 58 Lumsden Road, Ohinewai as sought within the submission.</p> <p>OR</p> <p>Add objectives and policies to enable the subdivision, use and development of the property at 231 Tahuna Road, 52, 56 and 58 Lumsden Road, Ohinewai as sought within the submission.</p> <p>AND</p> <p>Amend the Proposed District Plan as necessary to support the relief set out in the submission.</p>
764.6	<p>Add an Ohinewai Structure Plan such as Attachment 2 within the submission as a new Appendix 13 in Chapter 29 Appendices.</p> <p>AND</p> <p>Amend the Proposed District Plan as necessary to support the relief set out in the submission.</p>

25. Essentially APL's submission sought 178ha of land bounded by Lumsden Road, Tahuna Road and Balemi Road to be rezoned with a mix of Industrial, Business, Residential and Reserve Zoned land.
26. APL is the property-owning entity of The Comfort Group (TCG). TCG's manufacturing operations are currently based at two locations in Auckland, with storage at a third. APL (on TCG's behalf) has been investigating options to consolidate TCG's Auckland operations onto one site. As part of this investigation, APL searched extensively in Auckland and the Waikato for a suitable site. To achieve their aspirations and to facilitate and inform a suitable planning site framework for the Ohinewai, APL developed a Masterplan for the site that sets out the conceptual development form. The Masterplan informed the Structure Plan to be used to guide the development on the site. The proposed development originally incorporated the following:
  - (a) 68ha of industrial zoned land, including 37ha for the TCG Sleepyhead Factory.

- (b) 13ha of business / commercial zoned land for a service station, discount factory outlet shops, community facilities and a small amount of convenience retail.
  - (c) 52ha of residential land for up to 1100 homes, with the majority for sale on the open market and a number for TCG employees.
  - (d) 55ha of public open space including stormwater management areas, recreational facilities, ecological enhancement areas and other community areas.
27. As expected, through the evidence and hearing process, the proposal evolved and concluded with the following structure plan being filed by APL on 23 December 2020 accompanied by a suite of planning provisions to deliver the development. One key change was the deletion of the originally proposed discount factory outlet.
28. The planning provisions were structured around three zones being Industrial, Business and Residential. Accompanying provisions for infrastructure, natural hazards, hazardous substances and definitions were also included to make the provisions for Ohinewai self-contained, given that this Ohinewai decision is released ahead of the rest of the PDP decisions later in 2021.

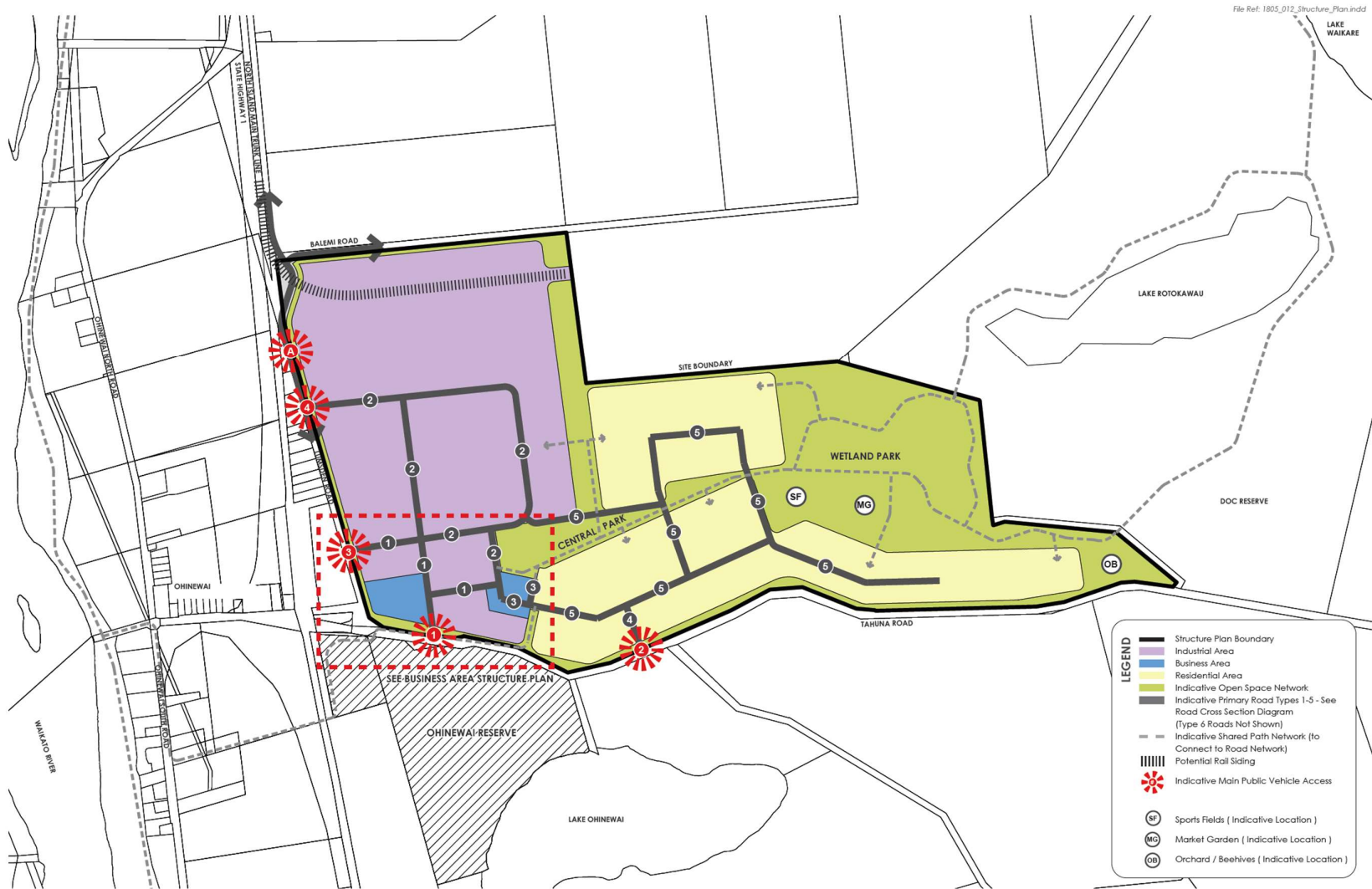


Figure 2: Ohinewai Structure Plan (as supplied by APL 23 December 2020)

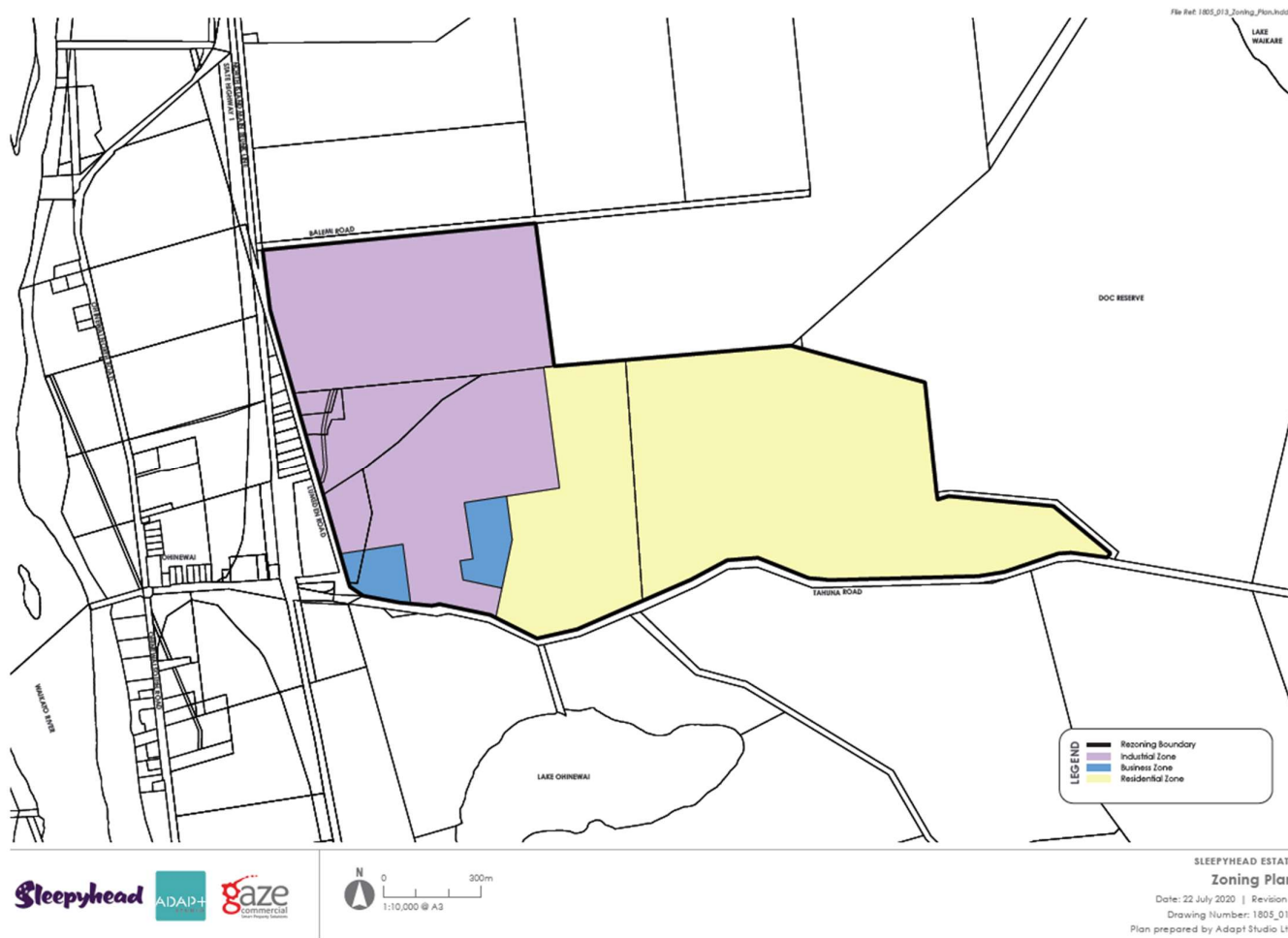


Figure 3: Proposed District Plan zoning as sought by APL (supplied by APL 23 December 2020)

## PART 2 – KEY ISSUES, EFFECTS AND FINDINGS

### 3 Statutory and planning framework

29. In this section we identify the relevant statutory tests and documents and include our assessment of whether the submissions meet those tests in Part 4 of this decision.
30. There were considerably different levels of detail provided by submitters; ranging from the twenty-three statements of evidence to support the APL Proposal, to some of the further submitters who did not lodge any information additional to their further submission. We have undertaken our analysis based on the information before us.

#### 3.1 Part 2 of the RMA

31. Part 2 of the RMA comprises sections 5-8, with section 5 being the fundamental section which sets out the purpose of the RMA. Section 6 contains matters of national importance which must be “recognised and provided for”. We largely agree with Mr Berry that the most relevant clauses in section 6 are:
  - a. Section 6(e) - the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga
  - b. Section 6(h) - the management of significant risks from natural hazards
32. But we also consider that given the proximity to Lake Rotokawau and Lake Ohinewai, that section 6(a) is also relevant to our consideration of these submissions. Section 7 requires that “particular regard” must be had to these matters, with the most relevant being:
  - a. Section 7(a) - the need to have particular regard to kaitiakitanga;
  - b. Section 7(b) - the efficient use and development of natural and physical resources;
  - c. Section 7(c) - maintenance and enhancement of amenity values;
  - d. Section 7(f) - maintenance and enhancement of the quality of the environment; and
  - e. Section 7(i) - the effects of climate change (in this case, in the context of natural hazards).
33. Section 8 requires that the principles of the Treaty of Waitangi be taken into account.
34. In terms of the relevance of Part 2 of the RMA to our decision making, we are particularly aware of the Supreme Court decision in *King Salmon*<sup>5</sup> which clarified that when developing plans, if there is no ambiguity in the higher order planning documents there is generally no need to refer back to Part 2 of the Act.<sup>6</sup> This is because the higher order planning document is assumed to already give substance to Part 2. However, there are several ‘caveats’ to this general rule as set out by Mr Berry. In particular<sup>7</sup>:

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<sup>5</sup> *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] 1 NZLR 593 (SC).

<sup>6</sup> *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] 1 NZLR 593 (SC), paragraph 85

<sup>7</sup> *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] 1 NZLR 593 (SC), paragraph 88

- a. where there is a challenge to the lawfulness of a planning document, this needs to be resolved before it can be determined if a decision maker is acting in accordance with Part 2 of the Act;
  - b. there may be instances where the document concerned does not “cover the field” and the decision maker will have to consider whether Part 2 provides assistance in dealing with the matters not covered; and
  - c. if there is uncertainty as to the meaning of particular policies, reference to Part 2 may be justified to assist in a purposive interpretation.
35. If one or more of these three caveats apply, reference to Part 2 may be justified and it may be appropriate to apply an overall judgement under Part 2. These caveats are particularly relevant to our consideration of the Waikato Regional Policy Statement (RPS) in the context of the National Policy Statement for Urban Development (NPS-UD) which was recently gazetted on 20 July 2020. We address this matter later in our decision.

### **3.2 RMA requirements**

36. In addition, we are mindful of the following sections of the RMA relevant to our decision making which are set out in Ms Parham’s opening statement on behalf of Waikato District Council<sup>8</sup>:
- a. Section 31 which sets out the Council’s functions;
  - b. Section 72 the purpose of a district plan is to assist a territorial authority to carry out its functions in order to achieve the purpose of the Act;
  - c. Section 74(1) sets out the matters that a district plan must be in accordance with;
  - d. Section 74(2) sets out the documents that the district plan must have regard to;
  - e. Section 74(2A) requires the Council to take into account any relevant planning document recognised by an iwi authority;
  - f. Section 74(3) requires that regard must not be had to trade competition or the effects of trade competition;
  - g. Section 75(3) identifies the higher order planning documents that a district plan must give effect to;
  - h. Section 75(4) requires that a district plan must not be inconsistent with a water conservation order or a regional plan for any matter specified in section 30(1);
  - i. Section 76(3) requires that in making a rule, the Council must have regard to the actual or potential effect on the environment of activities, including any adverse effect; and
  - j. Section 32AA requires an evaluation for any changes made to the PDP after the evaluation report was completed at notification. A further evaluation must be

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<sup>8</sup> Opening legal submissions by counsel for Waikato District Council, 23 September 2019, paragraphs 28-55



undertaken in accordance with section 32(1) to (4) and must be undertaken at a level of detail that corresponds to the scale and significance of the changes.

37. We have set out below the planning instruments, including non-RMA documents, that are relevant to our consideration of the Ohinewai submissions. The RMA instruments comprise:
  - a. The NPS-UD;
  - b. The National Policy Statement for Freshwater Management 2020 (NPS-FM);
  - c. The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011;
  - d. The Waikato Regional Policy Statement; and
  - e. The Waikato Regional Plan.
38. Other relevant strategic documents include:
  - a. Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010;
  - b. The Waikato-Tainui Environmental Plan Tai Tumu, Tari Pari, Tai Ao;
  - c. Waikato Growth and Economic Development Strategy 2020 (Waikato 2070);
  - d. The Future Proof Strategy: Planning for Growth 2017;
  - e. Waikato Regional Land Transport Plan 2015-2045 (2018 Update);
  - f. The Mid Waikato Water and Wastewater Servicing Strategy, June 2020;
  - g. The Ohinewai Area Blueprint in the Waikato District Blueprints, June 2019;
  - h. The Hamilton to Auckland Corridor Plan.
  - i. Government Policy Statement on Land Transport 2018;
  - j. National Land Transport Programme 2018-2021; and
  - k. New Zealand Transport Agency Amended Statement of Intent 2018-2022
39. We summarise our findings on the most relevant of these documents in Parts 3 and 4 of this decision.
40. Sections 4 to 18 of this decision assess the competing evidence relating to the actual and potential adverse effects arising from the APL Proposal. The relevant effects relate to:
  - a. site suitability (including geotechnical, groundwater, site contamination, archaeology and earthworks);
  - b. three waters infrastructure;
  - c. transport and traffic;
  - d. economic;
  - e. cultural;
  - f. social;

- g. residential;
- h. acoustic;
- i. ecology;
- j. coal mining;
- k. urban design;
- l. landscape and visual;
- m. other infrastructure;
- n. cumulative effects; and
- o. precedent effects.

## 4 Site suitability and physical characteristics

41. Technical assessments and evidence were presented which addressed the suitability of the site and physical characteristics. We have carefully considered this information, particularly in the context of the effects of any development that would be enabled by a change in zoning, and the suitability of the sites for such development and this section records our findings.

### 4.1 Geotechnical

42. The evidence presented by Mr Nicholas Speight on behalf of APL and the geotechnical assessment undertaken by Initia Geotechnical Specialists were largely unchallenged. We understand from Mr Speight that the geology and specific ground conditions at the site present several geotechnical challenges for development.<sup>9</sup> He considered that sand layers below groundwater level are likely to be susceptible to liquefaction during seismic events. Soft soils are highly compressible when surcharged, such as covered with new fill to elevate the site levels and building loads.
43. Based on his evidence, we accept that these geotechnical risks will need to be appropriately mitigated for future development on the land. It seems to us in the first instance that the masterplan layout responds to the key geotechnical risks and we heard from Mr Speight how proposed development has been avoided/limited in areas of the site underlain by highly compressible soils, with these more challenging areas being identified as wetlands reserves.<sup>10</sup> We understand from Mr Speight that liquefaction severity can be mitigated through dynamic compaction, excavation and re-compaction/replacement and preloading of 6-12 months. We understand the effects of this treatment to be settlement from either surcharging of ground levels due to placement of new fill or building construction, or from lowering of the groundwater level, and vibration and noise effects from Dynamic Compaction during construction.<sup>11</sup>
44. Based on the evidence before us, we are satisfied that although there are geotechnical challenges, there are feasible engineering solutions which can be determined in more detail

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<sup>9</sup> Evidence in Chief, Nicholas Speight for APL, 9 July 2020, paragraph 2.3

<sup>10</sup> Evidence in Chief, Nicholas Speight for APL, 9 July 2020, paragraph 2.6

<sup>11</sup> Evidence in Chief, Nicholas Speight for APL, 9 July 2020, paragraph 2.11

through the resource consent processes for subdivision. We do not consider the geotechnical challenges prevent the rezoning of the APL site.

## 4.2 Groundwater

45. Groundwater is inherently linked to our consideration of geotechnical characteristics of the sites, but was also raised in the context of evidence from Ralph Estates opposing development (which we discuss later in our decision). Mr David Stafford on behalf of APL<sup>12</sup> stated that development of the site is anticipated to have a negligible impact on overall recharge to the Tauranga Group Aquifer or existing groundwater flow directions. He considered any change in groundwater levels within the Tauranga Group Aquifer is also likely to be negligible, with no effect on neighbouring groundwater users surrounding the site. In terms of the Rotokawau peat, he considered there is the potential for minor, localised alternation to rainfall recharge pathways as a result of increased impervious surfaces associated with the Sleepyhead Estate development. He considered this can be mitigated by infiltration in some parts of the site to maintain groundwater levels and prevent ground consolidation. The technical assessments and Mr Stafford's evidence were unchallenged and therefore we conclude that effects on groundwater both within the APL site and surrounding areas will be negligible, so long as the design of stormwater management features allow recharging of the Rotokawau peat such as swales, wetlands, etc.

## 4.3 Site contamination

46. We understand from the preliminary site investigation undertaken by Geosciences Ltd and the evidence of Mr Carl Mr O'Brien on behalf of APL, that soil testing of the Stage IA earthworks (the foam factory) area was undertaken. Of note was the elevated cadmium levels and higher concentrations above the expected naturally occurring background ranges for the underlying geology for samples taken from the footprint of historic buildings. One of these samples returned an elevated concentration considered to be a potential environmental discharge risk, but not at a level considered to present a risk to human health.
47. We note that Mr O'Brien recommended further detailed site investigation(s) to be undertaken to characterise the exact risk and inform the most appropriate management practices to ensure that the requirements of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health are met.<sup>13</sup> This leads us to conclude that the testing was not extensive, and further testing will need to inform resource consent applications for subdivision, with appropriate remedial actions undertaken. This does leave the extent and severity of potential contamination of the APL site somewhat of an unknown, but we are satisfied that contamination can be adequately managed through the resource consent process. We have no reason to believe the contamination cannot be adequately mitigated.

## 4.4 Archaeology

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<sup>12</sup> Evidence in Chief, David Stafford for APL, 9 July 2020, paragraphs 7.1-7.8

<sup>13</sup> Evidence in Chief, Carl O'Brien for APL, 9 July 2020, paragraphs 8.1-8.6

48. We understand from the archaeological assessment undertaken by Mr Gainsford and Mr Gumbley<sup>14</sup> that there are no archaeological sites recorded on the APL or OLL sites subject to the rezoning requests. There may be a pā on the south side of Tahuna Road bordering Lake Ohinewai, and thirteen archaeological sites were identified during the 1983 Foster survey including midden, pit/terrace, a find spot and a historic site. While we note none of these are located within the APL site, there are registered finds within the surrounding area. We are satisfied that the presence of known or likely archaeological sites does not preclude the development of the Ohinewai sites.

## 4.5 Earthworks

49. APL calculated the earthworks required to facilitate development of its site to be in the order of approximately 2,500,000m<sup>3</sup> over an expected 10-year construction period. As part of this, approximately 2,000,000m<sup>3</sup> of imported fill will be required in order to make the low lying areas developable.<sup>15</sup> The proximity to Lake Rotokawau, Lake Waikare and ultimately the Whangamarino wetland, as well as being located within the Waikato River catchment (and the importance of the Vision and Strategy), makes the management of effects arising from earthworks particularly important. Mr Pain set out a four-step erosion and sediment control methodology in his evidence, although we understand that the details of this will be developed through a resource consent process under both the regional and district plans.
50. While it is a sensitive receiving environment, we are satisfied that there are effective ways to minimise erosion, and adequately control sediment runoff prior to discharge into the receiving environment.

## 5 Three Waters Infrastructure

### 5.1 Wastewater

51. The management of wastewater arising from the development of the APL site received considerable attention through the technical assessments, expert conferencing and hearing. While initial reports prepared by Woods identified several interim and long-term options for water supply and wastewater servicing for the APL site, there were questions about the viability of those options (even though the solutions proposed may be technically feasible).
52. The complicating factor is the state of the existing Huntly wastewater treatment plant (particularly in terms of compliance with its current discharge consent), and the uncertainty around the nature and timing of any upgrades or alternative solutions. The management of wastewater was of concern to Waikato-Tainui, Waikato Regional Council and Future Proof; in particular whether treatment and discharge of wastewater could be achieved in a manner which meets the Vision and Strategy for the Waikato River.
53. It seems to us that the wastewater issue can be broken down into three defined phases (which, for convenience, we refer to based on APL's nominal development timeline, this being a matter we return to later in this decision). Years 1-3 of the development can be serviced for wastewater by an on-site biocycle system and subsequent discharge to land, as agreed by the wastewater experts in their Joint Witness Statement. That system raised no

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<sup>14</sup> Archaeological assessment of effects, Matthew Gainsford and Warren Gumbley, June 2019

<sup>15</sup> Evidence in Chief of Ben Pain for APL, 9 July 2020, paragraph 2.1

objections from Waikato-Tainui provided it was managed appropriately. We understand this system has already been consented.<sup>16</sup>

54. Years 3-6 depend on connection to the Huntly wastewater treatment plant, and we questioned whether the additional load generated by the APL development could be realistically added to a wastewater treatment plant that is already exceeding some of its regional consent conditions. When potential growth of other contributing towns such as Ngaruawahia is factored in, we have serious reservations about the Huntly wastewater treatment plant being a viable option in the absence of any upgrades. We agree with Mr Jim Bradley for the Council that the non-compliance needs to be addressed before the Huntly wastewater treatment plant receives the proposed volumes from any APL development. Mr Bradley considered there are also some planning issues that need to be addressed with the existing consent to enable it to accommodate the proposed Ohinewai volumes.<sup>17</sup>
55. In the longer term, from year 7 onwards, the evidence of Mr Robert White on behalf of APL points to the Mid Waikato Servicing Strategy as providing the wastewater solution for APL. The preferred solution outlined in this document is a centralised wastewater treatment plant for the Huntly and Ohinewai catchments located at Huntly. The Strategy identifies that the new Huntly wastewater treatment plant will be constructed in the 2025 horizon, and new consents will be required for the discharge from the new treatment plant.
56. We note from Mr Gavin Donald's evidence that the proposed solutions beyond years 1-3 are of concern for Waikato-Tainui in that they would not be giving effect to Te Ture Whaimana – the Vision and Strategy for the Waikato River or having regard to Tai Tumu, Tai Pari, Tai Ao. Mr Donald helpfully summarised the issues with the Huntly Wastewater Treatment Plant (as outlined in the Mid Waikato Water and Wastewater Servicing Strategy). Under Section 1.3.5 of that Strategy, the current situation is described:
- a. network issues, including high inflow and infiltration, poor condition, etc. These issues are outside the scope of this project but should be addressed in future in complement to any proposed upgrades to the WWTP;
  - b. oxidation ponds occasionally overtop in wet weather;
  - c. WWTP is vulnerable to flooding from the Waikato River;
  - d. WWTP is only partially compliant with effluent quality consent conditions and discharge limits;
  - e. poor access to WWTP for maintenance;
  - f. unreliable septage handling facility;
  - g. sludge build-up within WWTP, reducing pond capacity and treatment performance;
  - h. Huntly WWTP discharge consent expires on 31 March 2029 and any new consent conditions may be more stringent.
57. While we acknowledge the genuinely held concerns of Waikato-Tainui, we are persuaded by Mr Bradley's assessment that the proposals for all three stages of development are all

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<sup>16</sup> Evidence in Chief of Robert White on behalf of APL, 9 July 2020, paragraphs 2.28 and 6.2

<sup>17</sup> Technical memorandum appended to s42A rebuttal report, Jim Bradley, 27 August 2020

technically feasible. He considers that the challenges can be addressed through planning provisions that restrict proposed development in the medium and longer term until the necessary water/wastewater discharge consents as required for each stage are in place and we agree.<sup>18</sup> This approach was described by Mr Berry as being that if the solutions are not available, the next stage of implementing the Ohinewai Structure Plan will be delayed.<sup>19</sup> In our view this restriction on development is both logical and appropriate and gives effect to the Vision and Strategy.

58. We do not consider the uncertainty of a wastewater solution to be an insurmountable barrier to rezoning. It seems to us that the development of Ohinewai could well be the catalyst that forces improvement in the performance of the Huntly wastewater treatment plant (or a new wastewater treatment plant), particularly if there are robust Plan provisions that prevent development of the APL site beyond year 3 until this matter is resolved. We caution that any long-term wastewater solutions will need to be worked through carefully with iwi given their relationship with the Waikato River.
59. We note that since the hearing, a memorandum from Mr Berry for APL<sup>20</sup> has been submitted which outlines timeframes developed with Watercare and Waikato District Council for firstly, maintenance to increase the capacity of the Huntly wastewater treatment plant, and secondly, upgrades which are programmed to be operational in 2024. Watercare and Waikato District Council confirm the following steps will be undertaken:
- a. desludging of the Huntly WWTP was due to commence on 18 January 2021 and will take eight to nine months. The purpose of desludging is to increase the treatment capacity of the plant.
  - b. the preparation of a concept design for a new WWTP for Huntly has commenced. This will take approximately six months. Costs are estimated to be \$20-\$30 million.
  - c. the draft Long-Term Plan for Waikato District (2021-2031) (LTP) provides for construction of a new Huntly WWTP in 2024, with completion by 2026 (subject of course to the outcome of the LTP and consultation process).
  - d. WDC and Watercare are happy for APL to pursue alternative funding mechanisms to assist WDC to bring forward the Huntly WWTP upgrades (e.g. the Crown Infrastructure Fund).
  - e. A 'part flow' or 'side stream' membrane bioreactor (MBR) plant may be a suitable interim treatment solution either on-site at the Huntly WWTP or at Ohinewai. Watercare's preference is Ohinewai. This is a less favourable option for APL and WDC for whom the most optimal approach is to move directly to a new plant.
60. Assuming the Huntly WWTP upgrade is brought forward to commence 2021/22, the anticipated timetable would be as follows:
- a. July 2021: estimated price and concept design for Huntly WWTP confirmed.

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<sup>18</sup> Technical memo on key wastewater and water issues, Jim Bradley, 27 August 2020, page 3

<sup>19</sup> Opening legal submissions of counsel for APL, 14 September 2020, paragraph 4.16

<sup>20</sup> Memorandum of counsel for APL in relation to water and wastewater servicing, 26 January 2021

- b. August-October 2021: possible engagement with Crown Infrastructure or others, or both, in relation to funding options.
  - c. January 2022: commencement of detailed design with construction commencing later in the year).
  - d. 2024: plant operational.
61. We are pleased to see that the steps, timing and funding for upgrading the wastewater infrastructure are being progressed and it appears as though there is a feasible solution to wastewater. However, we consider there needs to be constraints on future development beyond the three-year stage one factory development until wastewater and water supply issues are resolved and implemented.

## 5.2 Water supply

62. It seems to us that water supply is less problematic than wastewater, although Waikato-Tainui expressed its concern that there is little guarantee on availability. We heard from Mr White that water can be sourced from both the latent capacity of the Huntly water treatment plant (600-2,600m<sup>3</sup> per day) as well as the unutilised water from the Te Kauwhata Water Association allocation.<sup>21</sup> We have sighted the letter from Te Kauwhata Water Association<sup>22</sup> which confirms that the Association holds a Waikato Regional Council water abstraction consent (No. 109337) to take 22,900m<sup>3</sup> of water per day from the Waikato River. That consent expires on 30 June 2024. The Association confirms in the event that APL succeeds in securing an appropriate zoning of its land at Ohinewai, the Association agrees to supply APL bulk untreated water up to 4,300m<sup>3</sup> per day for a period of not less than 10 years. We note that despite this assurance of water supply, the Association's consent expires in three years.
63. Since the hearing, the memorandum from Mr Berry for APL<sup>23</sup> confirms Watercare has one million litres of water per day available at Huntly for the next 10 to 15 years to supply the Ohinewai development and other potential developments in the area. Thereafter it is envisaged by APL that a new pipeline might be extended from Te Kauwhata. In this timeframe (10-15 years) a new pipe will be put in place linking Te Kauwhata to Huntly. A bridge solution for water servicing over SH1 and NIMT is assessed by APL as likely being the most viable solution for piping back to Huntly.
64. In a similar way to wastewater, and despite the lack of a confirmed solution, we are satisfied that this issue can be addressed by robust plan provisions that prevent progressing to the next stage of development until there is appropriate water supply consented and available.

## 5.3 Stormwater

65. Stormwater management has somewhat informed the layout of the APL structure plan, with two specified stormwater management areas in the form of the Central Park area, which provides stormwater treatment and centralised conveyance via a series of stormwater

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<sup>21</sup> Evidence in Chief of Robert White on behalf of APL, 9 July 2020, paragraphs 2.12-2.16

<sup>22</sup> Letter from Andrew Cornwall, Te Kauwhata Water Association, March 2020

<sup>23</sup> Memorandum of counsel for APL in relation to water and wastewater servicing, 26 January 2021

devices, and the Wetland Park area which is an enhanced natural wetland.<sup>24</sup> Eventual discharge from the wetlands will be to Lake Rotokawau (an Outstanding Natural Feature hydraulically connected to Lake Waikare). A treatment train approach is proposed, with stormwater being treated through at least two devices before discharging into the receiving environment. We note that the stormwater experts agreed in conferencing that stormwater is likely to be treated to an acceptable standard, and we understand it is to be designed in accordance with the Waikato Regional Infrastructure Technical Specification.

66. It is inevitable that increased stormwater runoff will result from the development of impervious surfaces. We agree with Ms Chloe Trenouth in her s42A report that the stormwater management plan must be embedded in the district plan provisions to ensure that management of stormwater quality and quantity are appropriately managed.
67. Although technical issues were raised by Ms Megan Blackburn in her review of the APL stormwater management on behalf of Waikato District Council, we note that Mr Wadan and Ms Blackburn largely agreed that the matters raised would be appropriately addressed at detailed design stage during the resource consent process.
68. Given the sensitivity of the receiving environment, we have considered potential ecological effects of stormwater as raised in the further submissions of the Department of Conservation and Fish and Game, and have addressed this matter elsewhere in our decision.
69. We consider that stormwater can be adequately managed, and appropriately incorporates mātauranga Māori, as set out by Mr Wadan<sup>25</sup>. The stormwater management approach for the APL site has been developed to respond to the particular characteristics of the site and receiving environment. The proposed stormwater management incorporates a water sensitive design approach in accordance with Waikato Regional Council's Stormwater Management Guidelines. While many of the details of stormwater management will be addressed through consents, we are satisfied that the management of stormwater is not an impediment to rezoning.

## 6 Natural hazards

### 6.1 Flooding

70. The APL site contains land subject to flood risk. This includes both surface flooding from watercourses, and flooding in the event of failure of the Waikato River stopbanks. The majority of the low lying land in the Ohinewai area is prone to flooding and has a high water table, with grazing of the land enabled by drainage schemes and pumping managed by Waikato Regional Council.
71. APL provided flood modelling demonstrating that future development could reasonably manage flood risks, including consideration for climate change.
72. Provisions addressing natural flood hazards were notified as Stage 2 of the PDP on 27 July 2020. We note that while PDP Map 14 includes the APL site, it does not contain any spatial layer that indicates those areas that are within the flood plain. However, the land on the western side of the Waikato Expressway is identified as being within the defended area; i.e.

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<sup>24</sup> Evidence in Chief of Pranil Wadan on behalf of APL, 9 July 2020, paragraph 2.15

<sup>25</sup> Evidence in Chief of Pranil Wadan on behalf of APL, 9 July 2020, paragraph 6.21-6.23



it is defended by the stopbanks. The eastern banks of the Waikato River are identified as Flood Plain Management Area and High Risk Flood Risk, neither of which is surprising to us.

73. This issue was of concern to Mercury Energy; namely that the loss of flood storage capacity within the storage zone of Lake Waikare would result in a minor increase to flood levels and a reduced capacity to absorb flood water diverted from the Waikato River in a significant flood event. While Mr Angus McKenzie on behalf of Mercury Energy acknowledged that the displacement effect from infill earthworks on the flood plain as part of the APL Proposal is likely to be insignificant, he remained concerned about the cumulative effect of development within the floodplain and the consequential change in the overall flood storage capacity.<sup>26</sup> The percentage of storage lost due to filling was discussed during expert conferencing with some alternative figures being calculated, but appears in any event to be less than 0.63% at 8.10m RL. The experts agreed that any development involving infill in the flood storage basin area will contribute to cumulative effects on the flood storage capacity<sup>27</sup> and this seems logical to us. The question raised by Mr McKenzie is how infill development within the flood plain is to be managed under the District Plan framework moving forward?
74. Mr McKenzie considered it to be of critical importance for the 1% AEP design flood level of RL 7.37m to be spatially represented in the PDP to ensure that the flood plain and associated risks are clear in relation to any land use change/development proposal. The issue of the 1% AEP design flood level of RL 7.37m flood plain layer was discussed in detail during expert conferencing and agreed as the “current design flood level” for Lake Waikare. We note that the APL development provides an adequate freeboard level of 8m, which mitigates the 1% AEP flood risk in this location. We consider this issue can be effectively managed through district plan provisions.
75. The consequential decrease in flood storage is being compensated by increased flood storage capacity in the open space/stormwater management area, as described in the APL Flooding Report (Appendix F to APL’s technical documents).
76. The second issue of concern to Mercury NZ Ltd was stormwater runoff from the development site draining into Lake Waikare. We understand from Dr Grant Webby that the lake functions as an off-channel storage facility for significant flood events in the Lower Waikato River and lake levels are normally controlled between RL 5.4-5.75 m. Dr Webby explained that the 1.89km<sup>2</sup> area of the development site is small in relation to the natural catchment area for the lake of 210.5km<sup>2</sup>. During expert conferencing, all experts agreed that although there will be additional stormwater runoff generated by the site, this will be very small in relation to the natural catchment runoff and flood overflows from the Waikato River. Dr Webby opined that any post-development storm runoff is therefore likely to have a negligible effect on flood levels in Lake Waikare<sup>28</sup> and we have no reason to disagree.
77. Mr Ajay Desai on behalf of APL summarised the modelling of a stop bank breach in three different locations. This modelling showed that flows would generally be contained to the west of State Highway 1 and flow crossing the State Highway 1 will not enter the site, instead flowing along the northern boundary eastwards towards Lake Waikare.<sup>29</sup> The risk to

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<sup>26</sup> Evidence in Chief of Angus McKenzie on behalf of Mercury NZ Ltd, 6 August 2020, paragraphs 4.1-4.2

<sup>27</sup> Joint Witness Statement of Experts for Flooding, 17 June 2020, paragraph 7.1

<sup>28</sup> Evidence in Chief of Murray Webby on behalf of Mercury NZ Ltd, 6 August 2020, paragraph 4.3

<sup>29</sup> Evidence in Chief of Ajay Desai on behalf of APL, 9 July 2020, paragraph 2.21

employees was of concern to Ms Trenouth in her s42A report, however we understand from Mr Desai that subsequent detailed analysis has shown that there is no flood risk to the site and therefore there is no need for such an evacuation plan.<sup>30</sup>

78. We were also interested in the effect of flood risk to neighbouring properties, however Mr Desai explained that in all scenarios there is a negligible increase in water levels and no increase in flood extents in neighbouring properties compared with the pre-development scenario except for one overland flow path around Lumsden Road which exhibits some ponding.<sup>31</sup> We understand this can be resolved by the installation of a new culvert to direct flows towards the Central Park area, and could be addressed through district plan provisions. We understand from Mr Wadan that even if 100% of the Central Park area storage is used by stormwater devices (i.e. no storage is available for flood storage), there is no increase in flood extents or flood levels within Lake Waikare.<sup>32</sup>
79. From the information provided by all the experts, we are satisfied that flooding does not preclude the rezoning of the APL site.

## **7 Transport and traffic**

80. The issue of transport and traffic generation received a considerable amount of scrutiny in the supporting technical assessments and evidence. There are many different aspects to the transport and traffic issue, so we have set out our consideration and decision for each aspect. Our general observation on this matter is that concerns expressed by some submitters over the potential adverse traffic effects from the APL Proposal on the connecting roading network and use of the expressway tended to be unduly conservative and generally overstated.

### **7.1 Site suitability**

81. The site appears to have a high level of connectivity being adjacent to State Highway 1 Waikato Expressway, access to the local road network of Balemi, Lumsden and Tahuna Roads as well as being adjacent to the North Island Main Trunk Railway. Access to State Highway 1 is through the existing grade-separated interchange at Ohinewai, which is a 'full diamond' layout with north- and south-facing on- and off-ramps. We heard from Mr Cameron Inder that traffic volumes are very low for this style and size of intersection, with 920 vehicles per day (VPD) and 15% heavy commercial vehicles (HCV) on the southbound off-ramp and 445 VPD with 9% HCV on the northbound off-ramp. Sightlines are constrained from the southbound off-ramp due to bridge parapets on the Expressway overbridge and adjacent railway overbridge.<sup>33</sup>
82. A roundabout exists at the intersection of Lumsden Road and Tahuna Road. Existing public transport provision consists of two services, each with very limited frequency per day (i.e. morning and night only, five days per week). Walking and cycling infrastructure is non-existent on the Interchange and the district roads.

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<sup>30</sup> Evidence in Chief of Ajay Desai on behalf of APL, 9 July 2020, paragraph 8.9

<sup>31</sup> Evidence in Chief of Ajay Desai on behalf of APL, 9 July 2020, paragraph 7.1

<sup>32</sup> Evidence in Chief of Pranil Wadan, on behalf of APL, 9 July 2020, paragraphs 3.19-3.21

<sup>33</sup> Evidence in Chief of Cameron Inder on behalf of APL, 9 July 2020, paragraphs 2.2-2.4

83. Similarly OLL considers that location of the site has a strategic advantage of road and rail connectivity to support mixed-use development.
84. Mr Ian Mayhew who gave planning evidence on behalf of Waka Kotahi and Waikato Regional Council had an alternative view on the suitability of the site from a transport perspective. His evidence was that there were considerable constraints to development, including exacerbating the severance of Ohinewai across the Expressway, limited multi-modal transport links to and from the site, and public transport that is unlikely to be viable. He considered that should the APL Proposal be approved, over time there will be development in and around the existing township on the western side of the Expressway, and this will result in an increasingly divided community and the requirement for more short trips across the Expressway for day-to-day activities. While he accepted that some severance across a State Highway or other major infrastructure is not uncommon in a number of existing towns and cities, having such severance as a starting point for new development is not consistent with the RPS and does not represent best practice nor create liveable and integrated communities.
85. Mr Robert Swears, the traffic engineer for Waka Kotahi, and Ms Naomi McMinn for the Council expressed similar concerns that the key transport engineering issue that cannot readily be resolved is the distance of the site from the services and facilities necessary to support activities on the site. They considered that the distance to Huntly and lack of alternatives for travel is likely to result in a high proportion of private vehicle trips to access employment and services. For the reasons outlined below, we are satisfied that the traffic concerns raised by Waka Kotahi, WRC or the Council relating to site suitability do not preclude the rezoning of the APL site.

## 7.2 Traffic generation

86. The basis of the transport analysis was the Integrated Transport Assessment undertaken by Mr Inder and Ms Rhulani Baloyi for APL and the experts all agreed that the modelling used was appropriate.<sup>34</sup> The Waikato Regional Transportation Model predicts 75-80% of total trip generation will be external to the site, with peak hour trip totals of 1,420 and 2,190 during the AM and PM peak hours respectively. The model predicts the split of external traffic to be approximately 40% north and 60% south. The removal of the discounted factory outlet (which was initially proposed) reduces the traffic generation by 12.5% in the AM and 20% in the PM to 1,220 and 1,730 respectively.<sup>35</sup>
87. Mr Swears, on behalf of Waka Kotahi, considered that there is some uncertainty associated with the outputs depending on the nature of the industrial uses that establish. The transport experts all agreed in the expert conferencing for transport that the modelling is sufficient so long as there is a mechanism in the planning provisions/consenting process to allow transport modelling and mitigation to be reassessed if the fundamental assumptions behind the modelling change, rather than have the nature and timing of the upgrades being 'locked in' now.<sup>36</sup>

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<sup>34</sup> Joint witness statement of experts in relation to transportation effects, 22 July 2020, paragraphs 2.1-2.3

<sup>35</sup> Rebuttal evidence of Cameron Inder on behalf of APL, paragraphs 2.2-2.3.

<sup>36</sup> Joint witness statement of experts in relation to transportation effects, 22 July 2020, paragraphs 3.8

88. As noted by Ms McMinn, the proposed planning provisions require an Integrated Transport Assessment (ITA) for most developments, but we accept there is a risk that development may result in cumulative adverse effects that are not adequately mitigated because of the incremental nature of development. Mr Swears supports a broad ITA assessment of the whole site for each stage, whereas Ms McMinn prefers a rule that requires an ITA to be prepared prior to the development of Stage 3 based on actual trip generation (compared to expected) to confirm the nature and timing of any upgrades required. We accept that the modelling may not accurately predict the traffic generation, particularly given the range of uses that are possible in the Business and Industrial Precincts. There is a risk that the ITA may potentially be underestimating trip generation for components of the APL development; but similarly there is a risk that the modelling over-estimates the trip generation. We have discussed this matter later in our decision when we address traffic generation provisions.
89. We are assured by the expert conferencing that the modelling is appropriate for zoning-related purposes, but that the provision of ITAs through the course of development of the site will allow traffic generation to be constantly updated and reassessed as development occurs.

### **7.3 Waikato Expressway**

90. Waka Kotahi in particular expressed concern that the proposed development will lead to the Waikato Expressway being used for local trips. Mr Inder on behalf of APL argued that the neighbourhood centre component of the development will serve the local community. We agree with Mr Swears that if the neighbourhood centre is developed, it will not include facilities that are likely to influence journeys being taken to more significant trip attractions beyond the site such as schools, supermarkets, and places of work. We accept it is likely that the short distance between Huntly and Ohinewai will lead to Ohinewai relying on Huntly for some community needs, but not all.
91. Ms Loynes for Waka Kotahi considers that the use of high-speed, high-capacity roading for short-distance trip-making to fulfil daily needs is not efficient as the Waikato Expressway is designed to meet the long-term freight and interregional travel needs of the country. These concerns were shared by Mr Swears, Ms McMinn and Mr Mayhew.
92. We do not share the concerns of Waka Kotahi or Ms McMinn. It seems to us completely logical that the Expressway is used for the purpose it was intended; that is, the conveyance of vehicles. It also seems to us that the distance of each journey and the type of vehicle using the Expressway is less important. We agree with Mr Olliver that the Waikato Expressway has sufficient capacity to accommodate the additional traffic generated by the APL development, taking into account the demands of the Future Proof settlement pattern out to 2041. It seems to us reasonable to utilise spare capacity within the Expressway to promote safe and efficient travel. We have not seen any evidence which suggests the development would undermine the operational effectiveness of the Expressway, and the ITA does not identify any significant impacts or any need for major upgrades. We have more to say on this particular issue later in the decision.
93. Options to avoid short trips on the Waikato Expressway were explored in the expert conferencing for transport. A left-turn slip lane and cycle way to Ohinewai South Road is proposed to provide connectivity and reduce local trips on the Expressway. Ms McMinn agreed it provides an opportunity to divert some trips that would otherwise use the

Expressway but saw it as providing only limited benefit. Mr Inder considered it as an opportunity to reduce trips on the Expressway as school children can be picked up without having to travel on the Expressway. Mr Swears agreed with the concept of a slip lane having merit, but considered the proposed speed limit (50km/hr) unlikely to be appropriate, although he accepted this could be addressed at a future time.

94. Overall, we consider the concerns raised by Waka Kotahi over the use of the Expressway are based on theoretical planning notions rather than a real-world approach. We are satisfied that the development of the APL site would have little effect on the operation and efficiency of a modern expressway that has considerable, as yet unutilised capacity.

## 7.4 Upgrades and new infrastructure

95. We understand that a number of upgrades are proposed to service the site including<sup>37</sup>:
- a. a rail siding which will connect the proposed industrial area to the NIMT;
  - b. realigning Lumsden Road and Balemi Road so that the proposed rail siding crosses Lumsden Road at a safe speed and angle;
  - c. speed management measures on Lumsden Road and Tahuna Road adjacent to the site to reflect the more urbanised environment and to increase safety for active travel modes;
  - d. several new intersections along Tahuna Road and Lumsden Road for access into the development, including several new private accesses along Tahuna Road, Lumsden Road and Balemi Road giving access into the service centre, the TCG factory area and the proposed rail siding;
  - e. shared paths on the northern side of the Tahuna Road and the eastern side of Lumsden Road (the side bordering the site); and
  - f. a pedestrian/cycling path bridge over the Waikato Expressway located approximately 315m south of the Interchange. The bridge connects to a new shared path and Ohinewai Primary School on the eastern side of State Highway 1.
96. An area of disagreement in the expert conferencing for transport was the various aspects of the Ohinewai interchange. Mr Swears was concerned about line of sight of approaching vehicles for drivers waiting at the interchange, while Mr Inder believed approaching vehicles can be adequately seen at operating speed. Ms McMinn was concerned with existing safety issues and crash history on the off-ramp approaching the stop sign, although Mr Inder considered that the crashes appear to be due to people not complying with the stop sign. However, all experts agree that widening the bridge to improve sightlines is very difficult. We note that the transport experts did not reach agreement on adequate tracking curves of the interchange but agreed that a HPMV 19.4m tracking curve may need to cross the centre line to avoid clipping the parapet/wingwall. It is likely that larger trucks currently cross over the centre line to avoid the abutment. Ms McMinn was also concerned about the incompatibility of the various modes of transport on the interchange such as trucks and cyclists that is not helped by the design and geometry.

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<sup>37</sup> Summary Statement of Cameron Inder on behalf of APL, 9 September 2020, paragraph 9

97. With the exception of the interchange ramps, we observe that the experts all agreed that the type of transport upgrades already identified in the ITA are likely to be the ones required (with details to be confirmed at resource consent stage). However, if certain transport upgrades not currently identified as necessary are later shown to be necessary, these can be required at resource consent stage as long as plan provisions are drafted specifically to require that. In terms of the interchange, we note that Ms McMinn and Mr Swears agree with Mr Inder that capacity-related upgrades to the Ohinewai Interchange are unlikely to be required based on the updated ITA and we have no reason to think otherwise.
98. Notwithstanding this agreement, Mr Swears expressed concerns about a number of the upgrades:
- a. measures have not been proposed to reduce the incremental road safety effects (in relation to the Ohinewai interchange) that may arise as a result of the additional traffic associated with the proposal, and
  - b. the design of pedestrian crossings that are needed to provide access to the proposed cycle/walkway across the Waikato Expressway.
99. Another area of debate was a pedestrian overbridge. Mr Inder identified a separate purpose-built shared walking and cycling bridge spanning the NIMT and Waikato Expressway. Mr Mayhew supported that proposal and considered it is necessary mitigation for exacerbating the severance of Ohinewai across the Expressway. However both Mr Swears and Ms McMinn expressed concern at the level of use it may attract, and therefore questioned its effectiveness in providing attractive alternative transport options to private vehicles. Mr Whyte, in his presentation on behalf of the Ohinewai Area Committee, told us that one of the very clear messages from the community through the Blueprint process was the need for foot/bike access over the Expressway. While we accept that the usage may not be high, we consider the pedestrian and cycle overbridge is important to support the connection of the two parts of Ohinewai and enable alternative transport options.
100. We agree with Ms Trenouth that the district plan must ensure that the upgrades identified by the ITA, in terms of existing intersections and roads in the short to long term, are delivered. In this regard, we are satisfied that there are effective district plan methods for ensuring these upgrades are undertaken in advance of the development taking place, and that staging of development aligns with appropriate transport infrastructure.

## **7.5 Strategic planning documents – transport infrastructure**

101. In respect of transport infrastructure, Ms Loynes for Waka Kotahi highlighted her concerns over the lack of strategic assessment of the APL Proposal and its inclusion in Waikato 2070. As a result, rather than maintaining the benefits of the infrastructure investment that has been made to support development in accordance with Future Proof, she considered the proposal risks undermining the investment in the Expressway – a risk that was identified in the Waikato Expressway Network Management Plan. She assessed the proposal against Objective 3.12(c) of the RPS which requires integrated land use and infrastructure planning and concluded that the development did not achieve this outcome due to the transportation engineering issues identified by Mr Swears. We do not agree. Having heard the evidence of Mr Inder, there is sufficient capacity in the Waikato Expressway to accommodate the development. It also seems to us that increasing the level of self-sufficiency of Ohinewai by

providing live, work, play opportunities in the development will decrease the need to travel on the Expressway. We accept that not everyone who works at Ohinewai will wish to live there however, and conversely, not everyone who chooses to live at Ohinewai will work there.

102. Ms Loynes also drew attention to Objective 3.12(e) of the RPS which seeks to recognise and protect the value and long-term benefits of regionally significant infrastructure. She pointed out that this objective goes substantially beyond simply managing effects on regionally significant infrastructure – it requires the “value and long-term benefits” of that infrastructure to be “protected”. One of the key strategic objectives of the Expressway is to enhance inter-regional and national economic growth and productivity by connecting large population centres, delivering efficient routes for large freight volumes and access to port and airport activities.<sup>38</sup> Ms Loynes’ evidence was that the role of the Expressway was to create a fast, reliable and safe corridor for inter-regional movements with a particular emphasis on freight and with a specific injunction against its use for short-distance private car trips. She considered that the APL Proposal will lead to development that will potentially diminish the investment in the Expressway, and the long-term benefits to the current and future community and economic development that it is intended to serve. She concluded that the development is therefore not consistent with RPS Objective 3.12(e).
103. Mr Olliver had an alternative view on Objective 3.12(e) and considered that the benefits of the Waikato Expressway and the NIMT are protected by using them for their purpose to support economic development in the form of industry and associated residential and commercial development. As there is available capacity in these transport corridors, they will not be compromised and their long-term benefits will be maintained, taking into account the future demands of the Future Proof land use pattern through to 2041. While we note that the objective refers to “protect” rather than “maintain” the long-term benefits of regionally significant infrastructure, we agree with Mr Olliver. It seems to us that the value of regionally significant infrastructure is not in the physical infrastructure itself, but in its ability to deliver a service; whether it be electricity transmission or the movement of vehicles.<sup>39</sup>
104. Ms Loynes considered that development that departs from the Future Proof settlement pattern as proposed requires a robust assessment using the development principles set out in Section 6A of the RPS. From a transportation perspective, this assessment includes consideration of whether the safe, efficient and effective operation of infrastructure is compromised, the use of private motor vehicles is minimised, employment opportunities are in a location that can be serviced by public transport, and there are walking and cycling and multi-modal transport connections. She concluded that the APL development does not achieve these outcomes. As we set out later in this decision, we consider that the APL Proposal can satisfy most of the development principles in Section 6A, and are particularly mindful of the directive at the start of the list that “new development should”. The requirements in the list are not mandatory.
105. Ms Loynes also undertook an assessment of the proposal against RPS Policy 6.3 which seeks to ensure the nature, timing and sequencing of new development is coordinated with the development, funding, implementation and operation of transport and other infrastructure. She concluded that the APL development does not achieve the policy as it will compromise

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<sup>38</sup> Waikato Expressway Network Plan, page v

<sup>39</sup> Evidence in Chief of John Olliver on behalf of APL, 9 July 2020, paragraph 7.22

the strategic function of the Waikato Expressway as residents use private vehicles to access services in Huntly and further afield. She considered that even if the residential component of the APL development is for “worker housing”, there will be additional residents within those households who will need to access Huntly for employment opportunities. Ms Loynes also considered that the public transport services proposed are unlikely to be effective for the reasons outlined in Mr Kuo’s evidence for Waikato Regional Council. She considered that active modes of transport are unlikely to be attractive for the reasons outlined in Mr Swears’ evidence.

106. Ms Loynes goes on to say that the Waikato Expressway is designed to meet the long-term freight and interregional travel needs of the country. Any ‘spare capacity’ that exists is capacity that could be used by the economically important trips that the Waikato Expressway was designed to support over its lifetime.<sup>40</sup> Based on the economic evidence presented to us, we consider that the Sleepyhead Factory combined with the other industrial and business zones sought by APL will constitute an “economically important” development, both locally and regionally. Based on the evidence presented, we agree with Mr Olliver that the infrastructure planning can be sufficiently responsive and resilient to accommodate the development. RPS Policy 6.3 does not require infrastructure to necessarily precede development; moreover, that new development is coordinated with the necessary infrastructure.
107. Mr Kuo considered that the site is not located within the existing growth areas identified under the Future Proof Strategy and accordingly the Council has not undertaken any forward planning or detailed assessment to ensure the strategic integration of land use, infrastructure and service provision. With respect, we find the RPS recognises that alternative land release may be required and establishes a framework for such alternative land release.
108. Ms Loynes considered that the APL development does not achieve RPS Policy 6.14 and is particularly concerned that the modelling does not include the cumulative impacts of the development provided for in Waikato 2070. We assess these criteria in some detail later in our decision but suffice to say here that we consider the APL development does give effect to Policy 6.14.
109. Ms Loynes agreed with Mr Olliver that the Hamilton to Auckland Corridor Plan (H2A) is in the early stage of development and so less weight should be afforded to it. We note with interest that Ms Loynes considers that the point of this strategic planning approach is to encourage the efficient use of existing infrastructure and avoid the high costs of new infrastructure, particularly where that new infrastructure is unlikely to be well used.<sup>41</sup> In our assessment, this is exactly what the APL development achieves.
110. Mr Olliver stated that Waikato 2070 specifically identifies the Ohinewai area for an “industrial cluster” and that this document should be accorded “significant weight”. Ms Loynes disagreed and clarified that Waka Kotahi highlighted issues with the Ohinewai development in the consultation process for Waikato 2070. Ms Loynes considered that Waikato 2070 should be consistent with the RPS, but we note that the RPS is well out of date in terms of providing for growth (particularly given the National Policy Statement for

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<sup>40</sup> Evidence in Chief of Sarah Loynes on behalf of Waka Kotahi, 13 August 2020, paragraph 9.20

<sup>41</sup> Evidence in Chief of Sarah Loynes on behalf of Waka Kotahi, 13 August 2020, paragraph 10.4



Urban Development), and even Future Proof 2009 that is embedded in the RPS has been superseded by a 2017 revision. She considered Waikato 2070 is a document that currently contains the aspirations of Waikato District but without the support of robust evidence and associated assessment of effects, it is problematic to afford it such high significance. We are aware that we must “have regard” to plans and strategies developed under other Acts by s74(2)(b)(i) of the RMA. We have done so, as we discuss later in the decision.

## 7.6 Rail

111. Mr Inder highlighted that one of the key transport infrastructure components is a new rail siding connection to the North Island Main Trunk line, including a localised realignment of Lumsden Road for safety at the level crossing. This will enable significant volumes of freight to be transported to and from the site without generating traffic trips on the adjacent road network. APL predicts that the rail siding will remove approximately 10 heavy vehicle trips per day for the factory, and that figure will increase with rail use by other industrial activities.<sup>42</sup> Mr Mayhew expressed concern that there appears to be no obligation for a rail siding to be constructed and therefore no certainty that the stated benefits to be derived from this will accrue. We heard from Mr Gaze and Mr Oliver who both stated the primary need for The Comfort Group to be located adjacent to the North Island Main Trunk railway. Although we understand Mr Mayhew’s concerns, we have no reason to believe that the rail siding will not be progressed.
112. While Ms McMinn had concerns about the safety of a new level crossing, we have sighted communication from KiwiRail<sup>43</sup> which advised that there will be no issues, with KiwiRail supporting the installation of a suitable, approved level crossing.

## 7.7 Private vehicle use

113. Having drilled down at the hearing into the detail of the opposition from Waikato Regional Council and Waka Kotahi on transport grounds, it seems to us that the central issue is that Ohinewai is physically separated from an existing urban area and there is a concern that this will lead to a high proportion of private vehicle trips. Ms McMinn summarised the reasons for vehicle trips may include the following:
  - a. the distance to access employment and services in Huntly and Te Kauwhata.
  - b. being on the eastern side of SH1 and the need to travel across the NIMT and SH1 to the Ohinewai School on the western side. At 2km, this is likely to be too far for children to walk.
  - c. the NIMT and SH1 overbridges on Tahuna Road are narrow and do not provide space for pedestrians or cyclists to safely travel from the OSP area to the existing Ohinewai village.
  - d. the limited public transport services available in the area.

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<sup>42</sup> Evidence in Chief of Cameron Inder on behalf of APL, 9 July 2020, paragraphs 2.7

<sup>43</sup> Email from David Brinsley, KiwiRail, 13 September 2019

- e. the lack of a safe and direct walking and cycling link along Tahuna Road is likely to add short trips by car to destinations including the Ohinewai Hall and existing bus stop.
- 114. Mr Mayhew considered that the proposal does not create good accessibility for “all people”, being a development that is highly dependent on private motor vehicle usage to access services (including shops, medical centres and high schools) that are essential for the efficient function and social cohesiveness of communities.
- 115. In the context of the residential component of the APL development as well as its own land, OLL considered that growth based on employment land without a supporting residential component will prevent the creation of a stronger local community at Ohinewai and lead to increased travel demand. Mixed-use development would help to reduce travel demand.
- 116. While we agree with Mr Mayhew that there is likely to be a reliance on private vehicles, we agree with OLL that this will actually be reduced by having a more complete community with live, work and play opportunities all as part of the development. If the APL Proposal only consisted of industrial and business land uses then it seems to us that the use of the private vehicle would be considerably higher.

## **7.8 Public transport**

- 117. We understand from Mr Inder that there is an existing public transport service for Ohinewai, albeit it rather infrequently i.e. morning and night only, five days per week. We are aware that the Waikato Regional Council organises the operation of the public transport network, and therefore there is little that APL as a developer can do to encourage this, other than to provide physical infrastructure such as a covered bus stop facility. We note that public transport is promoted within the APL site through the provision of both an interim bus stop facility located on Tahuna Road just west of the Tahuna Road/Lumsden Road roundabout, and the ultimate facility within the proposed business precinct.
- 118. Mr Kuo is Waikato Regional Council’s public transport policy advisor and he agreed in principle that a public transport connection to the site can be provided by the proposed public transport infrastructure, but is concerned that there is no certainty around whether a service will be provided (funding), in what form, and the long walking distances between the residential area and the proposed bus stops. Mr Kuo acknowledged that the site can be serviced by public transport if sufficient funding is available. It seems to us that funding is the only constraint to public transport occurring and therefore somewhat outside the scope of matters we can influence in our decision-making role.

## **7.9 Findings on transport**

- 119. Having carefully considered the traffic-related matters raised by Waka Kotahi and Waikato Regional Council, we are satisfied that the development can be satisfactorily serviced for transport by either the existing network or through upgrades embedded in the district plan provisions.

## 8 Economic effects

### 8.1 Benefits

120. The economic benefits of the APL development were certainly a focal point with the generation of additional employment opportunities and 1100 new dwellings for the APL development. The basis for the economic assessment undertaken by Property Economics on behalf of APL was:
- a. 100,000m<sup>2</sup> Sleepyhead Factory;
  - b. approximately 137,000m<sup>2</sup> of industrial floorspace;
  - c. approximately 43,500m<sup>2</sup> of commercial space; and
  - d. 1,100 dwellings.<sup>44</sup>
121. The assessment undertaken by Property Economics<sup>45</sup> identifies the economic benefits will be in two phases:
- a. the development phase which includes construction costs of \$1,099m spend with an initial regional economic injection of \$1,316m; and
  - b. the ongoing operation of the anticipated development in terms of retail spend and employment generation of \$192.9m per annum, with an additional 1265 employees.
122. The assessments undertaken by Property Economics consider that the construction phase is less likely to impact upon the local economy due to the small construction labour force located locally. With only 360 construction employees located in the catchment, it is likely that a larger proportion of the workforce will be sourced from the wider district and regionally. The estimated contribution during the construction phase is \$100m to the local catchment. In terms of the scale of employment opportunities created by the APL Proposal, Mr Tim Heath on behalf of APL estimated this number to be 2,600<sup>46</sup> and this figure was agreed by the experts for economics. Following the deletion of the discount factory outlet, Mr Heath revised his assessment and considered that the substitute extension of the industrial zone is likely to accommodate an even greater number of employees due to higher employment levels associated with industrial than those accommodated by the discount factory outlet.<sup>47</sup>
123. The expected scale of annual economic activity generated by the APL Proposal was debated by the economics experts. Mr Phil Osborne (economist on behalf of APL) calculated that the APL proposal will result in over \$222m per annum<sup>48</sup>, while Dr Doug Fairgray (economist on behalf of Waikato District Council) argued that Mr Osborne only offered detail for only \$126m of the estimate. Regardless of the exact figure, it seems apparent to us that the APL proposal is likely to result in substantial additional GDP to the region.

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<sup>44</sup> Assessment of Economic Effects, Property Economics, November 2019, Section 10

<sup>45</sup> Assessment of Economic Effects, Property Economics, November 2019, Section 10.1

<sup>46</sup> Evidence in chief of Timothy Heath on behalf of APL, 9 July 2020, paragraph 3.3

<sup>47</sup> Rebuttal evidence of Timothy Heath on behalf of APL, 24 August 2020 paragraph 5.1

<sup>48</sup> Rebuttal evidence of Phil Osborne, 24 August 2020, paragraph 6.1

124. We are mindful of the evidence of Mr Osborne who stated that the surrounding catchment has seen a relative consistent drop in retention of employment over the last 18 years, which is somewhat at odds with the significant growth in employment within the wider district.<sup>49</sup> In addition to the construction opportunities, it seems logical to us that the development would generate additional employment that would not have otherwise existed.
125. Dr Fairgray considered that the employment opportunities will be predominantly in manufacturing and other light industry, which in the district accounts for only 10-12% of total employment. He considered that even if all of the retail and service workers are recruited locally, the range of local employment opportunities will be quite limited. We are aware that this development may well be a catalyst for further employment opportunities. For example, additional families with school-aged children will necessitate an increase in the number of teachers at Ohinewai School, and additional capacity needed in early childhood education.
126. Turning to the economic impacts, the expert conferencing for economic effects agreed that the proposed development is not just redistributing expected economic growth, but there were differing opinions as to the magnitude of the additional economic growth. Regardless of the scale, it seems to us that there are considerable positive economic impacts likely to result from the proposed rezoning – both in terms of additional employment opportunities which leads to additional income in the community, as well as attracting spend. Mr Heath estimated that the development is expected to generate an additional \$6.4m (excluding supermarket spend) in convenience retail spend annually, which can support around 2,500sqm of convenience retail and commercial service floorspace.<sup>50</sup>

## 8.2 Effects on Huntly and existing centres

127. The economic effects on Huntly received attention through the expert conferencing and hearing. Mr Heath considered that the development can generate a significant number of jobs locally and stimulate the local economy; something that the Huntly/Ohinewai area has required but not achieved for the last few decades. He considers this type and scale of development represents the type of economic stimulus the Huntly/Ohinewai area needs to improve the settlement's current economic position and reverse the area's recent trajectory of economic decline.<sup>51</sup> It seems to us that any additional employment opportunities for Huntly can only be a positive effect. Dr Fairgray agreed with Mr Heath that with the discount factory outlet removed from the APL Proposal, the development would not have significant adverse impacts on the retail and service roles of Huntly or Te Kauwhata.<sup>52</sup>

## 8.3 Residential

128. We heard from APL that the development will provide affordable housing for the employees of The Comfort Group and housing that is available for the open market. We are less persuaded that the housing will be predominantly for the employees of The Comfort Group. We accept that there will be some uptake by APL employees and other industrial personnel,

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<sup>49</sup> Summary statement, Phil Osborne on behalf of APL, 9 September 2020, paragraph 5

<sup>50</sup> Summary statement, Tim Heath on behalf of APL, 9 September 2020, paragraph 7

<sup>51</sup> Summary statement, Tim Heath on behalf of APL, 9 September 2020, paragraph 14

<sup>52</sup> Rebuttal evidence of Dr Doug Fairgray on behalf of Waikato District Council, 1 September 2020, section 5.3.1

the extent of which is difficult to quantify. Nevertheless, we accept that the Sleepyhead Factory will attract a significant number of additional households to the area that would not have otherwise located there, particularly as a result of the new employment opportunities. We have addressed the residential development specifically elsewhere in this decision and thus focus here on the economic impacts.

129. We accept that there has been very little demand for housing in Ohinewai/Huntly as stated by Dr Fairgray, however it seems to us that if there are very few employment opportunities, then as a consequence there will be little demand for new housing.
130. The Housing Development Capacity Assessment undertaken by Market Economics (2017) shows a short-term sufficiency shortfall in the Waikato District in dwellings priced below \$580,000 in the district – the market in which the residential product offered by the Sleepyhead Estate would likely be placed. Mr Heath considers that establishing homes at an average price point of around \$500,000 (albeit prices likely to range from low \$400,000s to mid \$500,000s depending on typology) enables the OSP to deliver sufficiently cheaper homes compared to Auckland, or the new homes in Te Kauwhata. We are aware of the concerns from Dr Fairgray and Mr Blaire Keenan on behalf of Waikato Regional Council about how housing affordability might be achieved. However, we are also aware that if housing is more affordable in Huntly then employees may choose to live there rather than Ohinewai – a point made by Dr Fairgray in expert conferencing.
131. Mr Keenan considered that given recent trends in the Waikato district housing market, it is plausible that a significant proportion of the housing to be developed at Ohinewai will be sold to those working off-site, including as far afield as Hamilton or Auckland.<sup>53</sup>

## 8.4 Findings on economics

132. We note that Mr Keenan and Dr Fairgray both consider that the full picture of the possible economic effects of the development at Ohinewai has not been provided. While this may be the case (and would likely always be the case at the zoning stage), we are satisfied that there will be significant benefits in GDP, employment, and other elements, even if there are differences of opinion between the experts on the magnitude of those benefits.

## 9 Cultural effects

133. The recognition, protection and provision for Māori cultural and spiritual matters is an important consideration, particularly as it is represented in Section 6(e) - The relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga, alongside sections 7(a) (kaitiakitanga) and 8 (principles of the Treaty of Waitangi) of the RMA.
134. Cultural issues were represented in a number of ways. Waikato-Tainui further submitted in opposition to the proposal. In a memorandum filed prior to the hearing, Waikato-Tainui clarified that as a result of engagement with mana whenua, it has narrowed its focus to the servicing of the site for both drinking water and wastewater.<sup>54</sup> Mr Donald stated that other issues raised by Waikato-Tainui in the further submission are being dealt with by local hapu/entities or the Tangata Whenua Governance Group. The memorandum stated

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<sup>53</sup> Summary Statement, Blaire Keenan on behalf of the Waikato Regional Council, paragraph 2.3

<sup>54</sup> Memo to the Hearings Panel, 1 September 2020, Gavin Donald on behalf of Waikato-Tainui

Waikato-Tainui will however continue to pursue a best-for-river approach but have yet to see how this can be achieved. The concerns of Waikato-Tainui can be summarised as:

- a. Stage 2 of the development and how the Huntly Wastewater Treatment Plant can accommodate the additional discharge within its water quality consent limits.
- b. Stage 3 of the development and how the Huntly Wastewater Treatment Plant or an as yet undefined wastewater treatment solution can accommodate the additional discharge, given the current resource consent at Huntly expires in 2029.
- c. The availability of water for the site. In particular, the status of third-party agreements and the reliance on them to adequately provide water for the site. And the projected 2,000 cubic litre per day shortfall that is projected, as a result of population growth in Ngaruawahia.

135. While we have addressed each of these concerns in the wastewater and water supply sections in more detail, we are mindful of Mr Donald's concerns about how the Vision and Strategy is given effect to. This also aligns with one of the main touchpoints of the Kaitiaki Environmental Values Assessment Report that was appended to Mr Gaze's evidence. The Kaitiaki Environmental Values Assessment Report states that the values and interests of Mana Whenua culminate around three fundamental factors:

- a. To uphold, recognise and provide for the Vision and Strategy for the Waikato River/Te Ture Whaimana o Te Awa o Waikato;
- b. That Mana Whenua (via the Tangata Whenua Working Party) continue to be active participants to enable the expression and exercise of Mana Whakahaere to protect and nurture the mauri of all living things and be active managers of the values and interests identified in the report (and any future reports); and
- c. Opportunities to advance Mana Whenua social, economic, environmental and cultural aspirations, such as papakaainga housing, employment and enterprise within the Sleepyhead Estate, and environment enhancement/restoration activities.

136. We note that mana whanua have told us they are encouraged by the opportunities that the Sleepyhead Estate development will bring to Ohinewai, and widely the Waikato region. We heard from Mr Glen Tupuhi, the Chairman of the Tangata Whenua Governance Group which was formed to formalise the relationship between mana whenua, The Comfort Group and APL. We acknowledge and support the collaborative way in which the parties are working to ensure that their environmental, cultural and spiritual values are appropriately identified, recognised and provided for and that the development is beneficial to all parties. We heard from Mr Tupuhi that the development offers huge opportunities for their people. He stated that the combination of jobs and housing in the Sleepyhead Estate development proposal is a major attraction for the Governance Group, including the opportunities for home ownership. Mr Tupuhi observed that the Governance Group and APL have been working through implementation of the recommendations in the Kaitiaki Environmental Values Assessment Report and have made good progress.

137. We also heard how cultural matters have influenced the design of the development. As an example, Mr Wadan (a stormwater engineer representing APL) explained how the stormwater management plan has incorporated a mātauranga Māori perspective that gives

effect to the Vision and Strategy. Protection and preservation of important sites, areas and/or resources to mana whenua, and environmental enhancement actions/activities pertaining to restoring mauri of taonga (land, water, lakes, sites of significance, and wetlands) are tangible ways in which the proposal has responded to cultural matters.

138. We note that except for the registered archaeological sites, mana whenua will not disclose the exact locations of sites of significance, but will work with APL in a manner that is consistent with the purpose, principles and objectives of the Memorandum of Understanding between the parties.
139. It is clear to us that engagement with Waahi Whaanui Trust with regards to matters related to Ohinewai growth and consultation through local iwi and hapu groups will be ongoing, and we consider this is a meaningful way to enable the exercising of Mana Whakahaere.
140. Notwithstanding the wastewater and water concerns expressed by Mr Donald on behalf of Waikato-Tainui, we are satisfied from the evidence presented that cultural effects do not preclude the rezoning, and that it is likely that there will be significant benefits to mana whenua in terms of employment and housing opportunities.

## **I0 Social Impacts**

### **I0.1 Employment**

141. Mr Robert Quigley on behalf of APL estimated the total number of staff to be approximately 2072, of which 300 were existing staff potentially moving south from the Auckland-based NZ Comfort Group factories, and an additional 1772 staff to be hired. Of the approximately 1772 staff to be hired, half are projected to be hired from within the Waikato district and 20% from within the local area, including Te Kauwhata and Huntly. Most of the balance are expected to be hired from outside the Waikato district, but this includes Hamilton city, the Waikato region and the rest of New Zealand. The social value of the jobs provided to individuals, their family and the community are positive. We are mindful of the evidence presented by Mr Heath, Mr Osborne and Dr Wheeler and the past trends and statistics for employment in this part of the district where there is little retention of employment opportunities. We note that it was agreed by all participants in the social impacts experts conference that the scale of estimated employment opportunities has the potential to generate positive social impacts at the individual, family and community level. We have no reason to disagree with this assessment.
142. The experts involved in conferencing all agreed that construction effects from the masterplan on local housing will be negligible, with respect to accommodation in the surrounding townships. Most construction workers are expected to travel from their existing homes to work at the site because of the central location of Ohinewai to Auckland and Hamilton, and the ease of access to the Expressway. For those construction workers who do need to live close to the site, there is potential for short-term accommodation on-site, and potential for short-term accommodation in Huntly.
143. The experts agreed that employment for local families and consequent improvements in their incomes would likely have positive effects on local businesses.

## 10.2 Education

144. The current school roll of Ohinewai School is 152 and we are in no doubt that the school roll will grow as a result of a significant level of residential and employment opportunities within the school's catchment. The level of that growth will very much depend on the age group and demographics of the residents and workers and whether they have school-aged children. Mr Quigley assessed this impact as moderate positive effect, but we consider this may be a little understated. In our understanding, an increasing school roll equates to additional funding from the Ministry of Education, additional classrooms, additional teaching staff, and an increasing diversity of education opportunities. All of these can have significant social impacts on the children and the school. There can be negative effects also, particularly if there is a delay in the Ministry of Education providing additional classrooms after the school roll has already increased. This will also be an issue for the nearby secondary schools. We understand from communication from the Ministry of Education that it is intending to accommodate students from the APL development through expansion of the existing schools.<sup>55</sup>
145. In terms of early childhood education, of the eight centres in Huntly and Te Kauwhata, only one had a full roll with no additional capacity to take additional children. Mr Quigley considers there are likely to be additional new opportunities for centres to establish as a result of the development.
146. Ms Melissa Hackell on behalf of Waikato Regional Council considered that all aspects of the school community such as parents had not been canvased, and therefore the shift in character from a small rural school had not been adequately assessed.<sup>56</sup> We are satisfied that this concern is of little import.

## 10.3 Community and local residents

147. The social impact assessment prepared for APL assessed the development as having a neutral to minor negative effect on Lumsden Road residents (western side of road), mainly due to change of their rural outlook to massed plantings (to the east only). For Lumsden Road residents (eastern side), the potential purchase of their properties is judged to lead to a minor negative social effect because the residents will need to resettle elsewhere but this is judged by the residents themselves to be offset by the financial compensation of purchase. If not purchased, the social effects are judged to be moderate negative for Lumsden Road residents (eastern side) because of changes in their immediate living environment. For Tahuna Road residents, due to the distance from the development, the social effect is assessed as neutral.
148. In the expert conferencing, both Ms Jo Healy on behalf of Waikato District Council and Ms Hackell considered that the social impacts on the rural community (larger rural Ohinewai community) needed to be assessed so that the overall social effects can be better understood. They considered the implementation of the masterplan will change the character of the area and impact the social and cultural values existing in the broader community and there was no evaluation of how strongly the community values that rural character. Mr Quigley considered that this matter had been adequately addressed in terms

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<sup>55</sup> Letter from Alison Harold, Ministry of Education, 16 October 2019

<sup>56</sup> Evidence in Chief of Melissa Hackell for the Waikato Regional Council, 13 August 2020, paragraph 7.4



of nearby residents up to 2km from the site and communication with Ohinewai Area Committee, marae, Ohinewai primary school and Ohinewai businesses. Having heard from Mr David Whyte on behalf of the Ohinewai Area Committee, as well as other further submitters who are local, we are satisfied that the impacts on the surrounding community have been adequately catalogued. We acknowledge Mr Whyte's comments about the potentially negative effects arising from culture shock of transitioning to a very different community.

## 10.4 Huntly

149. The social effects on Huntly were the subject of debate between experts. Ms Healy considered that there is the potential for direct competition with Huntly businesses – e.g. food services, cafes, retail – in particular that Ohinewai may become the new destination to the detriment of Huntly (which has already suffered due to the Huntly bypass). In addition, Ms Healy noted that due to the through-traffic and visibility from the Waikato Expressway, traffic may stop at Ohinewai in preference to Huntly. In response, Mr Quigley considered that the Huntly main street is not a significant destination for State Highway 1 people stopping for food, and instead the retail food shops on Huntly main street are predominantly supported by locals. We consider that both Ms Healy and Mr Quigley are likely to be correct, with the Huntly town centre likely to continue servicing its community and passing traffic more likely to go to Ohinewai due to the convenience of the on-off ramps and visibility from the Waikato Expressway. Given the bypassing of Huntly by the Waikato Expressway, there is already significantly reduced opportunity for passing traffic to stop at Huntly, an effect that was acknowledged by Ms Healy in the expert conferencing on social impacts.
150. However, we are aware of the potential employment opportunities that the development will afford to Huntly residents and the use of Huntly services by the residents of Ohinewai. Mr Whyte identified in his presentation the importance of working with Huntly to start developing connections.

## 10.5 Housing

151. Mr Quigley considers the development will likely have a neutral effect on the housing market in Huntly. While workers at Ohinewai may settle in Huntly, the proportion expected to do so is small. In contrast, Te Kauwhata has ample land zoned for residential growth and is viewed positively by people moving to the Waikato district. As such, the slower-growing-than-expected Te Kauwhata housing market is projected to be positively supported by Ohinewai workers who may not wish to live in Ohinewai. Effects on Ohinewai housing are projected to be positive for residents on the western side of the Expressway due to the reduced likelihood of industrial land use changes in what is desired to be a rural residential area.
152. Ms Hackell expressed concern that the portion of homes that will be offered under a rent-to-own scheme is unspecified, making it difficult to assess the extent to which they might be considered 'affordable' and hence the likely uptake.<sup>57</sup> We agree that the lack of certainty or mechanisms to ensure this occurs, does make the social impact of housing difficult to assess.

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<sup>57</sup> Evidence in Chief of Melissa Hackell for the Waikato Regional Council, 13 August 2020, paragraph 6.3

## 10.6 Areas of disagreement and findings

153. As explored in the expert conferencing, there were a number of areas where the experts disagreed, in particular Ms Healy and Ms Hackell considered that the social effects had not been fully canvased. These included poor integration of land use and transport resulting in car-centric development and a dormitory town, social impacts on countryside living and rural outlook of existing residents, uncertainty that affordable housing will be provided, and creating a community in a rural area without existing services and amenities. Ms Healy and Ms Hackell considered that further evaluation of other scenarios (compared to full implementation of the proposal) and what the plan change allows is required to fully understand the potential social costs and benefits of the proposed plan changes.<sup>58</sup>
154. Ms Hackell also expressed concern that new residential developments located in rural areas can be isolated and disconnected from the existing urban fabric. Without enhanced links to social infrastructure in Huntly and Te Kauwhata there is a risk that residents of Ohinewai could suffer social isolation as well as issues with the ease and cost of access to services. As a dormitory town, it is likely Ohinewai will depend on vehicles.
155. Having considered all the evidence, we are satisfied that there will be inevitable social benefits of the development (such as additional employment opportunities) but there are also risks such as Ohinewai becoming a dormitory settlement, albeit that those risks are likely to be at a low level. In particular, it seems to us that the most significant social effect is to the surrounding landowners and Ohinewai community who are currently living in a rural area, but that area will change substantially in character. We consider it is important to ensure the two parts of Ohinewai function as a cohesive settlement as much as possible. We are aware that the distance between Huntly's future urban limits and Ohinewai is 2.3km and Mr Olliver considers this to be sufficiently close to have many synergies and interactions with the township through schooling, shopping, recreation and social services.<sup>59</sup> He considers Ohinewai will not be a dormitory suburb (as is the concern of Ms Hacknell and Ms Healy) where large travel distances are required to access these services; the distance is less than for many suburbs in a medium-sized city such as Hamilton where some suburbs are 10km from the CBD. We consider this is a valid point.
156. We also acknowledge Ms Healy's desire to deliver social outcomes and protect early residents from delays in development or changes to the masterplan which result in the non-delivery of community infrastructure. We consider staging controls can ensure this is delivered.
157. We understand Ms Healy and Ms Hackell's concerns that the masterplan may not be delivered, or is only implemented in part. As with any development, neither we nor the Council can force a development to happen. The district plan can only set the parameters for that development and ensure that any development is in accordance with the structure plan, but there is no way for the district plan to make development happen.

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<sup>58</sup> Summary of evidence of Melissa Hackell for the Waikato Regional Council, 8 September 2020, paragraphs 4.1 and 4.2

<sup>59</sup> Evidence in Chief of John Olliver on behalf of APL, 9 July 2020, paragraph 7.64

158. While the full extent of the social impacts may not have been assessed by Mr Quigley, we are satisfied that the development will enable positive social impacts for both the present and future community.

## **11 Residential component**

159. The residential component of the rezoning sought by APL was one of the more contentious topics addressed in the technical documents, at expert conferencing and in evidence. APL has sought zoning of approximately 52ha of residential land which is intended to accommodate 900-1100 dwellings.

### **11.1 Need for residential growth**

160. APL's justification for the residential development is set out in Mr David Gaze's evidence. He stated that large manufacturers need a reliable, locally available work force. The ability to have staff living near their place of work has a massive impact on the efficiency of operations and provides consistency, community and lifestyle benefits for the staff. A key driver of the Sleepyhead Estate Masterplan is therefore to deliver residential development that is capable of achieving that objective, in a manner that enhances the opportunity for selected qualifying staff to achieve home ownership.<sup>60</sup>
161. It seems to us that the development of dwellings very much is linked to the industrial and business development; without those, there would be no need for the residential development. Dr Fairgray for Waikato District Council noted that housing growth patterns across the last two decades do not suggest significant underlying demand for the Ohinewai locality, however the development of additional employment opportunities are likely to change this level of demand. As will be canvassed in the upcoming Proposed District Plan hearing addressing re-zoning, there is capacity for other nearby towns to accommodate residential growth such as Huntly, Te Kauwhata and Ngaruawahia (in terms of greenfield as well as infill development). There was disagreement between the economic experts regarding the level of long-term shortfall in residential capacity. The APL Economic Assessment calculated a shortfall of 587 dwellings in Huntly, whereas Dr Fairgray considers there is sufficient residential capacity available or planned within the local area of Huntly and Te Kauwhata subject to infrastructure constraints being addressed, which could serve employees at the Sleepyhead Factory.
162. Mr Keenan pointed to the Housing and Business Development Capacity Assessment prepared by Future Proof, which indicates that there is sufficient residential capacity in the Waikato district in the short and medium term. He considered it indicates that, with additional anticipated capacity, there is ample capacity in the long term and a 'shortfall' does not appear to be a reason to support the proposed residential development at Ohinewai.<sup>61</sup> This contrasts somewhat with the Future Proof tables which indicate a shortfall of capacity of 300 households in Huntly between 2016 and 2025.<sup>62</sup>

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<sup>60</sup> Evidence in Chief of David Gaze on behalf of APL, 9 July 2020, paragraph 2.13

<sup>61</sup> Evidence in Chief of Blair Keenan on behalf of Waka Kotahi and Waikato Regional Council, 13 August 2020, paragraph 9.2

<sup>62</sup> Future Proof 2017, page 35

163. We are mindful of the requirements of the recently gazetted National Policy Statement for Urban Development which requires Waikato District to have a competitiveness margin for both housing and business land:
- a. 20% for the short term;
  - b. 20% for the medium term; and
  - c. 15% for the long term.
164. The APL Economic Assessment indicates that the Sleepyhead Factory will attract a significant number of additional households to the area that would not have otherwise located there. This is based on assumptions that 100% of the Sleepyhead workers will live in the Waikato region, with up to 70% living within the local catchment by 2031; and that no current workers reside within the region (apart from the few that are currently based in Auckland for work experience).<sup>63</sup> We consider it unlikely that all workers will wish to live in Ohinewai and there are a variety of reasons why they may wish to live elsewhere, such as proximity to family, lifestyle choices, income in relation to purchase price of a property. In any event, we acknowledge that the APL Proposal would contribute to additional demand for housing within the district; a matter that was agreed by the economic experts.

## 11.2 Effects on Huntly

165. The effects of residential development at Ohinewai on Huntly were explored in the expert conferencing for economics. Dr Fairgray considered that a major attraction of the residential development is housing that is affordable, as well as the proximity to work. We are aware that the housing stock will be different from Huntly which is older and more modest. Mr Heath considered that many of the older/lower-priced homes in Huntly need a major upgrade/investment, so housing product in Ohinewai will be attractive. Dr Derek Kemp for the Council observed that convenience for work only applies to the single person in the household, not necessarily others in the household. This seems reasonable to us.
166. Mr Tremaine for Future Proof Implementation Committee considered that the residential development proposed for Ohinewai is likely to compete with the regeneration of Huntly<sup>64</sup>. The regeneration of Huntly has been signalled in the Future Proof Strategy, Waikato 2070 and the Hamilton to Auckland Corridor Statement of Shared Spatial Intent. While we understand the desire to encourage Huntly to redevelop, we are mindful of the aging housing stock combined with the constraints to development such as risk of flooding through proximity to the Waikato River as well as mine subsidence. This was noted by Mr Whyte who considered that there is insufficient space in Huntly for the number of homes proposed due to steep hills, lakes, swampy ground, mine tailings, river and rail corridors, heritage sites, and a lack of industrial and commercial options for expansion. In other words, it would not be viable to accommodate the residential component of the APL Proposal in Huntly due to a number of factors. We agree.

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<sup>63</sup> Property Economics, Ohinewai Structure Plan Assessment of Economic Effects, section 10.2, page 50.

<sup>64</sup> Evidence in Chief of Ken Tremaine on behalf of Future Proof Implementation Committee, 13 August 2020, paragraph 7.5

### 11.3 Typology and affordability

167. The issue of house affordability was raised in a number of the expert conferencing sessions including economics, social effects and planning. We understand that The Comfort Group has an objective of assisting a portion of its employees into home ownership. It sees this as both a social and business objective as it is good business to encourage a stable and loyal workforce to live in good quality housing near the factory, with the security of property ownership.<sup>65</sup> Not surprisingly this concept has been factored into the economics and social assessments. We are also aware of the differing views on what constitutes affordable. As noted by Mr Olliver, using Huntly median values of residential properties as a benchmark is somewhat unrealistic as the existing housing stock is generally of low value and there are very few new builds. He quotes the median house value for Huntly as being \$380,700 (as at March 2020). However compared with Auckland or Hamilton house prices, this would be a financially attractive option.
168. The Comfort Group considers that it will be able to build medium-density units for around \$500,000 and be able to offer them to employees on attractive terms. Mr Gaze explained that The Comfort Group is investigating means of its employees achieving home ownership; thus far, the most likely vehicle is a shared equity/ownership scenario. Shared equity structures are intended to bridge the gap between the market price of an entry-level home and the price which the home buyer can afford, with additional 'bridging' equity provided by a third-party Shared Equity Provider.<sup>66</sup>
169. Mr Gaze considered there is further opportunity to reduce the cost of construction through economies of scale, given the number of homes to be built at the site.
170. While all these factors might sound attractive in theory, we are well aware that there is no way for a district plan to control the ownership of land, nor dictate the selling price of any subsequent property. This is a matter acknowledged by Mr Olliver<sup>67</sup>; it is impractical to devise a set of 'affordability' provisions that are workable and effective, and we have yet to come across a district plan that achieves this successfully. The district plan cannot control the market and if a locality becomes desirable to live in, then the market forces will escalate the value of those properties. Similarly, if a place is less desirable (and this can be due to a range of factors such as a lack of employment opportunities), the price range will decrease. As stated by Mr Quigley, the term "affordable" is difficult to define as what is affordable for one person in one market, may not be for another person.
171. We note that the Ohinewai Area Committee in its representation did not support high-density housing, but did support mixed development, including commercial and residential.
172. We agree with Mr Olliver that the only mechanism that the district plan will assist in enabling a more affordable product is housing densities such as smaller lots, and alternative typologies like medium density.

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<sup>65</sup> Evidence in Chief of John Olliver on behalf of APL, 9 July 2020, paragraph 11.3

<sup>66</sup> Evidence in Chief of David Gaze on behalf of APL, 9 July 2020, paragraph 2.14

<sup>67</sup> Evidence in Chief of John Olliver on behalf of APL, 9 July 2020, paragraph 11.7

## 11.4 Strategic policy

173. The recommendation of Ms Trenouth in the s42A report is that the industrial development be accepted; but not the residential development. The reasons she provides for recommending the rejection of the residential component is that there is insufficient planning justification for establishing a new Residential Zone at Ohinewai. The s42A report considers the APL Proposal creates a new urban area that is not adjacent to an existing urban area or integrated with the existing Ohinewai village and is therefore inconsistent with the principles of Future Proof and the Built Environment policies of the RPS. The policy direction for growth in the RPS and Future Proof is to consolidate growth in existing urban areas or identify new growth adjacent to existing urban areas.
174. The s42A report acknowledges that an alternative land release of residential land is provided for where specified criteria are met, but considers these criteria will not be met because the new growth area is not adjacent to an existing urban area and will not meet the Future Proof principles and the section 6A Development Principles in the RPS. This opinion is shared by Mr Mayhew as well as the experts representing Waka Kotahi and Waikato Regional Council.
175. While we have addressed the planning framework in some detail later in this decision, suffice to say at this point in our decision that we consider the residential component gives effect to the RPS and the NPS-UD. The RPS became operative in May 2016, and the NPS-UD was more recently approved by the Governor-General under section 52(2) of the RMA on 20 July 2020. The RPS is required to give effect to the NPS-UD (as is the Waikato District Plan), but the RPS has not yet been updated to give effect to the NPS-UD.
176. As we conclude later in our decision, the NPS-UD goes further than the RPS in terms of providing for unplanned development, and to that extent the RPS does not yet fully give effect to the NPS-UD. We have undertaken an analysis of the entire APL development (including the residential component) against the strategic planning framework in Part 4 of this decision.
177. We are mindful also of our requirement by s74(2)(b)(i) of the RMA to “have regard” to management plans and strategies prepared under other Acts. Waikato 2070 fits into this category as it was prepared using the Special Consultative Procedure under section 83 of the Local Government Act 2002. Waikato 2070 includes the urban development of Ohinewai in section 04.7 and the Ohinewai Development Plan. It includes the APL development in the form of the ‘Ohinewai South Industrial Cluster’ and a residential growth cell. Both have a development timeframe of 1-10 years. The residential component is clearly consistent with this document.

## 11.5 Findings on residential component

178. Having considered all the evidence before us, we agree with Mr Berry that if only the industrial component of the development is to be enabled, employees at the site will have no choice but to travel from elsewhere to work.<sup>68</sup> It seems to us that this scenario would exacerbate the concerns of Waka Kotahi that the Waikato Expressway would be used for commuter traffic given that employees would have no choice but to commute to work using

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<sup>68</sup> Closing legal submissions for Counsel for APL, 23 September 2020, paragraph 8.7

the Waikato Expressway unless they lived east or west of the site (and given that there are few housing opportunities in either direction). We are in no doubt (as was agreed by the economic experts) that the APL Proposal would contribute to additional demand for housing within the district. It seems logical to us that commuter trips should be reduced and locating residential adjacent to the business and industrial area seems an efficient way to provide opportunities to live, work and play. Not providing for residential would significantly limit housing options for employees.

179. It is worthwhile noting the Assessment of Environment Effects for OLL considered that growth based on employment land without a supporting residential component will prevent the creation of a stronger local community at Ohinewai and lead to increased travel demand. We agree.
180. We are mindful of the potential for reverse sensitivity effects to arise with residential located close to business and industrial land uses, but consider these can be effectively managed through careful layout of the development, as contemplated by the Structure Plan, as well as other district plan provisions.
181. On balance, we are persuaded that the residential development will deliver on the affordable housing outcomes promoted by APL but are aware that the district plan is limited in its ability to deliver this outcome, other than ensuring a range of housing product including medium-density residential development.

## 12 Acoustic effects

182. In our consideration of the acoustic effects of the development, we were mindful of Marshall Day's assessment of the existing ambient environment of the site, particularly the noise generated from the Waikato Expressway and the rail line. The ambient and background noise levels are very high in the proposed Village Zone to the west of the APL site. The level of ambient noise during the daytime averages 68dB  $L_{Aeq}$  which is 18 decibels higher than the district plan daytime noise limit of 50dB  $L_{Aeq}$ . The daytime background noise level is also high, with an average measured level of 53dB  $L_{A90}$ . Attended measurements confirmed high background noise levels at the proposed Village Zone of 55-56dB  $L_{A90}$ . The background noise level can be thought of as a measure of the 'quietest period' in any measurement. The same is true during the night period with the existing night-time ambient noise levels average 67dB  $L_{Aeq}$  and the existing background noise levels average 43dB  $L_{A90}$ .
183. We note Marshall Day's comment that the existing traffic noise level is around "four times louder" than would be permitted to be generated from activity on the APL site.<sup>69</sup>
184. The issue of acoustic effects focused on three main areas: increased noise generation from industrial and business uses, construction noise and sensitivity to noise from existing uses, including Waikato Expressway, North Island Main Trunk rail and game bird shooting, etc.
185. The assessment of the noise generated by future activities on the site has used the noise limits for the relevant zones as prescribed in the Proposed District Plan. Marshall Day confirms that the Sleepyhead Factory would readily comply in terms of daytime by 8-10 decibels when measured from the Village Zone. While the night-time emissions from the factory would also comply with the noise standards in the Proposed District Plan, this would

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<sup>69</sup> Ohinewai Structure Plan Proposed Re-Zoning Acoustic Assessment, Marshall Day Acoustics, November 2019, Section 4.3

only just be achieved at the closest Village Zone property.<sup>70</sup> Similar conclusions were made about the cumulative noise arising from other industrial activities. Marshall Day did consider that in the theoretical worst-case situation where industrial activities (including Sleepyhead) are proposed to operate on the western side of the site during the night period, a breach of the Operative District Plan night-time rule at the Village Zone is likely. Evidence from Mr Ben Lawrence on behalf of APL considered that conventional measures such as noise barriers, building envelope design and scheduling of operations would in most cases be enough to achieve compliance. However, it is possible that some constraints on night-time industrial activity at the interface may also be required.<sup>71</sup> Mr Lawrence recommended limits for the adjacent Industrial sites to ensure noise received at the existing dwellings is controlled to an appropriate level. These limits are the same as the PDP rule for noise emissions from Business Zones received at Residential/Village Zones.

186. In terms of the Business Zone, the main noise sources are likely to be passenger cars, occasional truck deliveries and standard mechanical plant and are unlikely to generate significant noise. The Business Zone is also well separated from the Village Zone and any nearby Rural dwellings. Marshall Day considered compliance with the proposed daytime and night-time district plan noise rules should be readily achieved.
187. The proposed Residential Zone is well removed from the Village Zone, and while this zone is likely to change the character of the ambient environment from rural in nature to one where residential noise is audible at times, Marshall Day considered the residential use of the proposed site can readily comply with the Proposed District Plan limits.
188. It is inevitable that a change in land use from rural to urban uses will result in a changed noise environment; both in terms of noise generated, as well as increased sensitivity to noise (particularly by residential land uses). We are largely satisfied with the assessment undertaken by Marshall Day Acoustics<sup>72</sup> that the implementation of appropriate noise rules would be suitable to ensure any noise effects both generated by land uses as well as received at sensitive zones will manage any adverse noise effects.
189. We have read the further submissions from nearby landowners and the Ohinewai Area Committee that raise concerns about the generation of noise as a result of the rezoning. We note that noise generated from the site would still need to comply with the Village Zone noise limits when measured at the boundary of the Village Zone. However, we agree that the operational noise from the industrial sites will result in a change of character and amenity from that which currently exists. Additionally, there is likely to be an increase in heavy vehicle movements. We are also aware that this area already has relatively high ambient noise levels generated by the Waikato Expressway as well as the rail network. So while we consider that the noise generated by the development can be managed to comply with the relevant noise standards for the various zones, we accept that the type of noise generated will be different, i.e. industrial. We note Mr Lawrence's recommendation that

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<sup>70</sup> Ohinewai Structure Plan Proposed Re-Zoning Acoustic Assessment, Marshall Day Acoustics, November 2019, Section 5.2.1

<sup>71</sup> Evidence in Chief of Ben Lawrence on behalf of APL, 9 July 2020, paragraph 2.11

<sup>72</sup> Ohinewai Structure Plan Proposed Re-Zoning Acoustic Assessment, Marshall Day Acoustics November 2019



appropriate noise limits should be set for these sites with dwellings to ensure noise from the adjacent industrial sites is controlled to a reasonable level and we agree with this approach.<sup>73</sup>

190. Turning to construction noise, we are mindful that construction noise is inevitable. In addition, the dynamic compaction required to geotechnically stabilise the site and enable building platforms may result in significant noise and vibration for surrounding sites. Mr Lawrence calculated that daytime works would readily comply with the district plan construction standards and would not result in unreasonable noise and vibration effects on amenity.
191. However, we consider this matter should be carefully considered through a construction noise and vibration management plan and appropriate controls put in place accompanying any resource consent applications for bulk earthworks. Mr Lawrence helpfully provided examples of mitigation and management measures included in construction noise and vibration management plans<sup>74</sup>:
- a. prioritising low noise and vibration methodologies near to sensitive receivers. An example is using cut and fill instead of dynamic compaction.
  - b. scheduling works to take place when buildings are unoccupied.
  - c. installing noise barriers where appropriate and effective.
  - d. communication to inform affected receivers prior to high noise and vibration works, as well as addressing construction related complaints.
192. We agree that gun noise from existing gamebird shooting in the Lake Rotokawau reserve is a potential reverse sensitivity issue as raised by Fish and Game. Mr David Klee on behalf of The Auckland/Waikato Fish and Game Council confirmed at the hearing that the inclusion of a no-complaints covenant on the residential area, and an acceptable level of amenity for residents with a façade control for dwellings facing Lake Rotokawau Reserve adequately resolves this issue and we agree.<sup>75</sup>

### **13 Ecological effects**

193. The ecological effects of the rezoning and subsequent development focused on the following areas:
- a. terrestrial habitats
  - b. aquatic ecology of the drainage channels and wetlands
  - c. At Risk and Threatened native fauna species (e.g. black mudfish and bats)
194. We address each of these in turn. As described by Mr Chad Croft on behalf of APL, the site is a highly modified agricultural landscape with no remnant indigenous vegetation and is used for grazing.<sup>76</sup> We are aware of two significant natural areas with one along the eastern extent of the APL site, which is an extension of the significant natural area surrounding Lake

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<sup>73</sup> Evidence in Chief of Ben Lawrence on behalf of APL, 9 July 2020, paragraph 13.2

<sup>74</sup> Evidence in Chief of Ben Lawrence on behalf of APL, 9 July 2020, paragraph 11.3

<sup>75</sup> Evidence in Chief of David Klee on behalf of The Auckland/Waikato Fish and Game Council, 13 August 2020, paragraph 4.1

<sup>76</sup> Evidence in Chief of Chad Croft on behalf of APL, 9 July 2020, paragraph 3.5

Rotokawau. The second significant natural area is over a kilometre to the south of the APL site surrounding Lake Ohinewai.

195. We note from the surveys undertaken that the ecological value of the APL land for avifauna was low mainly due to the lack of tree habitats. Although skinks were present, the overall ecological value for herpetofauna was low.
196. In terms of the aquatic environment, we are aware that Lake Ohinewai and the site are connected to the greater Whangamarino Wetland complex via a managed artificial drainage canal and both Lake Rotokawau and Lake Waikare. Of significance, Whangamarino Wetland has been a Ramsar Site since 1989 and is a wetland of international importance.
197. Through the expert conferencing and evidence, it was acknowledged by all parties that the Lake Rotokawau reserve located directly adjacent to the proposed development is an ecologically significant site that contains several threatened and critically endangered species. In this respect, Mr Klee considered that the application and assessment of effects concentrated too heavily on the direct footprint of the proposed development and failed to adequately consider the potential effects on adjacent high-value and ecologically sensitive wetland sites. He considered that potential environmental effects caused by the rezoning can radiate some distance from the site itself.<sup>77</sup> The experts all agreed that development can lead to a proliferation of pets, namely dogs and cats, which pose risks to some of the species that inhabit the Lake Rotokawau reserve. All parties agreed that control of these animals is warranted. There was some disagreement as to the most effective mechanism for controlling cats and dogs. While this is a potential effect we have to turn our mind to, it seems that there are effective means to limit the adverse effect such as covenants and fencing.
198. In terms of the aquatic environment, there are two large drainage channels mapped within the APL site forming part of the Franklin-Waikato Drainage Scheme (Waikare drainage area, West subdivision); comprising the Balemi Road drain which discharges into Lake Waikare, and the other is the Tahuna Road drain which drains into Lake Rotokawau. A network of channels criss-cross the APL site, and we note that there was disagreement in the expert conferencing on ecology as to whether these were artificial drains or otherwise.
199. We heard from Mr Croft that the poor-quality habitat within the drainage channel network suggests it is unlikely that anything other than highly tolerant species (e.g., shortfin eels, black mudfish and gambusia) would persist in these channels.
200. Black mudfish gained considerable attention through the hearing. We note that black mudfish have been recorded in the vicinity of the APL site (within 2km) and are known to occur in marginal habitats, including habitats that dry out periodically.<sup>78</sup> This species was of particular concern to Dr Thomas Wilding for Waikato Regional Council. He explained that black mudfish are classified as 'at risk-declining' in the Department of Conservation's freshwater fish threat classification list. The significance of this is that the presence of this species would classify the waterways as a significant habitat of indigenous fauna in accordance with the criteria in IIA of the Waikato Regional Policy Statement. It seems that

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<sup>77</sup> Evidence in Chief of David Klee in behalf of Fish and Game, 13 August 2020, paragraph 5.1

<sup>78</sup> Evidence in Chief of Chad Croft on behalf of APL, 9 July 2020, paragraph 5.10

translocations of mudfish are generally unsuccessful, although this was challenged by Mr Croft. Dr Wilding considered that there are two choices available:

- a. avoid loss of habitat through habitat protection, or
- b. accept the risk of failure of translocation if mudfish are encountered at the site during development.

201. APL propose a rule for earthworks requiring an Ecological Rehabilitation and Management Plan, that in certain circumstances requires a Fish Management Plan to be prepared. Dr Wilding was pessimistic as to the level of mitigation afforded by a Fish Management Plan, should the presence of mudfish be confirmed during development of the site. He pointed out that where mitigation is unsuccessful, the proposed Waikato District Plan provides criteria for offsetting effects and requires provisions to address the risk of failure.<sup>79</sup> In any event, he considered that a rule requiring an Ecological Rehabilitation and Management Plan should be applicable for all earthworks that require resource consent, not just those in a watercourse due to the uncertainty of whether artificial drains constitute a watercourse. We address this issue in more detail in Part III of our decision. He considered that avoiding effects on all potential habitat is unlikely to be achieved, but that there may be an opportunity to configure the restoration options shown on the site Masterplan to enable some habitat retention/protection.
202. We are aware of the presence of long-tailed bats in the Waikato and that these were an issue for the planning and construction of the Huntly Bypass undertaken by Waka Kotahi. We note that monitoring of the site between February 26th and March 14th, 2020 led to four bats being detected.<sup>80</sup> On this basis, Mr Croft concludes that the overall ecological value for chiropteroфаuna was moderate. There was little discussion through the hearing as to the management of effects on bats, however the AEE identifies that this risk is best addressed through the development and implementation of a Bat Management Plan.
203. Mr Croft succinctly summarised the potential adverse effects on ecology as follows:
  - a. the loss of moderate-value habitat for indigenous lizards and long-tailed bats;
  - b. the loss of low-value exotic vegetation communities and an increase in impermeable surface cover across the site;
  - c. the loss of moderate-value aquatic habitat for indigenous fish species;
  - d. potential injury/death of native fauna, particularly native birds, lizards and bats inhabiting the exotic vegetation on-site and native fish species within the drains and downstream;
  - e. sedimentation of aquatic ecosystems if earthworks activities are not effectively managed;
  - f. introduction of contaminants to the adjacent environment if stormwater runoff is not effectively managed;
  - g. increased noise and lighting during construction and operational phases; and

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<sup>79</sup> Evidence in Chief of Thomas Wilding on behalf of WRC, 13 August 2020, paragraphs 9.1 and 9.2

<sup>80</sup> Evidence in Chief of Chad Croft on behalf of APL, 9 July 2020, paragraphs 5.23-5.25

- h. introduction of pets and exotic garden species associated with residential development which may impact on adjacent indigenous fauna around Lake Rotokawau.
204. However it seems to us that these adverse effects need to be balanced by positive effects such as:
- a. likely significant reduction in nutrient contamination from retirement from farming;
  - b. probable reduction in nutrient loading of Lake Rotokawau, Lake Waikare and ultimately the Whangamarino wetland;
  - c. restoration of the wetlands; and
  - d. creation of an ecological buffer adjacent to the significant natural area surrounding Lake Rotokawau.
205. Having heard the evidence, we are satisfied that although the risk of actual significant adverse ecological effects is low, there are ways to avoid and mitigate those possible effects at the time of future development. We are also satisfied that ecological management measures will decrease the risk of adverse impacts on any high-value species that may be present, and an ecological restoration management plan developed at the time of subdivision can effectively detail measures to minimise adverse effects on ecology.

## **I4 Coal mining**

206. We heard from Ralph Estates who opposed any rezoning on the basis of the mineral titles it holds under and adjacent to some of the land that is the subject to the rezoning requests. The main reason for its opposition is that its mineral interests would be effectively sterilised if the properties were rezoned to provide for urban uses.
207. The Ohinewai Opencast Sector contains a resource of between 17 and 22 million tonnes of coal, and approximately 75% of this coal is owned by the Ralph Estates. Mr Gary Gray on behalf of Ralph Estates estimated that the market value of the sterilised Ralph Estates coal ranges from \$4.1 to \$7 million<sup>81</sup>. We heard from Mr Dean Fergusson (an expert in the field of coal mining and large civil earthworks) on behalf of Ralph Estates who opined that an opencast mine at Ohinewai is technically feasible. His opinion is that it would be economic at the mine scale and anticipated production level previously proposed by Solid Energy, even when capital requirements are considered.
208. We are mindful of s85 of the RMA and the requirements for “reasonable use” which are defined in s85(6) as:
- “reasonable use, in relation to land, includes the use or potential use of the land for any activity whose actual or potential effects on any aspect of the environment or on any person (other than the applicant) would not be significant”
209. We appreciate that resource consents would be required to realise these rights, and consider that mineral extraction would have significant actual or potential effects on any aspect of the environment or on any person. It is therefore unlikely that s85 will apply in this case.

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<sup>81</sup> Evidence in Chief of Gary Gray on behalf of the Ralph Estates, 13 August 2020, paragraph 76

210. Evidence from Mr Lines on behalf of APL questions the future demand for coal, the economic viability, technical feasibility including dewatering and the extent of the proposed buffer zone and the overstating of sterilised coal. We are mindful that even though Ralph Estates has held mining interests over the land since the 19th century, there has been no attempt to exercise those rights. Mr Lines set out a summary of the potential effects<sup>82</sup>:
- a. the open cast excavation would need to be large, necessitating the removal of Lake Rotokawau and possibly Lake Ohinewai.
  - b. early stage overburden removal is expected to require a similar footprint to the final footprint of any opencast mine developed at Ohinewai.
  - c. widespread drawdown of groundwater is to be expected in the compressible Tauranga Group soils, resulting in associated widespread ground surface settlement beyond the pit walls. This has the potential to affect SH1 and the North Island Main Trunk rail line.
  - d. there is the potential for hydraulic connection into the pit from Lake Waikare or the Waikato River through the higher permeability sand-rich Karapiro Formation. Depending on the eventual position of the pit walls, effects could range between the slow dewatering of Lake Waikare, through to the risk of internal erosion (piping) style failure of the pit walls and flooding of the pit from either water source.
  - e. potential instability of the pit walls due to uncertainty in material characteristics and hydrogeology, an event that has historically occurred in nearby opencast mines.
  - f. a shortfall of overburden to backfill the site is expected, due to out-of-pit placement in early mine development. A lake is likely to fill the void over time.
211. As noted by Mr Berry in his closing statement, the recently gazetted National Environmental Standards for Freshwater make earthworks within a natural wetland a prohibited activity. Thus we are left questioning the consentability of such a proposal. We are not satisfied that the Ralph Estates mineral interests are a reason not to rezone.

## 15 Urban Design

212. We understand that the design and layout of the APL site comprises of a nesting of plans; the structure plan has been informed by the Masterplan and provides a framework for the development of the wider site, outlining the location of activities, the indicative road network and the general location of the green spaces that will provide for recreation and the management of stormwater. The Zoning Plan outlines the proposed land use zoning that will apply to the site. The Urban Design assessment undertaken by Mr Jonathon Broekhuysen on behalf of APL outlined the design features which include:
- a. a mix of land uses to help create a mixed-use resilient community. The area to the west is primarily about job creation while the area to the east is primarily homes and about living and community, and each is separated by a central open space area to buffer the effects of the commercial land uses on the residential areas and to provide amenities for the residents;

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<sup>82</sup> Evidence in Chief of Cameron Lines on behalf of APL, 9 July 2020, paragraph 7.25

- b. a large tract of open space is proposed on the eastern side to connect to the existing DOC reserve and create a significant nature area for residents;
  - c. a mixture of lower density freestanding and higher density attached housing product for choice and varying levels of affordability;
  - d. generally, the larger lots are located around the periphery of the site and the higher density lots are located internally focused around areas of higher amenity;
  - e. a multi-modal movement network with walking and cycling networks following the street network as well as throughout the open space network for recreation;
  - f. heavy vehicles using the industrial area have been split off from the residential areas to avoid reverse sensitivity effects; and
  - g. over 55ha of multipurpose public open space ranging from larger regional type parks to urban plazas.
213. A number of matters were agreed upon as a result of expert conferencing between Mr Broekhuysen and Mr Matthew Jones (on behalf of Waikato District Council):
- a. Ohinewai can urbanise because it is an existing village.
  - b. the Masterplan street network provides a strong grid and responds well to topography.
  - c. the alignment and mechanism of delivering the shared path connection to the existing Ohinewai settlement is appropriate.
  - d. that site-specific design guidelines may not be required if all the relevant elements are pulled through into assessment criteria.
214. Mr Jones had the following areas of disagreement:
- a. the further urbanisation of Ohinewai is unjustified based on the existing patterns of development along SH1;
  - b. the proposal does not integrate with the existing Ohinewai settlement in relation to development patterns and connectivity;
  - c. the number of vehicle connections/intersections onto Tahuna Road is inappropriate;
  - d. the revised location of the neighbourhood centre is inappropriate;
  - e. the density shown in the illustrative Masterplan is inappropriate;
  - f. the proposal does not allow for any future development of the Ohinewai Lands Limited (OLL) land if it eventuates.
215. Some of these matters cannot be addressed through revised design of the layout, such as the location of the APL development which is disconnected from the existing Ohinewai settlement by the Waikato Expressway. As discussed by Mr Broekhuysen, there are ways to ensure connection between the two parts of Ohinewai, such as the road and a grade-separated pedestrian bridge across SH1. This is not the only town in the country, or even the district, to be split by a major road e.g. Huntly, Ngaruawahia, Matamata, Cambridge, etc.

The business area has been placed on the south-west corner of the site which is closest and most accessible to the existing Ohinewai settlement.<sup>83</sup> We consider also that if there is to be residential development, then it should be at densities that efficiently use the land. We understand from Mr Broekhuysen that there is a net density of 33 dwellings per hectare but the gross density is approximately 11 dwellings per hectare due to the high level of open space. This density does not seem unreasonable, particularly given the surrounding rural area.

216. Overall, we are satisfied that the urban design appropriately responds to the physical constraints and opportunities of the site, as well as the rural surroundings.

## 16 Landscape and visual effects

217. In terms of assessing the landscape and visual effects, Mr Michael Graham on behalf of APL has concentrated on the effects of the masterplan and the outcome of the zones being sought, rather than the zones per se (although both are obviously linked). We understand from the analysis undertaken that views of the proposed rezoning area are largely limited to within 1.5km of the site from a north-westerly orientation. The site can also be viewed from close proximity on SH1, North Island Main Trunk rail line and adjacent Lumsden Rd and northern sections of Tahuna Rd. Mr Graham acknowledged that while the development will have an effect on the surrounding rural character; the degree to which this occurs will be based on proximity, elevation and the efficacy of mitigation planting. He considers that while the development will be of a scale and intensity that is not present within the immediate locale, it is consistent with other towns within the wider district and will be seen as an extension of the existing development around Ohinewai.<sup>84</sup>
218. Mr Graham considered there would be no adverse effects on nearby Outstanding Natural Features (being Lake Waikare and the Waikato River). The Waikato River ONF is considered sufficiently distant from the site and screened by intervening undulating topography as not to be affected. A small portion of the site encroaches on peripheral planting of Lake Rotokawau (which forms part of the Lake Waikare ONF). The Ohinewai Structure Plan identifies this area as Open Space Network. It is anticipated that this part of the site will be enhanced with restoration planting. Mr Graham concluded that adverse effects on visual amenity values as a result of the likely development of the site were high from close proximity locations, diminishing to negligible once beyond 1 km from the site.<sup>85</sup> Mr Jones for the Council disagreed that the proposed development will be seen as an extension of the existing development around Ohinewai, and that the proposed residential buildings will be of a scale and size “which are congruent with the surrounding residential housing grain”. We agree with Mr Jones, as the housing pattern and densities proposed as part of the APL development do not match either the existing country living development on the eastern side of the Waikato Expressway, or the existing residential development on the eastern side.
219. The question for us to consider therefore is not whether there will be a change in the landscape values, but rather whether this change is acceptable given the mitigation/minimisation treatments. Mr Graham recommends mitigation measures that

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<sup>83</sup> Evidence in Chief of Jonathan Broekhuysen, 9 July 2020, paragraph 9.8

<sup>84</sup> Landscape and Visual Assessment Report, Michael Graham, December 2019, Page 15

<sup>85</sup> Evidence in Chief of Michael Graham on behalf of APL, 9 July 2020, paragraph 2.3

include building height and setback, recession planes, visual mitigation planting, amenity planting and a landscape buffer. In his review of the landscape assessment and mitigation treatments, Mr Jones generally concurred, however recommended the following amendments:

- a. the 3m width of landscape planting along the Business Zoned boundary should be a minimum 5m wide and include species that are capable of substantially screening development, and
  - b. the 15m wide setback area along Tahuna Road adjacent to the Residential Zoned land should include a minimum of a 5m landscape planting buffer.
220. Mr Jones considered these measures will provide mitigation screening of the proposed development, reducing the effect of buildings on the existing visual amenity values of the surrounding area.<sup>86</sup> We address this matter in Section 3 of this report where we consider the proposed provisions.
221. We are mindful of Mr Graham's comments that while the establishment of the mitigation within the landscape buffer will substantially reduce the effects of the proposal on visual amenity from most surrounding locations, the effects on the adjacent residential properties may be higher. He considers the effects on these properties should be considered within the detailed mitigation design through the resource consent process and we agree.
222. Whilst we agree with Mr Jones that the development is clearly separate to the existing Ohinewai development on the western side of the Waikato Expressway, we consider that there are ways to effectively connect the development. As we have outlined in the above section on urban design, it is not unusual for a town to have two parts to it, separated by a significant transport corridor. The question is therefore whether these can be effectively connected and function as a whole. In considering the landscape and visual effects, we have been particularly mindful of the existing outstanding natural landscapes (being Lake Waikare and the Waikato River) and the potential effects on them. We accept Mr Graham's assessment that there are no adverse effects identified on those outstanding natural features. Thus, overall, we are satisfied that the landscape and visual effects are not sufficiently adverse or significant to reject the rezoning requested.

## 17 Other infrastructure

223. The evidence of Mr David Gaze on behalf of APL attached a number of communications from infrastructure providers.
224. The Order of St John provided comment on the future ambulance needs for Ohinewai. Ohinewai sits equal distance from the existing ambulance stations in Huntly (9.7km) and Te Kauwhata (12.4km). These two close ambulance stations form part of a wider network of ambulance stations throughout the North Waikato. It advised that even with the new medium-term growth in the population at Ohinewai, the existing ambulance stations will be adequate to respond to the emergency medical needs of the new community at Ohinewai

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<sup>86</sup> Landscape, Visual and Urban Design Assessment Peer Review, Matthew Jones, 31 August 2020, paragraph 2.16



and St John does not need land set aside to build a new ambulance station at Ohinewai in the foreseeable future.<sup>87</sup>

225. WEL Networks<sup>88</sup> confirmed that WEL will be able to make the required staged-capacity available within the timeframes once suitable network upgrades have been implemented. WEL require commercial agreements in place in advance of when the electricity is required for the Sleepyhead Factory, and easement agreements for WEL equipment on private land. WEL is keen to explore opportunities for renewable energy opportunities, and we would support such initiatives.
226. Firstgas<sup>89</sup> confirmed that the gas supply needed (in volume and pressure) could be delivered to Sleepyhead from a connection in its existing Huntly network. When additional demand exceeds this supply, this could be supplied via a second stage of construction to reinforce the Ohinewai network directly from the Huntly delivery point. If Firstgas constructs the network along with water/wastewater etc, this would provide significant savings to the project and reduce its breakeven cost.
227. Ultrafast Fibre Limited<sup>90</sup> confirmed that an ultrafast fibre telecommunications to Ohinewai is achievable, provided a commercial agreement is reached between the developer and Ultrafast Fibre. Ultrafast Fibre will undertake to become the telecommunications operator of the telecommunications reticulation in the proposed public roads for APL to provide network connections to all lots in the subdivision.
228. From these communications we are satisfied that the APL development can be adequately and appropriately serviced.

## **18 Cumulative and precedent effects**

229. In our assessment of this zoning proposal, we are obliged to consider cumulatively the effects of the zone change proposal if granted in combination with the effects from existing activities in the area and those effects from reasonably foreseeable activities that could occur in that area.
230. For completeness in terms of our assessment, we do not consider the other rezoning proposals at or around Ohinewai that are to be considered at a later hearing would (if granted) have any material effect on the level of cumulative effects to be considered in relation to the APL zoning proposal. OLL is seeking recognition of its site for future development (and has since filed evidence as part of Hearing 25 Zone Extents seeking Future Urban Zone) over its land to the south of the APL site, but that zoning would not in our view result in any change in the existing rural environment in and around the OLL site. The other proposed zone changes relate to areas on the western side of State Highway 1, localities separated from the APL site and its surrounds.
231. Our finding in relation to the cumulative effects issue is that we are satisfied that any adverse effects from the APL proposal, either individually or in combination with those effects that

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<sup>87</sup> Letter from Andrew Boyd, St John Central Region, 21 May 2020

<sup>88</sup> Letter from Jack Nannes, WEL Networks, 10 October 2019

<sup>89</sup> Letter from Paul Bird, Firstgas, 18 July 2020

<sup>90</sup> Letter from Matt Sheehy, Ultrafast Fibre Limited, 9 July 2020

currently exist in the Ohinewai area and those that reasonably could occur, can be adequately managed by the comprehensive plan provisions we have approved.

232. We are also obliged to consider whether precedent effects are likely to arise if the APL zone change is granted. This issue was raised in evidence in the context that the APL proposal would set a precedent for the granting of future rezoning proposals involving the urban expansion of Ohinewai. We do not accept that argument. In our view, any future live zoning proposal at Ohinewai would need to be considered on its merits including consideration of its likely impact on the APL rezoned area and its surrounds. We are not convinced that the APL proposal would inevitably result in other rezoning proposals being granted. It follows we are unable to accept that precedent effects are likely to arise if the APL zone change is granted.

## **19 Is there an obligation to consider alternative sites?**

233. Counsel for Waka Kotahi submitted that it was necessary for APL to undertake a thorough assessment of alternative sites, particularly given the development is not in accordance with the settlement pattern in Future Proof.<sup>91</sup>
234. It is clear to us from the evidence of Mr Gaze that The Comfort Group has considered a number of alternatives at both the macro and micro scale. The locational requirements were identified as being:
- a. within a one-hour drive from Auckland City (and the Port);
  - b. of a sufficient size and otherwise suitable for the construction of a 100,000m<sup>2</sup> factory for The Comfort Group's operations; and
  - c. proximate to the State Highway network and to the NIMT where a rail siding could be constructed to offload imported steel wire and fabric that would primarily be transported from Auckland Port.
235. On the back of these requirements, the company explored a number of areas including Drury, Pukekohe, Tuakau, Pokeno, Meremere, Te Kauwhata, Huntly, Ngaruawahia, Waharoa and Ruakura. Most sites were discounted as being too small or unable to be sold due to ownership by Waikato-Tainui. Sites near Huntly were also considered, but discounted due to underground mines and potential instability. Mr Olliver explained that the land requirement is too large to be accommodated in Huntly or any of the other towns in the vicinity and it was inevitable that a new urban area had to be created to allow for it. We are aware that the distance between Huntly's future urban limits and Ohinewai is 2.3km. We are aware of Mr Mayhew's contention that the section 32AA analysis should have contemplated alternative sites for the development and alternative development schemes. We are more persuaded by Mr Berry's analysis of case law<sup>92</sup>, and particularly the question of whether the assessment requires consideration of alternative "sites or methods" as addressed by the Supreme Court in *Environmental Defence Society v King Salmon*.<sup>93</sup> It is clear to us that appropriate consideration of locational alternatives were considered, and we

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<sup>91</sup> Legal submissions of counsel for NZTA, 9 September 2000, paragraph 5.21.

<sup>92</sup> Opening legal submissions of Counsel for APL, 14 September 2020, paragraphs 21.8-21.27

<sup>93</sup> [2014] NZSC 38(2014) 17 ELRNZ 442.

agree with Mr Berry's assessment that a forensic consideration of alternative sites and development proposals is not required<sup>94</sup>.

236. Turning to the more micro consideration of alternatives, the design and layout of the APL site has been constantly refined, resulting in changes such as the removal of the discount factory outlet concept. A large number of modifications have been made in response to issues raised by experts such as including specific triggers in the provisions which prevent development until such time as specific infrastructure upgrades occur, and internal noise requirements for habitable rooms which have an acoustic line of sight to the boundary of the Lake Rotokawau Reserve to address the concerns of Fish and Game.
237. Turning to the RMA section 32AA assessment and more specifically section 32(1)(b)(i) which requires an evaluation report to:
- “(b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—”
- (i) identifying other reasonably practicable options for achieving the objectives;
238. The s32AA evaluation included in the Assessment of Environmental Effects considers the costs and benefits of the following alternatives:
- a. do nothing and undertake development as per existing provisions. (Lodge discretionary activity resource consents for industrial development scenarios.) Retain the existing Rural Zoning over the site.
  - b. wait for the PDP review process to be completed and promulgate a private plan change seeking rezoning. Provide for the proposed structure plan through a private plan change to the district plan once it is operative.
  - c. promote a rezoning through the district plan review process.
239. While the consideration of alternatives documented in the Assessment of Environmental Effects for APL could have been more fulsome, we consider that the combination of all the consideration of alternatives (ranging from the location to the evolution of the specific plan provisions) more than adequately satisfies section 32(1)(b)(i) of the RMA.

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<sup>94</sup> Opening legal submissions for Counsel for APL, 14 September 2020, paragraph 21.22-21.27

## PART 3 – PROVISIONS

### 20 District Plan Provisions

#### 20.1 Directions from the Panel

241. Although the original submission from APL did not contain provisions, the suite of provisions to deliver the rezoning and development sought by APL evolved through the course of the subsequent process and the hearing. Mr Olliver attached a version of the provisions to his evidence in chief on 9 July 2020, and a further version to his rebuttal evidence dated 24 August 2020. At the close of the hearing, we indicated that although no decisions had been made by the Hearings Panel, if rezoning requests were to be approved, further work would be necessary to ensure that the provisions relating to those requests were more robust.
242. Although we had not reached a conclusion on whether or not the various rezoning requests at Ohinewai should be approved or not, we issued Directions on 14 October 2020 providing guidance on particular matters that needed further attention, including the need for the provisions to be recast so that they are a suite of self-contained provisions that do not rely on yet-to-be-settled district-wide provisions. In those Directions, we required APL to develop a revised set of provisions and circulate those to all parties that provided written, pre-circulated evidence for the Ohinewai Hearing or who presented submissions at the Ohinewai Hearing and Council staff. In accordance with our Directions, APL filed a revised version of the Ohinewai Precinct provisions on 30 October 2020 together with a memorandum of counsel providing an overview of the process followed by APL to consult with other parties and next steps.
243. We directed that those parties that wished to propose amendments to the revised version were to provide a redlined/strikeout version by 13 November 2020. We received a set of marked up provisions within this timeframe from Mercury, OLL, Waikato District Council and Waikato Regional Council and we appreciate the effort these parties have put into reviewing the provisions. Our directions required that APL file a final version of the Ohinewai Precinct provisions on 27 November 2020. While we made no specific Directions regarding consultation, we encouraged the parties to collaborate as much as possible during the process and the timeframes we have set were intended to allow sufficient time for meaningful engagement.
244. By way of a memorandum of counsel dated 27 November 2020, APL sought further time to prepare a revised set of Ohinewai Precinct provisions consistent with feedback from Waikato District Council. On 30 November 2020, we confirmed that APL was to file its final set of Ohinewai Precinct provisions by 18 December 2020. On 18 December 2020, we received a memorandum from APL's legal counsel requesting a further extension to 23 December 2020 to allow further revision of the provisions in response to matters raised by Waikato District Council staff. This request did not seem unreasonable and was granted by us given the scale and complexity of the provisions. A set of final provisions was filed by APL on 23 December 2020.

## 20.2 Overview of provisions

245. While the early hearing requested by APL was not difficult to accommodate, the request for our decision to be released in advance of our decisions on the rest of the Proposed District Plan does raise some significant challenges. The provisions tabled with Mr Olliver's evidence in chief on 9 July 2020 included minimal changes to the notified chapters: 4 Urban Environment, 14 regarding transport diagrams, 16 Residential Zone, 17 Business Zone and 18 Industrial Zone. This approach caused us some concern as any development undertaken would depend on the Operative District Plan for district-wide matters such as infrastructure, natural environment, definitions, etc. Similarly it would be problematic for Ohinewai provisions to rely on proposed provisions which have not been settled, and which we have not issued decisions upon. This led to our Directions on 14 October 2020 that provisions were to be recast so that they are a suite of self-contained provisions that do not rely on yet-to-be-settled district-wide provisions. In response to our Directions, Mr Olliver subsequently filed an amended set of provisions which was somewhat self-contained and imported all the relevant provisions from various chapters of the Proposed District Plan such as infrastructure and energy, definitions, natural hazards, hazardous substances, etc.
246. A large number of sections of the PDP are not relevant to development in the Ohinewai Zone. For example, rules pertaining to the Rural Zone and the Country Living Zone are not contained in the zone so are not relevant. Similarly, there are no heritage items or Identified Areas (such as significant natural area or outstanding natural features and landscapes) so those chapters are not relevant. These provisions have therefore been excluded from the wider suite of provisions.
247. In response to submissions seeking implementation of the National Planning Standards, we issued Directions to this effect on 21 April 2020. This also has implications for the Ohinewai provisions. We have given careful consideration to the structure of the Ohinewai provisions in the context of the National Planning Standards, and it seems to us that the most appropriate approach is to have the Ohinewai development provided for as a Special Purpose Zone, with the main land uses such as residential, industrial and business being precincts. We consider this approach to align with the definition of a Special Purpose Zone in the National Planning Standards, which requires that Special Purpose Zones must only be created when the proposed land use activities or anticipated outcomes of the additional zone meet all of the following criteria:<sup>95</sup>
- a. are significant to the district, region or country;
  - b. are impractical to be managed through another zone; and
  - c. are impractical to be managed through a combination of spatial layers.
248. We also consider this is the most practical and clear way to structure the provisions for Ohinewai given that our decision for this area is being released in advance of our decision on the rest of the PDP, and provisions for Ohinewai will essentially be a standalone part of the PDP. This will allow the general provisions like infrastructure and compliance with the structure plan to sit under the zone, and the more specific provisions regarding land use to be nested in the precincts underneath the Special Purpose Zone umbrella. While it would be desirable for the Ohinewai provisions to be integrated across the PDP in its National

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<sup>95</sup> Mandatory Standard 8(3), National Planning Standards, 2019

Planning Standards structure (e.g. subdivision provisions in the subdivision chapter, earthworks controls in the earthworks chapter, etc), this is not practical given the timing of the Ohinewai decision versus our decision on the rest of the PDP. We anticipate that this integration exercise may well occur in the future after any appeals are resolved (if indeed there are any), and a future minor plan change may be needed to seamlessly integrate the Ohinewai provisions.

249. The other aspect we are aware of is that the provisions for the Residential, Industrial and Business Zones have evolved considerably since the PDP was notified on 18 July 2018 through the twenty-four s42A reports, hearings and evidence we have received. While it is not surprising that Mr Olliver used the notified version of the provisions as his starting point, we have been mindful that the provisions need to be a 'right fit' for Ohinewai and that may involve modifications to the notified provisions. We have looked critically at the provisions filed by Mr Olliver on 23 December 2020 and have summarised our decision and reasons here. We have not attempted to record the reasons for every provision; to do so would be impractical and unnecessarily repetitive. We have structured our discussion largely to reflect the matters addressed in Part 2 of this decision.

### **20.3 Structure of provisions**

250. Building on our decision on the structure of the provisions filed by APL the structure has been changed so that it is organised under the following headings:

a. Ohinewai Zone

This requires an introduction which outlines what the zone covers and the precinct structure which sits underneath. The introduction explains that the structure plan has informed the location of the precincts. The introduction also explains that the Ohinewai Zone provisions are self-contained and do not rely on any other chapters in the district plan. This chapter contains an introduction, objectives and policies which apply across the whole zone including the structure plan, the structure plan diagram, and tables containing key infrastructure upgrades.

- i. Infrastructure and energy (combined objectives, policies and rules)
- ii. Hazardous substances and contaminated land (combined objectives, policies and rules)
- iii. Natural hazards (combined objectives, policies and rules)
- iv. Ohinewai Residential Precinct
- v. Ohinewai Business Precinct
- vi. Ohinewai Industrial Precinct
- vii. Definitions

### **20.4 Giving effect to the structure plan**

251. The structure plan is important for not only setting out the layout of the development, but also has been the basis for understanding and assessing the effects of its implementation. The structure plan diagram will be included in the PDP and implemented through policies,

standards and matters of discretion for subdivision as well as certain land use activities. The policy requires that development is to be in general accordance with the structure plan, but recognises that some flexibility and minor variation is appropriate at the resource consent stage. While the structure plan sets the general layout for the development, the policy enables minor amendments to respond to detailed design.

## 20.5 Wastewater

252. On 10 February 2021 we received a memorandum from Waikato-Tainui, which related to the memorandum from APL counsel filed on 26 January 2021 which recorded meetings between APL, Watercare and Waikato District Council. The memorandum from Waikato-Tainui expressed concern regarding the change in approach to the agreed minimum standard of treatment required of the Huntly Wastewater Treatment Plant and the failure to provide detail around access to drinking water. The memorandum considered that Waikato-Tainui has participated in expert conferencing on the proposed development in good faith, and the Joint Witness Statement signed on 11 August 2020 reflected general agreement, that, as a minimum, for Stage 2 of the development to progress, the Huntly Wastewater Treatment Plant would have to be compliant with its current resource consent. Waikato-Tainui observed that the memorandum of Counsel for APL dated 26 January does not appear to be consistent with this, as the only commitment made is a desludging process that will simply add more capacity. The only reference to the awa is that the discharge will be no worse than the currently failing system. Waikato-Tainui considered this is far from the expectations created in Te Ture Whaimana.
253. Waikato-Tainui expressed a further area of concern relating to the provision of drinking water, as it is only addressed briefly in the APL memorandum and no mention is made of the need to supply the township of Ngaruawahia. Waikato-Tainui considered this needs to be more thoughtfully addressed given the growth in Ngaruawahia and the commitments to supply the township.
254. We are mindful of the concerns of Waikato-Tainui around wastewater and have inserted policies requiring all development to be connected to a reticulated public wastewater supply, except for the initial industrial development in Factory Stages F1 and F2 which can be treated and disposed on-site. Initial subdivision and development in Factory Stages 1 and 2 is therefore required to have on-site treatment and disposal of wastewater. Any subsequent development in any of the Precincts must be serviced for wastewater by an operational public reticulated system that:
- a. can accommodate the stage of development;
  - b. has obtained all the necessary resource consents;
  - c. is able to comply with all the conditions of those consents as a result of the connection; and
  - d. is certified by the WDC as being able to comply with the conditions of those consents as a result of the connection.
255. This approach is reinforced through standards which allow development as a permitted activity in the residential and business precincts, and a restricted discretionary activity in the industrial precinct (beyond Factory Stages 1 and 2) if it is connected to a reticulated

wastewater network, but is non-complying for development not connected. The effect of an 'avoid' policy and a non-complying activity where development is not connected to a reticulated wastewater network means that such a development would be unlikely to pass the s104D gateway test of the RMA. We consider this restrictive approach will ensure that development cannot occur until there is a complying wastewater system available. Given the status of the Huntly wastewater treatment plant, it is our hope that this approach will result in either improvements to the existing Huntly wastewater treatment plant or the design and commissioning of a new plant, and ultimately result in betterment of the Waikato River in accordance with the Vision and Strategy.

## 20.6 Water supply

256. We are mindful of the concerns of Waikato-Tainui around water supply and have inserted policies requiring all development to be connected to a reticulated public water supply, except for the initial industrial development in Factory Stages F1 and F2 which can be serviced on-site for water. Any subsequent development in any of the Precincts must be serviced for water by a public reticulated system. Similar to wastewater, compliance with a water servicing standard is required for land uses and subdivision beyond the initial Factory Stages F1 and F2. Any development not connected to a public reticulated water supply would be a non-complying activity. We consider this is an effective approach to ensuring development is connected to a public reticulated water network.

## 20.7 Stormwater

257. Stormwater is managed through policies, and rules in the Ohinewai Zone, Ohinewai infrastructure, transport and energy chapter, as well as the three precincts. Stormwater is addressed through land uses (such as earthworks, requirement for on-lot low impact design stormwater devices and impermeable surface standards) as well as subdivision. All subdivision applications must be accompanied by a stormwater management report and plans. As the details of the stormwater management system cannot be determined through this process, we consider the provisions will be effective in ensuring careful consideration of stormwater and implementation of a low impact stormwater management approach.

## 20.8 Residential

258. Residential development is located in the Ohinewai Residential Precinct, and the objectives, policies and rules for this Precinct are located in that chapter. The provisions for the Ohinewai Residential Precinct are largely based on those for the Residential Zone in the Proposed Waikato District Plan (Chapter 4 Urban Environment and Chapter 16 Residential Zone). The evidence from Mr Olliver considered that the residential development was likely to have a high proportion of multi-unit development, and this is a restricted discretionary activity. Other activities consistent with residential amenity are permitted such as a small home stay and childcare.
259. A key factor in promoting the residential land use was the ability to provide affordable housing for employees of The Comfort Group. We are aware of the limitations of a district plan in ensuring this is provided, but have nonetheless included a policy which seeks to achieve a minimum net density of 12-15 households per hectare, provides a range of housing typologies – including medium-density residential densities – and locates medium-density residential with access to public transport and alternative modes of transport. Multi-unit



residential development as a land use does not have any densities specified, however there are standards in the rules controlling subdivision of multi-unit developments which specify that the exclusive area for each residential unit must be a minimum of 300m<sup>2</sup> net site area, and minimum unit sizes to ensure any resulting units are liveable. We consider this will enable multi-unit residential development, while providing sufficient matters of discretion or standards to ensure a good quality liveable development. The factors determining whether these residential units are affordable is a complex equation of the cost of the land, infrastructure servicing, building materials, tradespeople and preparation, all of which are outside the control of the district plan.

## **20.9 Business**

260. Commercial development is to be located in the Ohinewai Business Precinct, and the objectives, policies and rules for this Precinct are located in that chapter. The provisions for the Ohinewai Business Precinct are largely based on those for the Business Zone in the Proposed Waikato District Plan (Chapter 4 Urban Environment and Chapter 17 Business Zone). The Ohinewai Business Precinct is located in two separate areas. The site on the corner of Tahuna Road and Lumsden Road is identified for transport-oriented development including a transport hub, emergency services and community facilities. The second Ohinewai Business Precinct is located further along Tahuna Road and intended to provide convenience retail for the residential areas and community facilities and meet the day-to-day needs of the Ohinewai community.
261. Commercial activities in the neighbourhood centre are restricted in terms of size to limit the effect on the economic viability of Huntly. The total combined gross leasable floor area of commercial activities, excluding any service station, is limited to 2500m<sup>2</sup>. This is further reinforced by a policy which seeks to minimise any adverse economic effects on the Huntly Town Centre.

## **20.10 Industrial**

262. Industrial development is to be located in the Ohinewai Industrial Precinct, and the objectives, policies and rules for this Precinct are located in that chapter. The provisions for the Ohinewai Industrial Precinct are largely based on those for the Industrial Zone in the Proposed Waikato District Plan (Chapter 4 Urban Environment and Chapter 20 Industrial Zone). The Ohinewai Industrial Precinct is located on the northern edge of the development and encompasses 68ha, including 37ha for The Comfort Group Sleepyhead Factory. The purpose of the Precinct is relatively simple; enable a wide range of industrial activities (and ancillary activities) and manage any adverse effects arising from those activities. All of the activities in the Precinct require a restricted discretionary resource consent with matters of discretion including design of buildings and layout. The scale of the buildings are likely to be significant and will probably be the first development to be constructed.

## **20.11 Natural hazards**

263. The provisions in the Ohinewai Natural Hazards chapter are based on the notified provisions of Stage 2 of the PDP. The objective seeks to avoid increases in flood risk on land beyond the Ohinewai Zone. The policies direct that building platforms are located above the 100-year AEP flood level. The functional and operational requirements of the Lower Waikato Flood Protection Scheme are recognised and any adverse effects (including

cumulative effects) on the storage capacity of the scheme must be appropriately managed. A standard of subdivision for the Residential Precinct is that every lot, other than one designed specifically for access or is a utility allotment, must establish a building platform that is above 8.5m RL (ground level). This level is 8.3m RL for the Business and Industrial Precincts and consent notices will be imposed to ensure building platforms above this level are established. Non-compliance with this standard will result in a discretionary activity status.

264. While liquefaction is a risk for this area, the provisions in the Ohinewai Natural Hazards chapter are not specific to Ohinewai and are consistent with Stage 2 of the PDP.

## 20.12 Transport

265. The transport upgrades are outlined in considerable detail in OHI-Table I in response to the issues raised in expert conferencing and evidence. OHI-Table I describes the nature of the upgrade and the trigger point at which the work is required. This table applies to the whole of the development. These triggers are generally linked to a stage of development (as shown on the OHI-Figure 3 Staging Plan) or a level of development (such as 100 residential units), whichever comes first. The transport upgrades are delivered through policies as well as standards for land use activities and subdivision. Activities that do not comply with the transport upgrades generally cascade to a non-complying activity status.
266. A traffic generation rule has been inserted into the Ohinewai Infrastructure and Energy chapter which establishes a permitted level of traffic generation. This is consistent with the traffic generation numbers in the notified Proposed Waikato District Plan for the comparable zones e.g. Residential Zone, Business Zone and Industrial Zone. Traffic generation beyond this standard is a restricted discretionary activity with focused matters of discretion. This differs from the approach taken by APL who had a rule for traffic generation which was measured cumulatively within each precinct. We considered this approach carefully, but had concerns about the ability for Council to implement such a rule and keep track of the traffic generation numbers. We have also included a matter of discretion that requires the effects on the safety and efficiency of the transport network to be considered through an Integrated Transport Assessment. This applies to both subdivision, as well as land uses that require a resource consent as a restricted discretionary activity (including industrial activities in the Ohinewai Industrial Precinct). While this may seem as though traffic generation is assessed in multiple ways, we have been mindful of the agreement by the transport experts. They all accepted the current transport modelling so long as there is a mechanism to reassess transport modelling and mitigation down the track within the planning provisions/consenting process if the fundamental assumptions behind the modelling change, rather than the nature and timing of the upgrades being locked in at the time of plan change.<sup>96</sup>
267. The rest of the transport provisions in the Ohinewai Infrastructure chapter are based on Chapters 6 and 14 of the notified PDP. The standards relating to the number of parking spaces have been deleted in accordance with the NPS-UD.

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<sup>96</sup> Expert conference statement for Transport, 23 June 2020, paragraph 3.8

### **20.13 Cultural effects**

268. The Vision and Strategy is recognised through an objective and policy which applies to all development within the Ohinewai Zone. The objective seeks to restore the whenua and uphold cultural values in accordance with Te Ture Whaimana o Te Awa o Waikato (the Vision and Strategy for the Waikato River). This objective is delivered through the policy which addresses:
- a. stormwater discharges;
  - b. wetland habitat;
  - c. control and management of introduced pest flora and fauna;
  - d. cultural and customary activities; and
  - e. mana whenua narratives are woven into the development.
269. We considered how the objective could be delivered through provisions, but concluded that the Vision and Strategy can be delivered through a variety of means ranging from macro design to micro such as interpretative signage and naming of key infrastructure. Because such a range of responses are possible, there was no way to develop standards and we consider it more appropriate that this be elevated to a policy level.
270. Based on the concerns raised by Waikato-Tainui and Mr Donald, we consider one of the most significant issues in giving effect to the Vision and Strategy is through the management of wastewater. We are satisfied that the framework embedded in these provisions will ensure development cannot and does not proceed until either the Huntly wastewater treatment plant is upgraded, or is replaced by a comprehensive new plant.
271. A continuation of the relationship between APL and the Tangata Whenua Working Party will also assist to deliver the outcomes embodied in the objective, although we realise this process is outside the district plan provisions.

### **20.14 Urban design**

272. Elements of urban design are reflected in the layout of the Ohinewai Structure Plan as well as policies and matters of discretion for subdivision and land uses (such as multi-unit development and all development in the Ohinewai Industrial Precinct).

### **20.15 Landscapes and visual matters**

273. Building setbacks and landscape buffer mitigate visual and landscape effects on rural areas and neighbours. This is delivered through a policy which applies to the whole development, as well as specific setback requirements in each of the Precincts. A landscape concept plan is required with every subdivision application. In addition, visual, landscape, streetscape and amenity effects are matters of discretion on land uses and subdivision.

### **20.16 Acoustic effects**

274. The noise standards in the Ohinewai chapter have largely been imported from the s42A report recommendations to the PDP. The most significant change is the additional acoustic insulation requirements for any habitable rooms in dwellings in Stages 8 and 9 on the

Ohinewai Staging Plan that have a property boundary adjoining the Wetland Park, and which have an acoustic line of sight (i.e. visible were it not for vegetation) to the boundary of the Lake Rotokawau Reserve. This is to address the concerns raised by Fish and Game regarding recreational shooting on the Rotokawau Reserve. This is reflected in a policy which recognises potential reverse sensitivity effects of recreational hunting are mitigated by acoustic treatment of the nearby dwellings. We consider this will be an effective method to reduce the risk of reverse sensitivity effects from residential development near the Rotokawau Reserve.

275. We are aware of the concerns from residents of existing rural residential sites regarding the noise generated by construction and industrial activities. There are standards in the Ohinewai Industrial Precinct controlling the noise generated by construction, but also limits on industrial noise when measured at the notional boundaries of the dwellings on Lots 1-3 DP 4743475 existing as at 1 September 2020. The noise when measured at those boundaries must not exceed:
- a. 55dB (LAeq), 7am to 7pm every day
  - b. 50dB (LAeq), 7pm to 10pm every day
  - c. 45dB (LAeq), and 75dB (LAmax), 10pm to 7am the following day.

## **20.17 Ecological effects**

276. The ecological restoration and management plan is the key mechanism for identifying important species and developing protocols for minimising adverse effects on them. Through the expert conferencing and evidence, considerable attention was given to the effect on native bats and the black mudfish. An ecological restoration and management plan is required for earthworks that do not comply with the permitted standard and subdivision. The rules set out specific requirements which the ecological restoration and management plan must address. This includes:
- a. indigenous fish;
  - b. bats;
  - c. ecological restoration plan including habitat creation and enhancement and planting and pest plant control;
  - d. predator control programme including domestic cats and dogs;
  - e. ongoing management and maintenance of wetland areas;
277. The ecological restoration and management plan is required to include evidence of engagement with tangata whenua during preparation of the Ecological Rehabilitation and Management Plan, including how outcomes of that engagement have been addressed.
278. We consider this will be an effective way of assessing the effects on indigenous ecology, and then requiring compliance with the ecological restoration and management plan through conditions of consent.

## **20.18 Conclusion on appropriateness of district plan provisions**

279. We have amended the structure and the provisions considerably since APL filed its latest version on 23 December 2020. However this was necessary to make sure that the provisions worked effectively and did not internally contradict. We consider that the version of the provisions appended to this decision will effectively address many of the issues raised in submissions, expert conferencing and evidence that are within the scope of the district plan to address and therefore avoid, remedy or mitigate adverse effects.

## PART 4 - STATUTORY ASSESSMENT

### 2I Statutory tests

280. The rezoning submission is subject to a range of provisions in the RMA and we need to be satisfied that the relief sought by the submitters:
- (a) Is in accordance with:
    - (i) the Council's functions as set out in section 31 of the RMA;
    - (ii) the purpose and principles in Part 2 of the RMA; and
    - (iii) the Council's duty under section 32 of the RMA.
  - (b) Gives effect to:
    - (i) any relevant national policy statement;
    - (ii) any relevant national environmental standard; and
    - (iii) the RPS
  - (c) Has regard to:
    - (i) any relevant management plans and strategies under other Acts;
    - (ii) the extent to which the district plan needs to be consistent with plans and proposed plans of adjacent territorial authorities; and
    - (iii) the actual or potential effect of activities on the environment
  - (d) Must not be inconsistent with an operative regional plan for any matter specified in section 30(1) or a water conservation order;
  - (e) Must take into account any relevant planning document recognised by an iwi authority;
  - (f) Must not have regard to trade competition or the effects of trade competition.
281. We do not attempt to analyse each provision of each relevant document here, but instead record our approach and general findings.

#### 2I.1 Requirements of the RMA

282. As set out in the early sections of this decision, Part 2 of the RMA comprises sections 5-8, and this is the backdrop against which our decision is made. As we outlined earlier, Part 2 becomes especially important in the case of invalidity, incomplete coverage or uncertainty of meaning in the relevant higher order statutory planning documents when determining a plan change. This is because the higher order planning document is assumed to already give substance to Part 2, unless one or more of these three caveats apply, in which case reference to Part 2 may be justified and it may be appropriate to apply the overall balancing exercise. For the reasons outlined later in this section, we do not find any of the *King Salmon* caveats apply in this case. However, that is not to say Part 2 has no relevance to the APL Proposal. This is because section 74(1)(b) of the RMA specifically provides that a proposal

must be in accordance with Part 2. Therefore, an analysis of Part 2 is required in that context.

283. In addition, there are a suite of sections of the Act which guide our decision making and outline the requirements of a district plan. Our approach in this section is to assess the submissions against each of the higher order planning documents in accordance with the Act, and then conclude with an assessment against the Act itself.

## **21.2 Part 2 of the RMA**

284. Although there was significant debate as to whether incomplete coverage of the RPS results in recourse to Part 2 of the RMA, we discuss this below in the context of the RPS. Section 74(1)(b) of the RMA requires change to the district plan in accordance with the provisions of Part 2, and we therefore have included an analysis of the APL Proposal under that backdrop.
285. Our starting point is Section 5 which states that the purpose of the Act is sustainable management. Section 5(2) provides further interpretation of what “sustainable management” means and we address each of those aspects below.
286. There is no doubt in our mind that the APL development will provide for the economic well-being of both the local community (including Huntly) as well as the wider district. The joint witness statement of the economic experts confirmed that it is new economic growth, not just redistributing expected economic growth. The proposal will bring economic development and employment opportunities that do not currently exist. The employment opportunities are created at various points in the development; ranging from the initial land preparation and construction, to the more long-term employment provided by The Comfort Group factory and other industrial enterprises.
287. Having considered all the evidence, we are satisfied that there will be inevitable social benefits of the development (such as additional employment opportunities) but there are also risks such as Ohinewai becoming a dormitory settlement, albeit those risks are likely to be at a low level. While the full extent of the social impacts may not have been assessed by Mr Quigley, we are satisfied that, on balance, the development will enable positive social impacts for both the present and future community.
288. The potential for cultural well-being to be enhanced is captured in the Kaitiaki Environmental Values Assessment prepared by the Tangata Whenua Governance Group. While we acknowledge the concerns of Waikato-Tainui with regards to the health and well-being of the Waikato River, particularly with regards to wastewater and water supply, we are satisfied that there are viable solutions and the district plan provisions can preclude development until consented and compliant publicly reticulated servicing for wastewater and water supply is available.
289. We have considered the health and safety of people and communities. This is relevant in the context of flood hazards, geotechnical stability, adequate servicing for water and wastewater and safe transport options. We are satisfied that all of these issues can be effectively addressed by district plan provisions such as minimum floor level, requirements for geotechnical assessments to accompany subdivision applications, and specific upgrades of the transport network.

290. Turning to Section 5(2)(a) of the Act, we consider the development will sustain the natural and physical resources to meet the needs of future generations. In this regard, we have been particularly aware of effects on the River as a key natural resource and giving effect to the Vision and Strategy. We also consider that the proposal considered the effects on the life-supporting capacity, particularly the ecosystems in accordance with Section 5(2)(b) of the Act. This has been manifested in the design of the structure plan, as well as through district plan provisions requiring an ecological restoration and management plan to accompany subdivision and earthworks consent applications.
291. We consider that any potential adverse effects on the environment are avoided or mitigated through design processes and district plan provisions. These include measures to avoid or mitigate transport safety effects, and provisions to mitigate potential adverse visual, landscape, ecological and water quality effects.
292. We consider the Section 6 matters relevant to the proposed rezoning are:
- a. Section 6(e) the relationship of Māori and their culture and traditions with the ancestral lands, water, sites waahi tapu and other taonga is to be recognised and provided for.
  - b. Section 7(a) the need to have particular regard to kaitiakitanga.
  - c. Section 8 principles of the Treaty of Waitangi.
293. We consider these provisions have been satisfied through the meaningful engagement of APL with the Tangata Whenua Governance Group, and the reflection of cultural symbolism and traditions in the design of the Ohinewai Structure Plan and provisions. We accept that engagement is likely to be ongoing beyond this district plan review process.
294. Section 6 (h) is also relevant in relation to management of flood risk, and we are satisfied that the risk can be managed through design of the structure plan as well as plan provisions.
295. We consider there are more relevant Section 7 matters than Mr Olliver does:
- a. Section 7(a) Kaitiakitanga
  - b. Section 7(b) the efficient use and development of natural and physical resources
  - c. Section 7(c) the maintenance and enhancement of amenity values
  - d. Section 7(d) intrinsic values of ecosystems
  - e. Section 7(f) maintenance and enhancement of the quality of the environment
  - f. Section (g) any finite characteristics of natural and physical resources
296. We consider that the proposal addresses and achieves each of these matters, through either design or provisions.

### **21.3 Te Ture Whaimana – Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010**

297. The Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 (Settlement Act) gives effect to the Deed of Settlement entered into by the Crown and Waikato-Tainui in



relation to Treaty of Waitangi claims in relation to the Waikato River on 17 December 2009. The Settlement Act has the overarching purpose of restoring and protecting the health and well-being of the Waikato River for future generations.

298. Section 9(2) of the Settlement Act confirms that Te Ture Whaimana, the Vision and Strategy for the Waikato River, applies to the Waikato River and activities within its catchment affecting the Waikato River. As well as being deemed part of the RPS in its entirety pursuant to section 11(1), the Settlement Act prevails over any inconsistent provision in a national policy statement, and sections 11 to 15 of the Settlement Act prevail over sections 59 to 77 of the RMA (which relate to regional policy statements, regional plans and district plans) to the extent to which the content of the Settlement Act relates to matters covered under the RMA. The overall vision is captured in clause 2.5.1 of the RPS which is:

Our vision is for a future where a healthy Waikato River sustains abundant life and prosperous communities who, in turn, are all responsible for restoring and protecting the health and well-being of the Waikato river, and all it embraces, for generations to come.

299. We have been particularly mindful of the requirements of this Act, as well as the requirement to give effect to Te Ture Whaimana, the Vision and Strategy for the Waikato River given that it is embedded in the RPS. The need to give effect to Te Ture Whaimana, the Vision and Strategy for the Waikato River was of particular concern to Waikato-Tainui, especially in relation to servicing for wastewater and water supply. Mr Donald outlined the concerns of the tribe and clarified that in terms of wastewater (which, for convenience, we refer to based on APL's nominal development timeline). Years 1-3 of the development will be serviced through a discharge to land solution. Mr Donald considered that provided this is managed appropriately, there are no objections from Waikato-Tainui. Years 3-6 and from year 7 and beyond are the phases that raise significant concern for Waikato-Tainui, particularly given the existing compliance issues with the Huntly treatment plant. Given the APL Proposal's reliance on this poorly performing Wastewater Treatment Plant, Mr Donald contended that the re-zoning cannot be considered to be giving effect to Te Ture Whaimana – the Vision and Strategy for the Waikato River or having regard to Tai Tumu, Tai Pari, Tai Ao.<sup>97</sup> The ability to service the proposed rezoned land with drinking water was also raised as a concern for Waikato-Tainui. As we discuss elsewhere in this decision, we consider that these issues can be effectively managed through staging requirements tied explicitly to the provision of infrastructure, and development cannot occur until such time as appropriate servicing is available. We are satisfied that there are viable solutions, and therefore the key is ensuring that development cannot and does not occur in advance of these solutions being implemented.

300. Mr Olliver outlines the way in which the development will lead to improvements in water quality including<sup>98</sup>:
- a. the improvement in stormwater quality as a result of retirement from farming practices;
  - b. an improvement in wastewater discharges, through the opportunity to rationalise and improve the municipal discharges to the Waikato River;

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<sup>97</sup> Statement of Evidence of Gavin Donald on behalf of Waikato – Tainui, paragraphs 6.4-6.7

<sup>98</sup> Evidence in Chief of John Olliver on behalf of APL, 9 July 2020, paragraph 7.7-7.11

- c. improved access to the river; and
  - d. the restoration and protection of the relationship of Waikato-Tainui, the River iwi and communities with the river, including the economic, social, cultural and spiritual relationships.
301. While we acknowledge the valid concerns of Waikato-Tainui, and have carefully considered them, we are satisfied that carefully crafted provisions will ensure that the appropriate wastewater upgrades are implemented. Overall, we are satisfied that the provisions we have approved respond appropriately to Te Ture Whaimana – the Vision and Strategy for the Waikato River and will result in improvement of the health and well-being of the River.

## 21.4 National Policy Statement for Urban Development

302. The NPS-UD came into force on 20 August 2020, some two years after the notification of the PDP, and four years after the RPS becoming operative. Nonetheless, district plans are required to give effect to any national policy statement by s75(2) of the RMA, and therefore we have given this careful consideration in our decision making. The Ministry for the Environment summarises the intent of the NPS-UD as:
- a. ensuring urban development occurs in a way that takes into account the principles of the Treaty of Waitangi (te Tiriti o Waitangi);
  - b. ensuring that plans make room for growth both ‘up’ and ‘out’, and that rules are not unnecessarily constraining growth;
  - c. developing, monitoring and maintaining an evidence base about demand, supply and prices for housing and land to inform planning decisions;
  - d. aligning and coordinating planning across urban areas.
303. Because of the timing of the hearing, APL’s initial evidence assessed the National Policy Statement for Urban Development Capacity 2016 so it was Mr Olliver’s rebuttal evidence that assessed the new NPS-UD. Mr Mayhew also assessed APL’s submission against the NPS-UD in his evidence.
304. The NPS-UD requires well-functioning urban environments, that enable all people and communities to provide for their social, economic, and cultural well-being, and for their health and safety, now and into the future. It also seeks to improve housing affordability by supporting competitive land and development markets by requiring councils to provide 20% competitiveness margins for both housing and business land (15% for the long term). The NPS-UD requires district plans to enable more people to live in, and more businesses and community services to be located in, areas of an urban environment in which certain criteria apply. Similar to its predecessor (being the National Policy Statement for Urban Development Capacity) there is a focus on integrating land use with infrastructure.
305. The issue of the NPS-UD did raise some complications in regards to the RPS; namely the growth figures and indicative locations for growth. The growth in the RPS has been superseded by Future Proof 2017 and Waikato 2070, and further succeeded by the NPS-UD. We are aware of s62(3) of the RMA and suggest that the RPS may not be wholly compliant in this regard. Nevertheless, we do not consider this constitutes “incomplete coverage” in

the *King Salmon* sense. Rather, the RPS is not as fully compliant with the NPS-UD as it could be.

306. The NPS-UD applies to all local authorities which have an “urban environment” within their district and to all decisions that affect an urban environment. The issue of whether the development meets the definition of “urban environment” as defined in the NPS-UD was the matter of some debate, with Mr Mayhew considering that the APL development does not in itself qualify as an “urban environment”. On that basis, he considered many of the provisions of the NPS-UD do not apply. The alternative assessment advanced by Mr Olliver on behalf of APL is that the combined Huntly and Ohinewai areas be considered to be an urban environment and thus the NPS-UD does apply.<sup>99</sup> We agree with Mr Olliver that the definition of urban environment in the NPS-UD is very broad insofar as it is not limited by geographic size, jurisdictional or other boundaries. We note that the definition of “urban environment” in the NPS-UD is as follows:

urban environment means any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that:

- (a) is, or is intended to be, predominantly urban in character; and
  - (b) is, or is intended to be, part of a housing and labour market of at least 10,000 people.
307. We are particularly persuaded by clause (b) which refers to being (or intended to be) part of a larger housing and labour market. Given that Waikato 2070 is the most recent projection of growth, we note that the possible future population of Huntly and Ohinewai combined is 13,500, therefore it would seem to us that Ohinewai could be an “urban environment” based on the definition in the NPS-UD. We disagree with Mr Mayhew’s<sup>100</sup> and Mr Keenan’s<sup>101</sup> interpretation of clause (b) as requiring separate housing and labour markets, each of 10,000 people. It seems to us that housing and labour should be read together and mean an urban area where there are housing and labour markets operating in a population of at least 10,000 people. We are more persuaded by the Ministry for the Environment’s Regulatory Impact Assessment for the NPS-UD which states:

“The NPS-UD applies to all urban environments of more than 10,000 people, which are then categorised into three tiers”

308. We see no need to separate out Ohinewai from Huntly in terms of this definition, particularly given that there is only 2.3km between them and the NPS-UD does not provide any further guidance on geographic size or spatial delineation. We also consider that both areas would satisfy clause (a); that is, Ohinewai and Huntly either currently are, or will be, urban in character.
309. The significance of whether Ohinewai is or is not an urban environment is its application to a “well-functioning urban environment”, which is one of the key objectives of the NPS-UD.

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<sup>99</sup> Evidence in chief of Ian Mayhew on behalf of Waka Kotahi and Waikato Regional Council, 14 August 2020, paragraph 8.4

<sup>100</sup> Evidence in chief of Ian Mayhew on behalf of Waka Kotahi and Waikato Regional Council, 14 August 2020, paragraph 8.3

<sup>101</sup> Evidence in chief of Blair Keenan on behalf of Waikato Regional Council, 14 August 2020, paragraph 10.7

310. Objective 1 seeks to achieve a well-functioning urban environment and Objective 3 seeks to enable more people to live in, and more businesses and community services to be located in, areas of an urban environment. Mr Mayhew considers the APL development does not meet the objectives of the NPS-UD. He acknowledges that while The Comfort Group wishes to relocate its operations to Ohinewai, there does not appear to be any substantial demand for industrial and residential land.<sup>102</sup> We agree that were it not for APL, there would be no proposal for large-scale employment opportunities, and hence no need for associated residential development. However, we consider that the concept of enabling people to live close to where they work is an efficient planning approach, even though we accept that some people will not choose to live at Ohinewai and travel from elsewhere to work there. We also accept that it is unlikely that the development will be completely self-sufficient, and will rely on Huntly for certain services and social and community facilities. It seems clear to us that the proposal would add significant development capacity in accordance with Policy 8.
311. Mr Mayhew considered that the APL development fails to provide all of the “minimum” criteria for a well-functioning urban development as set out in Policy 1. In his opinion, the proposal does not create good accessibility for all people as it is reliant on private motor vehicles, and risks being a dormitory town with the associated social and greenhouse gas emission implications.<sup>103</sup> He goes on to state that in his opinion the development does not contribute to all, and detracts from some of, the minimum requirements for a well-functioning urban environment.
312. Conversely, Mr Olliver considers that the APL development will create a well-functioning urban environment and cites a number of reasons for this conclusion, including the mix of housing typologies, new healthy homes, lower price points, opportunity for papakainga housing, and good accessibility.<sup>104</sup> He accepts that Huntly will provide a majority of wider social and community services, but accessibility to and from Huntly will also be good, with provision of an off-road cycle connection and public transport. While we understand Mr Mayhew’s concerns, it seems to us that Policy 1 does not specify what form the accessibility should take, and merely states at the end of the policy “including by way of public or active transport”. It seems to us that Ohinewai has very good accessibility, particularly with its proximity to the Waikato Expressway and the four-way interchange, the rail, the local roading network, as well as the co-location of live, work and play opportunities of the structure plan. We consider the APL development achieves Objective 1 and Policy 1.
313. Objective 6 directs local authority decisions to be integrated with infrastructure, strategic and responsive, particularly to proposals that would supply significant development capacity. Mr Mayhew considered that it is insufficient to assess proposals on a case-by-case basis and that the APL Proposal lacks strategic assessment.<sup>105</sup> We accept that planning for growth is a constantly evolving area, as demonstrated by the rapid change from Future Proof 2009 to Future Proof 2017 to Waikato 2070. While Ohinewai may not have been identified in the Future Proof strategic planning documents, it was identified for growth in Waikato 2070 and therefore arguably satisfies Objective 6(b).

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<sup>102</sup> Evidence in chief of Ian Mayhew on behalf of Waka Kotahi and Waikato Regional Council, 14 August 2020, paragraph 8.7

<sup>103</sup> Evidence in chief of Ian Mayhew, 14 August 2020, paragraphs 8.11-8.14

<sup>104</sup> Rebuttal evidence of John Olliver on behalf of APL, 24 August 2020, paragraphs 3.11-3.16

<sup>105</sup> Evidence in chief of Ian Mayhew, 14 August 2020, paragraph 8.9

314. Mr Mayhew considered the APL development does not deliver Objective 8 due to its reliance on private vehicles. Mr Olliver had a contrary view that Ohinewai would not significantly increase greenhouse gas emissions. He considered that the home-work trip will be short and the development will be self-sufficient in terms of recreational open space and convenience shopping. It is only for trips for other services that travel to Huntly will be needed.<sup>106</sup> We consider that both planning experts are probably correct. It seems to us that the mix of live, work, play opportunities afforded by the APL development will reduce the level of car travel required. However it is unlikely that the development will be completely self-sufficient, and may rely on Huntly for social and community facilities. That is not to say some people will not choose to live at Ohinewai and travel somewhere else to work, but it seems to us that the development is planned to enable and encourage the opposite approach.
315. Mr Mayhew acknowledged that the proposal would add significant development capacity in accordance with Policy 8, but noted that the policy is specific to plan changes which he contended this is not. He made the same observation for Sub-part 2 Responsive Planning 3.8. We consider an all-of-plan review is essentially one big plan change to the operative district plan and therefore these policies are relevant. The APL development is unanticipated and it will add significantly to development capacity as it will supply 67ha of industrial land and 52ha of residential land. It seems to us that Policy 8 clearly directs that adding capacity is more important (subject to some provisos) than inflexible adherence to planning documents.
316. Overall, and for the reason stated earlier, we are satisfied that the APL development gives effect to the NPS-UD and largely prefer the analysis of Mr Olliver in this regard.

## **21.5 National Policy Statement for Freshwater Management**

317. On 3 September 2020, the National Policy Statement for Freshwater Management 2020 (NPS-FM) came into force. As this is a very new planning instrument, it was not addressed in APL's evidence. The fundamental concept underpinning the NPS-FM is Te Mana o te Wai, which refers to the "fundamental importance of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment" and protects the "mauri of the water".
318. The underlying concept is about restoring and preserving the balance between the water, wider environment and the community. The single objective of the NPS-FM is to ensure that resources are managed in a way that prioritise:
- (a) the health and well-being of water bodies and freshwater ecosystems;
  - (b) the health needs of people; and
  - (c) the ability of people and communities to provide for social, economic and cultural well-being, now and in the future.
319. The NPS-FM sets out 15 policies for achieving the above objective, a number of which are relevant to the submissions seeking rezoning of Ohinewai. Having considered the analysis of

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<sup>106</sup> Rebuttal evidence of John Olliver on behalf of APL, 24 August 2020, paragraph 3.16

Mr Berry<sup>107</sup>, and the evidence of various experts, we agree that the APL development gives effect to the NPS-FM.

## 21.6 Waikato Regional Policy Statement

320. Pursuant to section 75(3)(c) of the RMA, a district plan must give effect to any regional policy statement. Whether the APL development gives effect to the objectives and policies in the RPS was of some debate between parties.
321. One of the questions that was discussed at the expert planning conference was what are the key objectives and policies of the RPS to be considered in the assessment of the rezoning proposals? The key RPS provisions were agreed by the planning experts as follows:
- a. Chapter 2 Vision and Strategy
  - b. Objective 3.9 Relationship of tangata whenua with the environment
  - c. Objective 3.12 Built environment
  - d. Objective 3.14 Mauri and values of freshwater bodies
  - e. Policy 6.1 Planned and co-ordinated infrastructure
  - f. Policy 6.3 Co-ordinating growth and infrastructure
  - g. Policy 6.6 Significant infrastructure and energy resources
  - h. Policy 6.14 Adopting Future Proof land use patterns (although clauses (a), (d) and (h) are not relevant)
  - i. Policy 6.16 Commercial development in the Future Proof Area (but only clauses (a), (b), (d), (e) and (g))
  - j. 6A Development Principles
  - k. Map 6C Future Proof map
  - l. Table 6D Future Proof tables
  - m. Chapter 13 Natural hazards
322. We have addressed the Vision and Strategy above, but suffice it to say that the experts agreed that a fundamental issue is the future provision of wastewater services and the associated certainty including funding.

### **Objective 3.9 Relationship of tāngata whenua with the environment**

323. Similarly Objective 3.9 was agreed by the experts as being a key objective for Waikato-Tainui. Objective 3.9 requires that the relationship of tāngata whenua with the environment is recognised and provided for, including:
- a) the use and enjoyment of natural and physical resources in accordance with tikanga Māori, including mātauranga Māori; and

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<sup>107</sup> Opening legal submissions of counsel for APL, 14 September 2020, paragraphs 10.5-10.9

b) the role of tāngata whenua as kaitiaki.

324. We agree with Mr Olliver that this objective has been given effect to through the development of the Ohinewai Structure Plan, particularly through the Kaitiaki Environmental Values Assessment and the relationship with the Tangata Whenua Governance Group. The objective and policy included in the Ohinewai provisions provides opportunity for cultural and customary activities, and ensure mana whenua narratives are woven into the development. Mr Olliver identifies potential implementation methods as including cultural monitoring, training and education, cultural symbolism and commemorations, place names and protection of taonga.<sup>108</sup>

### **Objective 3.12 Built Environment**

325. In terms of the RPS, Objective 3.12 is the only objective that specifically acknowledges urban development. It is a high level objective and provides the basis for the more specific policies relating to the Future Proof land use pattern. The policies in Section 6 of the RPS give effect to Objective 3.12, and are highly relevant to our consideration of the residential component of the development.
326. Objective 3.12 was the subject of debate between the planning experts. We agree with Mr Olliver that the unanticipated nature of the APL development challenges the responsiveness of the relevant planning instruments. Mr Olliver considered that although it is unanticipated development, Ohinewai can be considered as planned development if it meets the criteria and guidance for alternative land release. He also outlined the ways in which he considers the APL development meets Objective 3.12.<sup>109</sup> Ms Loynes for Waka Kotahi did not agree and considered that the development will be reliant on private vehicles due to its isolation, and therefore there is no resilience around transport mode choice.<sup>110</sup> She considered that while the proposal is utilising capacity of the Waikato Expressway, it is not “protecting” it. Other planning experts expressed concern about the scale of commercial activities and how it will undermine the social and economic viability of Huntly. We note that the experts made specific comment on the discount factory outlet, but this has been deleted from the proposal. Ms Trenouth and Mr Donald also expressed concern that available water has been allocated for Huntly growth.
327. While we understand the concerns of the planners, we consider that the APL Proposal overall satisfies Objective 3.12 both at a macro level (i.e. land uses) or through design and district plan provisions.

### **Objective 3.14 Mauri and values of freshwater bodies**

328. Objective 3.14 seeks to maintain or enhance the mauri and identified values of freshwater bodies. Mr Olliver considers the APL development impacts on freshwater only to the extent of treated stormwater disposal to the adjacent receiving environment near Lake Rotokawau, together with a potential future municipal wastewater discharge. <sup>111</sup> However we are also mindful that the retirement of the site from farming may result in an improvement in water

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<sup>108</sup> Evidence in chief of John Olliver on behalf of APL, 9 July 2020, paragraph 7.16

<sup>109</sup> Expert conferencing for planning, 26 June 2020, paragraph 9.7 and Evidence in chief of John Olliver for APL, 9 July 2020, paragraphs 7.20-7.25

<sup>110</sup> Expert conferencing for planning, 26 June 2020, paragraph 9.7

<sup>111</sup> Evidence in chief of John Olliver for APL, 9 July 2020, paragraphs 7.26

quality of nearby water bodies. We agree with Mr Olliver's assessment that Objective 3.14 seeks to "maintain and enhance" freshwater values while the Vision and Strategy seeks to "protect and restore". If the objectives of the Vision and Strategy are achieved, then the lesser tests of Objective 3.14 will also be achieved.

### **Section 6 Built Environment**

329. The policies in Section 6 of the RPS give effect to Objective 3.12, and were the focus of planning evidence from a number of parties. The planning experts all agreed that Policy 6.1 is not particularly directive in that "regard is to be had" to Section 6A which are the development principles. We note that the development principles are cross-referenced in a number of the policies in Section 6 as well as implementation methods, so address them comprehensively below.
330. Policy 6.3 addresses the coordination of growth and infrastructure, and the planning experts all agreed that this policy is fundamental to the assessment of the APL Proposal. As acknowledged by Mr Olliver, the ideal approach is to predict urban growth and to plan and fund future infrastructure to support that growth, but the rate and direction of growth is not always predictable. The issue is whether development can be co-ordinated with the provision of infrastructure, and Mr Olliver considers it is for the following reasons<sup>112</sup>:
- a. the Waikato Expressway has sufficient capacity to accommodate the additional traffic generated by the APL development, while maintaining the operational effectiveness of the Expressway. The Expressway will be used for its planned purpose, which is to enhance inter-regional and national economic growth and productivity.
  - b. there is available capacity in the Huntly Wastewater Treatment and Water Treatment plants to accommodate the APL development. While there are some issues with the timing and sequencing of the capacity and necessary upgrades to match it to the APL demands, these matters can be managed through staging and hold points to ensure capacity is in place before the development needs it.
  - c. the private investment in infrastructure funding for the APL development will assist in addressing current infrastructure problems such as the non-compliances associated with the operation of the Huntly WWTP.
331. Mr Mayhew acknowledged that the proposal includes staged development aligned with the provision of infrastructure. He considered this goes some way to achieving sub-clause (i) by requiring necessary infrastructure prior to it being required to service subsequent stages of development. He expressed concerns about the ability of the development to achieve the other clauses of the policy due to the Expressway being used for short journeys, a concern shared by Mr Swears.<sup>113</sup> Ms Loynes and Mr Swears outlined the importance of the Expressway and the benefits and functions that it is intended to provide and the risk that the proposal raises in respect of the efficient and effective functioning of the Expressway. Both experts expressed concern as to whether cycleways and walkways will be utilised given the distances between the development area, the school/neighbouring settlement and the road

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<sup>112</sup> Evidence in Chief of John Olliver on behalf of APL, 9 July 2020, paragraphs 7.36-7.42

<sup>113</sup> Evidence in Chief of Robert Swears on behalf of Waka Kotahi and Waikato Regional Council, 14 August 2020, paragraph 6.55



environment that will be crossed to get there. In addition, Mr Swears identifies potential design and safety issues associated with proposed pedestrian crossings on Tahuna Road that enable access to areas beyond the site.

332. Mr Kuo for Waikato Regional Council considered that the APL Proposal does not support the concept of a compact urban form where a range of community facilities and services can be easily accessed (or efficiently provided for) by public transport, walking and cycling to create a liveable community. We accept that Huntly will provide the social and community services and some of the service/goods needs, but the self-sufficiency of Ohinewai will very much depend on what businesses and social community infrastructure establish there.
333. As we have addressed elsewhere, we are not convinced that there is a significant risk to the Waikato Expressway. For the reasons outlined above, we consider the development does give effect to Policy 6.3, and the implementation methods that cascade from this policy.
334. Policy 6.6 seeks to protect the effectiveness and efficiency of existing and planned regionally significant infrastructure and recognises the benefits that can be gained from the development and use of regionally significant infrastructure. Mr Mayhew considered that developing a new industrial and residential node that is severed from the existing Ohinewai Village and distant from Huntly is not consistent with RPS Policy 6.6 and does not represent best practice nor create liveable and integrated communities.<sup>114</sup> We note that Policy 6.6 envisages regionally significant infrastructure being used, and we consider that Ohinewai effectively uses both rail and the Waikato Expressway to benefit the local, district and regional economy. Given that there is sufficient capacity within the state highway network, we consider that use of the Expressway constitutes an effective and efficient use of the transport infrastructure. We consider the proposed development gives effect to Policy 6.6.
335. Policy 6.14 of the RPS seeks to ensure that new development within the sub-region adopts the Future Proof land use pattern. Specifically, the relevant clauses seek to ensure:

Within the Future Proof area:

a) new urban development within Hamilton City, Cambridge, Te Awamutu/Kihikihi, Pirongia, Huntly, Ngaruawahia, Raglan, Te Kauwhata, Meremere, Taupiri, Horotiu, Matangi, Gordonton, Rukuhia, Te Kowhai and Whatawhata shall occur within the Urban Limits indicated on Map 6.2 (section 6C);

(b) new residential (including rural-residential) development shall be managed in accordance with the timing and population for growth areas in Table 6-1 (section 6D);

(c) new industrial development should predominantly be located in the strategic industrial nodes in Table 6-2 (section 6D) and in accordance with the indicative timings in that table except where alternative land release and timing is demonstrated to meet the criteria in Method 6.14.3;

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(g) where alternative industrial and residential land release patterns are promoted through district plan and structure plan processes, justification shall be provided to demonstrate consistency with the principles of the Future Proof land use pattern.

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<sup>114</sup> Evidence in Chief of Robert Swears on behalf of Waka Kotahi and Waikato Regional Council, 14 August 2020, paragraph 7.14

336. Clauses (c) and (g) create flexibility for land use to depart from the Future Proof pattern, provided that certain criteria and principles are met. It seems to us that while the presumption of Policy 6.14 is that development will fit with the Future Proof settlement pattern embedded in the RPS, the policy also expressly provides a mechanism to implement an alternative land use pattern. In this regard, the Planning Joint Witness Conferencing Statement records that Policy 6.14 provides for the consideration of alternatives (to the Future Proof settlement pattern) and that this is applicable to the APL Proposal.
337. The alternative release criteria in Method 6.14.3 are specifically designed to address this issue. They state:
- District plans and structure plans can only consider an alternative residential or industrial land release, or an alternative timing of that land release, than that indicated in Tables 6-1 and 6-2 in section 6D provided that:
- a) to do so will maintain or enhance the safe and efficient function of existing or planned infrastructure when compared to the release provided for within Tables 6-1 and 6-2;
- ...
- c) sufficient zoned land within the greenfield area or industrial node is available or could be made available in a timely and affordable manner; and making the land available will maintain the benefits of regionally significant committed infrastructure investments made to support other greenfield areas or industrial nodes; and
- d) the effects of the change are consistent with the development principles set out in Section 6A.
338. With regards to Method 6.14.3(a), the Waikato Expressway, including the Ohinewai Interchange, can be used safely and efficiently and there is capacity available in the Huntly wastewater treatment plant and water treatment plant to accommodate the development in the short term, with a more strategic solution required in the medium to long term. These upgrades will be delivered through provisions which ensure development does not occur before the infrastructure is ready to service it as we have discussed elsewhere in this decision.
339. Having established that residential and industrial development at Ohinewai can achieve Method 6.14.3 (a) and (c) above, we turn to the requirements of Policy 6.14(g) and Method 6.14.3(d) which require development to demonstrate consistency with the principles of the Future Proof land use pattern and the development principles set out in Section 6A respectively. We address the 6A Development Principles later in our decision.
340. Turning to the 2017 Future Proof Guiding Principles, Mr Olliver notes the high degree of overlap between these and 6A Development Principles and concludes that the proposed development is consistent with these.<sup>115</sup> In contrast, Mr Mayhew considers that while there are aspects of the proposal that are consistent with some of the principles of the Future Proof land use pattern, the proposal as a whole is not consistent with these principles.<sup>116</sup> We consider that there are some Future Proof 2017 principles which the development does not achieve including:

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<sup>115</sup> Evidence in Chief of John Olliver on behalf of APL, 9 July 2020, paragraphs 8.5-8.20

<sup>116</sup> Evidence in Chief of Ian Mayhew on behalf of Waka Kotahi and Waikato Regional Council, paragraph 11.111

- a. the staging and timing of the settlement pattern will align with the partners’ long-term infrastructure strategies and that of any potential Council Controlled Organisation (CCO), as well as NZ Transport Agency plans.
- b. encourage development in established settlements to support existing infrastructure.
- c. encourage development to locate adjacent to existing urban settlement and nodes in both the Waikato and Waipa districts.
- d. recognise and provide for the growth of urban areas and villages within indicative urban and village limits.

341. We note that (b) and (c) are principles to “encourage” so are not hard and fast compliance requirements. Similarly (d) has limited applicability as Ohinewai Village does not have any defined urban limits. While the staging and timing of this development may not align with the current infrastructure strategies, we are aware that should this development proceed, Waikato District Council and Watercare are likely to advance the required infrastructure. In any event, there are provisions which prevent development until there is appropriate infrastructure available to service it. Therefore we conclude that on balance, the development is consistent with the principles of Future Proof 2017.

342. We have reproduced Table 6.1 and 6.2 for completeness, although given the recently gazetted National Policy Statement for Urban Development and its directive to provide 20% additional capacity, we suspect these figures are well out of date. We are aware of s62(3) of the RMA and suggest that the RPS is now not compliant in this regard.

Residential population				
	2006	2021	2041	2061
Huntly	6915	8940	10925	12275
Industrial land allocation				
Huntly and Rotowaro		8ha	16ha	23ha

343. We now consider whether the development can demonstrate consistency with the development principles set out in Section 6A as required by Policy 6.1, Methods 6.1.1 and 6.14.3(d).

**6A Development Principles**

344. We note that the preface of the 6A Development Principles states “new development *should*” which again does not seem particularly directive or mandatory. We agree with Mr Olliver that the wording of Method 16.4.3(d) “are *consistent* with the development principles” and the preface of the 6A Development Principles with “new development *should*” means they need to be viewed ‘in the round’.<sup>117</sup> It seems clear to us that the development is compatible with the Development Principles when they are read as a whole. While analysis of each principle is necessary, and particular attention should be paid to the principles that are most relevant in the circumstances, it is not necessary for the development to be consistent with every one of the twenty principles. We note the Section 6A Development Principles derive from the 2009 Future Proof Strategy and are slightly different to the Guiding Principles in Future Proof 2017. We note that Mr Mayhew

<sup>117</sup> Evidence in Chief of John Olliver on behalf of APL, 9 July 2020, paragraph 7.56

interprets Section 6A to mean “that an outcome is expected to occur, unless it is impracticable or there is a compelling reason not to do so”.<sup>118</sup> However that interpretation is not supported by the RPS itself and as such we do not accept strict adherence to each of the individual principles is envisaged, particularly as the NPS-UD (which the RPS must give effect to) expressly recognises alternative development opportunities (for example Policy 8).

345. Consistency with the Development Principles in Section 6A was given significant attention through the hearing. APL included an assessment of the proposal against each principle in Section 10.2 of the Assessment of Environmental Effects, and concluded that the proposed rezoning and Structure Plan have a high level of consistency with the Development Principles. Mr Olliver addressed each of the Development Principles in his evidence and concludes that the proposed development is consistent with the Principles; indeed, there is a high degree of alignment.<sup>119</sup> He considered that little weight can be placed on principles that intend that the development should be contained in an existing urban area given that it is an unanticipated development, outside the scope of the predicted Future Proof land use pattern, and of a size that cannot be contained in any of the townships.
346. Conversely, the experts for Waka Kotahi and Waikato Regional Council considered the development is not consistent with the Development Principles in Section 6A. Ms Loynes, Mr Swears and Mr Kuo all consider that the proposal will be a car-centric development, contrary to the Development Principles in section 6A. Mr Mayhew summarised his assessment of the development against Section 6A Development Principles and considered it was inconsistent for the following reasons<sup>120</sup>:
- a. the proposal does not support existing urban areas in preference to creating new ones and blurs the line between urban and rural areas by creating a new satellite urban area, potentially a dormitory town, separated from Huntly by tracts of rural land.
  - b. opportunities for urban intensification and redevelopment do not appear to have been considered, particularly in relation to the residential component,
  - c. while there are some elements of a compact urban design within the proposal itself, the reliance on schools, facilities and services in other locations and the limited ability to provide efficient and effective public transport will likely result in a high level of car-dependency.
  - d. The undesirable (from a traffic engineering perspective) use of the Expressway for short local trips, and the potential impact on the long-term benefits and function of the Expressway.
  - e. the need to make a series of compromises to transportation standards, guidelines, and principles in order to accommodate the proposal.
  - f. the location does not connect well with existing water and wastewater services and requires the provision of dedicated infrastructure to service the future stages of the development.

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<sup>118</sup> Evidence in Chief of Ian Mayhew on behalf of Waka Kotahi and Waikato Regional Council, paragraph 11.67

<sup>119</sup> Evidence in Chief of John Olliver on behalf of APL, 9 July 2020, paragraphs 7.62-7.85

<sup>120</sup> Evidence in Chief of Ian Mayhew on behalf of Waka Kotahi and Waikato Regional Council, paragraph 11.98

- g. the potential for incompatible land uses in proximity to each other.
- h. the location of the site in a flood hazard area, necessitating substantial volumes of imported fill to mitigate flood risk.

347. Mr Tremaine for Future Proof Implementation Committee considered the residential component of the development does not meet these. He explained that it is not consistent with the principles which support existing urban areas in preference to creating new ones, provide a clear delineation between urban and rural areas, connect well with existing and planned development and infrastructure and promote a compact urban form.<sup>121</sup>
348. While we acknowledge the considerable effort that parties have put into assessing these Principles, we prefer the evidence of Mr Olliver in this regard. We acknowledge that principles such as Principle (c) which seek to make use of opportunities for urban intensification and redevelopment to minimise the need for urban development in greenfield areas are, at first blush, somewhat confronting for a zone change such as this. However, this issue may be addressed through the upcoming Proposed District Plan hearing on zoning where we consider submissions seeking to enable urban intensification through zoning (e.g. the submission from Kāinga Ora seeking medium-density residential zoning in the main towns including Huntly). Similarly, Principle (a) seeks to support existing urban areas in preference to creating new ones which would seem to be inconsistent with the proposed development on the face of it. However, it is clear to us that there were no other suitably large sites located in appropriate locations to accommodate the development. However, we consider that this development can indeed support Huntly despite the 2.3km distance between the two. The APL development will provide considerable employment opportunities for Huntly that do not currently exist and thus support the economic – and as a result the social – well-being of the community. We are also mindful of the gross floor area limits on commercial development in the Ohinewai Business Precinct, and the policy which seeks to minimise any adverse economic effects on the Huntly Town Centre. We are of the clear view that when read holistically, the development is consistent with the 6A Development Principles.

**Policy 6.15 Density targets for Future Proof area**

349. Policy 6.15 establishes residential density targets for the Future Proof area:
- Hamilton City Council, Waipa District Council and Waikato District Council shall seek to achieve compact urban environments that support existing commercial centres, multi-modal transport options, and allow people to live, work and play within their local area. In doing so, development provisions shall seek to achieve over time the following average gross density targets:
350. We note that none of the areas mentioned in this table are relevant, with perhaps the nearest approximation being greenfield development in Huntly with an average gross density target of 12-15 households per hectare. We were presented with two different residential densities from APL; we understand from Mr Olliver that the residential component of the rezoning will achieve a density of approximately 21 houses per hectare (net developable area) although this is reduced to about 13 houses per hectare when all the open space and

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<sup>121</sup> Evidence in Chief of Ken Tremaine on behalf of the Future Proof Implementation Committee, 13 August 2020, paragraph 6.13

stormwater treatment area is included.<sup>122</sup> Mr Broekhuysen calculated a net density of 33 dwellings per hectare but the gross density is approximately 11 dwellings per hectare due to the high level of open space. We are unsure which is correct, but in any event this meets the target in Future Proof of 12-15 households per hectare in townships. We also note that the policy in Ohinewai Residential Precinct seeks to achieve a minimum net density of 12-15 households per hectare.

### **Policy 6.16 Commercial development in the Future Proof area**

351. Policy 6.16 establishes a hierarchy of established commercial centres in the Future Proof area and seeks to consolidate commercial activities predominantly in the centres identified in Table 6-4. Huntly is identified as a Town Centre in the table. We note the wording of the policy “primarily through” and “predominantly” and interpret this as meaning that the alternative development outside the centres is not precluded. This is reinforced by Policy 6.16(g) which states that new commercial centres are only to be developed where they are consistent with Policy 6.16(a)-(f).
352. An economic assessment of the proposed activities has been undertaken as part of the technical information that has informed APL’s rezoning submission. Mr Heath’s assessment is that the development of the APL development will not have adverse effects on neighbouring towns, and would actually add significant economic value to the area.<sup>123</sup> The deletion of the discount factory outlet will have addressed some of the concerns expressed by Dr Fairgray for Waikato District Council and Mr Keenan for Waikato Regional Council with regards to the effect on Huntly and Te Kauwhata. Dr Fairgray considered that the development would not have significant adverse impacts on the retail and service roles of Huntly or Te Kauwhata.<sup>124</sup> We are satisfied that the provisions are sufficient to limit the scale and type of activity provided for within the APL development to ensure that the proposed development will not impact on the hierarchy that is established in the RPS. We consider that the APL Proposal gives effect to Policy 6.16.

### **Chapter 13 Natural Hazards**

353. We have addressed Chapter 13 natural hazards earlier in our decision in the context of flooding, and consider that, based on the evidence of Mr Desai, the development of the site would result in a negligible increase in water levels or flood extents within the site or any of the neighbouring lots. Plan provisions will adequately manage any risk including an agreed 1% AEP with Climate Change flood level within Lake Waikare and the APL site of 8.0mRL, and any local effects of increased stormwater runoff as a result of the development can be addressed through design and construction of appropriate stormwater devices and assessed at the resource consent stage. We therefore consider that the APL development gives effect to the policies in Chapter 13.

#### **Does the RPS cover the field?**

354. Given the complexity created by the NPS-UD being gazetted recently and the RPS not yet being updated to give effect to it, there was some debate as to whether there is incomplete

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<sup>122</sup> Evidence in Chief of John Olliver on behalf of APL, 9 July 2020, paragraphs 8.9

<sup>123</sup> Evidence in Chief of Tim Heath on behalf of APL, 9 July 2020, paragraph 4.42-4.44.

<sup>124</sup> Ohinewai Rezoning Proposal - Economic and Residential Matters: Update, Doug Fairgray, 1 September 2020, paragraph 5.3.1

coverage of the RPS and therefore recourse to Part 2 of the RMA. Mr Olliver considered that the WRPS and the PDP have generally been prepared in accordance with the matters in Part 2, but identified two aspects where he considered there was “incomplete coverage” and therefore justify some recourse to Part 2. He considered that because the NPS-UDC post-dates the WRPS and some aspects of that NPS, such as preparation of a Future Development Strategy, have not been completed and any outcomes incorporated in the RPS. He considered the RPS is therefore incomplete in terms of its coverage of urban development, insofar as giving effect to the NPS-UDC is concerned.<sup>125</sup> We note that since Mr Olliver prepared his statement of evidence, the NPS-UDC was superseded by the NPS-UD, however this did not change Mr Olliver’s position.

355. The second area where Mr Olliver considered there was incomplete coverage by the RPS was in terms of the settlement pattern. While the settlement pattern in the RPS was embedded in 2010, Future Proof 2009 has now been superseded by Future Proof 2017 but the settlement pattern has not been changed. Mr Olliver considered this disconnect between the RPS and Future Proof 2017 leads to uncertainty in the RPS in terms of the way the built environment provisions should be given effect to in a district plan.<sup>126</sup>
356. Mr Berry outlined three possible pathways<sup>127</sup> as follows:
- a. The RPS covers the field - where properly applied, the RPS is sufficiently enabling and “responsive” in the manner required by the NPS-UD and enables the APL Proposal to proceed in accordance with the Alternative Land Release criteria in Policies 6.14(c) and (g) of the RPS and the Development Principles in section 6A of that document. While some objectives and policies are framed in a way that allows limited flexibility (that is, environmental bottom lines), others provide scope for choice. The key factor for consideration is the degree to which “flexibility and scope for choice” is provided by the relevant provisions. However, in the event that the planning document contains equally directive policies which pull in different directions, it may be necessary to conclude that there is “invalidity, incomplete coverage or uncertainty of meaning” in the RPS such that recourse to the higher order planning documents (and ultimately, Part 2 of the RMA) is required.
  - b. Need to refer back to the NPS-UD - if the alternative land release criteria and 6A Development Principles do not enable this rezoning to be approved notwithstanding the direction in the NPS-UD that development in the nature of the APL Proposal should be enabled, it demonstrates that the RPS is not sufficiently agile to “cover the field”, in a *King Salmon* sense, and does not “give effect to” the NPS-UD. At that point the NPS-UD, as the superior planning instrument, needs to take centre stage.
  - c. Revert to Part 2 of the Act - if the Panel find it is not possible to reconcile Policy 6 which requires “particular regard” to be had to the planned urban form anticipated by the RMA planning documents and the direction in Policy 8 to be responsive to unanticipated development capacity, such that there is uncertainty in terms of how the NPS-UD should be interpreted.

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<sup>125</sup> Evidence in chief of John Olliver on behalf of APL, 9 July 2020, paragraph 5.33

<sup>126</sup> Evidence in chief of John Olliver on behalf of APL, 9 July 2020, paragraph 5.35

<sup>127</sup> Closing legal statement for APL, 23 September 2020, paragraphs 2.35-2.62

357. Mr Berry goes on to say that he considers that reconciliation of provisions that are in tension is possible in light of the analysis set out in paragraphs 2.2-2.34 of his closing legal submissions. He also states that Objective 1 of the NPS-UD is essentially a mirror image of the first part of section 5(2) of the RMA in any event and should be given significant weight given the issues at stake and the opportunity presented.
358. Mr Mayhew on behalf of Waikato Regional Council had an opposing position to Mr Olliver. He considered that there is no fundamental reason for recourse to Part 2 in respect of consideration of the APL Proposal for the following reasons<sup>128</sup>:
- a. the RPS comprehensively addresses the issue of urban growth and development and is not materially deficient or incomplete in this regard.
  - b. the WRPS incorporates the Future Proof settlement pattern and principles. The principles have recently been reviewed and have been found to be, if anything, even more relevant than when they were first developed.
  - c. the evidence of Mr Keenan and the Future Proof Industrial Land Study (2020) indicate that there is no deficit of residential or industrial land that indicates Future Proof is deficient in terms of adequately providing capacity for growth in urban environments, as anticipated by the NPS-UD (noting its potentially limited application to the subject rezoning request).
  - d. the WRPS explicitly provides for departures from the Future Proof settlement pattern and the criteria by which this should be assessed, and it is accepted by the planning experts that these apply to the re-zoning requests.
359. Mr Gerald Lanning, legal counsel for Waikato Regional Council also addressed this issue in his submissions and considered Mr Olliver was incorrect in his interpretation.<sup>129</sup> Mr Lanning considered that just because the RPS may not have been fully updated in light of the NPS-UDC (as it was then) does not translate to the RPS not “covering the field”. He acknowledged that any settlement pattern specified in a planning document will be potentially 'dated' from the date it is first promulgated, in this case the RPS expressly provides for deviations from the specified pattern (generally consistent with the NPS-UD). He did not consider this is a case of the RPS not “covering the field”. He also drew our attention to the fact that Future Proof's settlement pattern and guiding principles were not altered substantially following the review in 2017.
360. Having carefully considered this issue, we are persuaded by the analysis and conclusions of Mr Mayhew and Mr Lanning. We consider that the RPS is sufficiently responsive and flexible to deal with out-of-sequence unplanned development, particularly given the alternative land release criteria in Method 6.14.3. We consider that the alternative land release provisions in the RPS mean it is sufficiently responsive to planned and unanticipated development opportunities to be consistent with the NPS-UD, particularly Policy 8. As to the outdated growth areas in the RPS, the alternative land release provisions cover this very situation in order to provide flexibility for new growth opportunities. Even if the RPS needs to be

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<sup>128</sup> Evidence in Chief of Ian Mayhew on behalf of Waikato Regional Council and Waka Kotahi, 14 August 2020, paragraph 14.3

<sup>129</sup> Opening legal submission on behalf of Waikato Regional Council, 9 September 2020, paragraphs 4.9-4.11



changed to give effect to the NPS-UD, then we take direction from the NPS-UD in any case. It seems to us that the need for recourse to Part 2 does not arise.

361. In the event that we are wrong and there is incomplete coverage, then we consider any gap is effectively covered by the NPS-UD, being the higher order document. In any event, section 75(3)(a) of the RMA expressly requires a district plan to give effect to any national policy statement, which includes the NPS-UD. Hence, in our view there is no need to revert to Part 2, other than to ensure compliance with s74(1)(b).

## 21.7 Future Proof

362. While Future Proof 2009 was embedded in the RPS, there was a subsequent 2017 update as part of a two-stage review process to recognise national and sub-regional planning change that had occurred since 2009. The 2017 revision did not update the settlement strategy, and contains the same industrial land use allocation table as Table 6-2 in the RPS. However, it includes a new section 7.5, A Responsive Approach to Development. This section refers to the difficulty of predicting future growth demands and trends, and provides further context and guidance for changes to the settlement pattern.
363. Section 74(2)(b)(i) requires us to have regard to management plans and strategies prepared under other Acts, and Future Proof 2017 falls into this category. Ohinewai is not an existing growth area in the Future Proof Strategy. This was central to the concerns of Waka Kotahi and WRC, that Ohinewai is not anticipated in the relevant strategic planning documents, including Future Proof.
364. We note that the submission of Future Proof Implementation Committee supports the industrial component of the development. Mr Tremaine explained that the Ohinewai development goes over and above the projected demand for industrial and residential land as outlined in the Future Proof Strategy and associated work such as the Housing and Business Development Capacity Assessment (July 2017) and the Future Proof Industrial Land Study (March 2020). However, he considers the industrial component is justified given the unique pressures and demand for land placed on the Waikato district from Auckland. He observed that forecasting industrial land demand is not an exact science and can only ever be a guide and we agree.<sup>130</sup>
365. The guiding principles of Future Proof 2017 are embedded in its Section 1.3 and Mr Olliver concludes that the proposed development is consistent with these.<sup>131</sup> In contrast, Mr Mayhew considers that while there are aspects of the proposal that are consistent with some of the principles of the Future Proof 2017 land use pattern, the proposal as a whole is not consistent with these principles.<sup>132</sup> We have addressed this matter earlier in our decision and conclude that on balance, the development is consistent with the principles of Future Proof 2017.

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<sup>130</sup> Evidence in Chief of Ken Tremaine on behalf of the Future Proof Implementation Committee, 13 August 2020, paragraph 6.5

<sup>131</sup> Evidence in Chief of John Olliver on behalf of APL, 9 July 2020, paragraphs 8.5-8.20

<sup>132</sup> Evidence in Chief of Ian Mayhew on behalf of Waka Kotahi and Waikato Regional Council, paragraph 11.111

## 21.8 Waikato 2070

366. Waikato 2070 is the growth strategy recently developed by Waikato District Council. As it was prepared under the special consultative process in the Local Government Act 2002, it has the same status as Future Proof 2017 in terms of our requirements to “have regard” to as per Section 74(2)(b)(i) of the RMA. We note however that Future Proof 2009 has an elevated status, given it is embedded in the RPS.
367. Waikato 2070 includes the urban development of Ohinewai in Section 04.7 and the Ohinewai Development Plan. It includes the APL site in the form of the Ohinewai South Industrial Cluster and a residential growth cell. Both have a development timeframe of 1-10 years. It also includes an Ohinewai North Industrial Cluster to the north of Balemi Rd. Mr Mayhew considers Waikato 2070 should not be afforded substantial weight as it is new and is a substantial departure from Future Proof 2017 and has not been developed in conjunction with Future Proof partners and for which the evidence base is not clear.<sup>133</sup> While Mr Olliver places “significant weight” on Waikato 2070, we are not certain we would go that far, although we recognise that growth projections is not an exact science. We do not agree with Ms Loynes who considered that Waikato 2070 should be consistent with the RPS, and expressed concern that no evidence was provided as to why this Growth Strategy should deviate from the agreed settlement pattern set out in Future Proof 2009 and embedded in the RPS. There is no requirement for Waikato 2070 to be consistent with the RPS, and given that the RPS is rather outdated in its growth projections (and Future Proof 2017 is likely to be also) we consider it of some advantage for Waikato 2070 to be the most recent update of the RPS and Future Proof 2017.
368. In any event, it is not our role to evaluate Waikato 2070 but rather have regard to it in our assessment of the submissions seeking rezoning of Ohinewai. In this regard, the APL development (industrial and residential components) is clearly consistent with Waikato 2070. The weight we have placed on Waikato 2070 is not determinative of our decision to approve APL’s submission and we have given more weight to the higher order planning documents in arriving at this view.

## 21.9 Waikato-Tainui Environmental Plan Tai Tumu, Tari Pari, Tai Ao

369. We are required to take into account the Waikato-Tainui Environmental Plan Tai Tumu, Tari Pari, Tai Ao in accordance with section 74(2A) of the RMA. The overarching purpose of the Waikato-Tainui Environmental Plan is to provide a pathway that returns the Waikato-Tainui rohe to the modern day equivalent of the environmental state it was in when Kiingi Taawhiao composed his maimai aroha. There are a number of sections of this plan relevant to the rezoning requests before us. It is clear to us that APL have engaged meaningfully with Tainui, in particularly through the Tangata Whenua Governance Group.
370. We have read the assessment contained in section 12.1 of APL’s Assessment of Environmental Effects, the Kaitiaki Environmental Values Assessment Report as well as Mr Olliver’s assessment in section 9 of his evidence. We agree that the APL development is aligned with the objectives in Waikato-Tainui Environmental Plan Tai Tumu, Tari Pari, Tai

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<sup>133</sup> Evidence in Chief of Ian Mayhew on behalf of Waka Kotahi and Waikato Regional Council, 14 August 2020, paragraph 5.9

Ao. It seems to us that the most relevant provisions of the Waikato-Tainui Environmental Plan Tai Tumu, Tari Pari, Tai Ao to this rezoning are:

- a. Chapter 6 Consultation and engagement with Waikato Tainui
- b. Chapter 7 Towards environmental enhancement
- c. Chapter 8 managing effects; and
- d. Chapter 11 Vision and Strategy for the Waikato River.

371. While Chapter 6 supports and encourages early involvement of Waikato-Tainui in major projects, we note that APL gave effect to these expectations by establishing the Tangata Whenua Governance Group in the early stages of preparation of the rezoning information. We understand that feedback from and the involvement of the Tangata Whenua Governance Group has informed the masterplan concept.
372. We consider that the APL Proposal will contribute to the achievement of a number of objectives in the Waikato-Tainui Environmental Plan Tai Tumu, Tari Pari, Tai Ao, for example reducing nutrients as a result of the retirement of the dairy farm, restoration of wetlands and opportunities for environmental enhancement. We have considered the proximity of the site to the Waikato River, as well as any tributaries. We are satisfied that the water quality of those waterbodies will not be adversely affected by the APL Proposal, particularly given the stormwater management provisions in the Ohinewai Infrastructure chapter.
373. We are mindful of the concerns of Waikato-Tainui, particularly with regards to water and wastewater servicing but consider that these concerns can be effectively managed through provisions that prevent development until such time as the necessary servicing (and upgrades) have been implemented. We consider that that given the current non-compliance of the Huntly wastewater treatment plant, the APL Proposal may accelerate upgrading the plant and therefore improving water quality of the Waikato River.

## **21.10 Sections 32 and 32AA of the RMA**

374. Sections 32 and 32AA require an evaluation that must consider the efficiency and effectiveness of a proposal, taking into consideration benefits and costs and the risk of acting or not acting where there is uncertain information. If a change from the notified proposed district plan is being recommended, a section 32AA further evaluation must be undertaken in accordance with section 32(1) to (4)<sup>134</sup>. While we have drawn on the Assessment of Environment Effects prepared by APL and the evidence of both Mr Olliver and Mr Penfold, for the avoidance of doubt, we have included our own s32AA in Appendix 5 given that the provisions have evolved considerably since the first set of provisions were filed by APL.
375. We are aware that case law has interpreted “most appropriate” to mean “suitable, but not necessarily superior”. This means the most appropriate option does not need to be the optimal or best option, but must demonstrate that it will meet the objectives in an efficient and effective way; a point that was accepted by Mr Mayhew and Mr Olliver in their evidence.

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<sup>134</sup> Section 32AA(1)(a) and (b)

Having undertaken this assessment, we conclude that the objectives are the most appropriate way to achieve the purpose of this Act.

376. We consider that the objectives will provide for the economic well-being of both the local community (including Huntly) as well as the wider district. The proposal will bring economic development and employment opportunities that do not currently exist. We are satisfied that the development on balance will enable positive social impacts for both the present and future community.
377. Cultural matters have been addressed primarily through the objectives regarding the Vision and Strategy as well as ensuring the necessary capacity of water supply and wastewater is available prior to development.
378. We have considered the health and safety of people and communities. This is embedded in the objectives for flood hazards, geotechnical stability, adequate servicing for water and wastewater and safe transport options.
379. In terms of Section 5(2)(a) of the Act, we consider the objectives will sustain the natural and physical resources to meet the needs of future generations, particularly through the objectives focused on the Vision and Strategy with the river as a key natural resource. The objectives address the life-supporting capacity, particularly the ecosystems in accordance with Section 5(2)(b) of the Act.
380. We consider that any potential adverse effects on the environment are avoided or mitigated through objectives, such as transport safety effects, visual, landscape, ecological and water quality effects.
381. Turning to the second part of s32 which focuses on provisions, we conclude that they are the most appropriate way to achieve the objectives by:
- a. identifying other reasonably practicable options for achieving the objectives; and
  - b. assessing the efficiency and effectiveness of the provisions in achieving the objectives.
382. Mr Mayhew criticised APL's s32AA evaluation in terms of an assessment of alternatives. He considered that the extent of the departure from the established and planned growth pattern, the potential public funding implications to support the proposal and the wider implications of the proposal are such that alternative options should be assessed (as would normally be the case in growth planning).<sup>135</sup> As outlined in Mr Gaze's evidence, APL had considered a range of alternatives in terms of location, but failed to find anything that met the needs of the company and its business. We agree that there may be alternative locations which accord with the RPS, however they would have constraints which make the project less viable such as land instability in Huntly due to mine subsidence, or distance away from the main trunk rail line, or insufficient land area. At a micro level, both the structure plan, design and provisions have evolved considerably since the original submission was lodged in 2018, all of which could be described as a consideration of options and alternatives.

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<sup>135</sup> Evidence in chief of Ian Mayhew on behalf of Waka Kotahi and Waikato Regional Council, 20 August 2020, paragraph 5.3

383. Our assessment of the efficiency and effectiveness included consideration of the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, more specifically the:
- a. opportunities for economic growth that are anticipated to be provided or reduced; and
  - b. employment that are anticipated to be provided or reduced; and
  - c. the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.
384. We note the requirement of Section 32(2) for an assessment of the opportunities for economic growth and employment to be provided or reduced. Evidence from APL's experts identified a significant economic benefit to the Ohinewai/Huntly area and the wider district from the \$1.3 billion investment and the estimated 2,600 jobs. As a result, there are likely to be significant social benefits for the deprived Huntly/Ohinewai area from this investment and employment opportunities.
385. There was a great deal of information provided through technical assessments, evidence and expert conferencing, and consequently very little uncertain or insufficient information. Nevertheless we have turned our minds to the risk of acting or not acting. We agree with Mr Olliver that the risk of not acting (i.e. not rezoning the land) is that APL will be unable to rationalise, expand and improve productivity and will be required to find a site somewhere else which would be very difficult.<sup>136</sup> Given where we are in the process of the district plan review, we are aware that the notified Rural Zone provisions would make the establishment of the industrial activity very difficult, and the residential development impossible (as subdivision down to residential densities would be a prohibited activity). As a result, the economic, social and employment opportunities would be entirely lost. This is the opportunity cost of the rezoning.
386. As acknowledged by Mr Olliver, there are some risks of acting (i.e. rezoning the land). He identified as a minor risk that a long-term water and wastewater solution is not in place by Years 7-9 of development when the capacity of the Huntly plants may be exhausted, but that the risk is addressed by the proposed staging rules in the plan provisions that will effectively prevent further development beyond the capacity of the infrastructure. As we have said earlier in this decision, we consider the APL development may well prove to be the catalyst which forces an upgrade of the currently non-complying Huntly wastewater treatment plant. However we do not consider the wastewater to be a risk, particularly given the stringent provisions we have included to ensure development cannot and does not proceed without connection to a complying public reticulated wastewater treatment plant. We consider there are other risks of acting albeit small, including social and economic failure of Huntly where commercial and residential growth is attracted to Ohinewai rather than Huntly. The flip side to this is that without the APL development, Huntly may fail to thrive anyway, particularly given the lack of employment opportunities and consequential demand for residential growth. Other risks of acting include flood risk, unreasonable noise, landscape and visual effects, etc.

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<sup>136</sup> Evidence in Chief of John Olliver on behalf of APL, 9 July 2020, paragraph 2.5

387. Having considered the risks of acting or not acting, we consider that not acting would result in greater negative environmental, economic, social, and cultural effects than acting.
388. Given that the Ohinewai proposal is a change from the notified proposed district plan, a section 32AA further evaluation must be undertaken in accordance with section 32(1) to (4)<sup>137</sup>. Having undertaken a Section 32AA evaluation, we consider the amended set of objectives appended to this decision are the most appropriate way to achieve the purpose of this Act, and the provisions are the most appropriate way to achieve the objectives.

## 21.11 Overall Assessment

389. In considering the APL submission and to ensure we have addressed all the statutory requirements, we have been guided by an updated checklist based on *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 which incorporates recent amendments to the RMA.
390. The rezoning proposal:
- a. must give effect to<sup>138</sup> any national policy statement, New Zealand Coastal Policy Statement, national planning standard and Waikato Regional Policy Statement<sup>139</sup>;
  - b. must have regard to any proposed regional policy statement;<sup>140</sup>
  - c. must not be inconsistent with an operative regional plan for any matter specified in section 30(1) or a water conservation order;<sup>141</sup>
  - d. must have regard to any proposed regional plan on any matter of regional significance etc.<sup>142</sup>
  - e. must have regard to any relevant management plans and strategies under other Acts, and to any relevant entry in the *Heritage List/Rarangi Korero* and to various fisheries regulations<sup>143</sup> to the extent that their content has a bearing on resource management issues of the district; and to consistency with plans and proposed plans of adjacent territorial authorities;<sup>144</sup>
  - f. must take into account any relevant planning document recognised by an iwi authority;<sup>145</sup>
  - g. must not have regard to trade competition<sup>146</sup> or the effects of trade competition;
  - h. must have regard to the actual or potential effect of activities on the environment<sup>147</sup>;

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<sup>137</sup> Section 32AA(1)(a) and (b)

<sup>138</sup> Section 75(3).

<sup>139</sup> Section 75(3)(a) to (d)

<sup>140</sup> Section 74(2)(a)(i).

<sup>141</sup> Section 75(4).

<sup>142</sup> Section 74(2)(a)(ii). This includes Proposed Plan Change I Heathy Rivers to the Waikato Regional Plan

<sup>143</sup> Section 74(2)(b).

<sup>144</sup> Section 74(2)(c).

<sup>145</sup> Section 74(2A).

<sup>146</sup> Section 74(3).

<sup>147</sup> Section 76(3).

- i. must be in accordance with<sup>148</sup> – and assist the territorial authority to carry out – its functions<sup>149</sup> (including its function under s31(1)(aa)) so as to achieve the purpose of the Act<sup>150</sup>;
  - j. must be in accordance with the provisions of Part 2 RMA<sup>151</sup> and a section 32 evaluation.
391. For the reasons set out in detail in this decision, we find that the evidence establishes that APL’s submission satisfies the above statutory requirements. In particular we are satisfied that the rezoning and associated plan provisions gives effect to the higher order planning instruments, namely:
- a. the NPS-UD because it will add significantly to development capacity and contribute to transforming the Huntly and Ohinewai area into a well-functioning urban environment; and
  - b. the alternative land release criteria in the RPS and the relevant development principles.
392. Overall, we conclude that the rezoning will enable the people and community of the North Waikato district to provide for their social, economic and cultural well-being, while ensuring that any potential adverse effects can be avoided, remedied or mitigated by the plan provisions.

## 22 Conclusion

393. In our decision we have set out at length our reasons for accepting all three parts (industrial, business and residential) to the APL Proposal at Ohinewai. We have done so in order to respond to a range of issues raised by submitters, particularly from the Waikato Regional Council and Waka Kotahi who both opposed the rezoning proposal for a multitude of reasons, none of which have persuaded us to reject the APL Proposal.
394. Central to their opposition were concerns that this proposal was not anticipated by strategic planning documents and would not achieve integrated land use development and infrastructure planning in conformity with existing planning documents.
395. Without wishing to be unduly critical, we consider those agencies have taken a narrow doctrinaire interpretation of the relevant strategic planning documents and have given little weight to the strong directions in the NPS-UD for decision makers to be responsive to development opportunities unanticipated by RMA planning documents. The need for flexibility in the planning context to accommodate unplanned development is also recognised in the alternative land release provisions in the RPS. We are disappointed the two public agencies took such entrenched positions to oppose the Ohinewai development proposal when a more constructive approach was called for when taking into account the significant benefits that could arise to the local area and the region if the rezoning proposal were to be approved.

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<sup>148</sup> Section 74(1).

<sup>149</sup> Section 31.

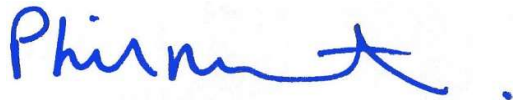
<sup>150</sup> Sections 72 and 74(1).

<sup>151</sup> Section 74(1)(b)

396. Having considered carefully all the evidence and competing submissions on the effects and consequences if this zoning proposal is approved, we are left in no doubt that the APL Proposal should provide significant economic, social and employment benefits to the Huntly/Ohinewai area and the wider Waikato region. There is the potential to provide over 2600 jobs to the Waikato region, to provide affordable housing to the local workforce and to contribute an estimated \$200 million per annum into the local economy. We are also satisfied the effects of this development within and outside the zone and its impact on infrastructure services can be appropriately managed through the prescriptive set of planning provisions we have approved as explained earlier in this decision.

## 23 Decision

397. Having undertaken all the required statutory tests, we accept the request to rezone the sites at 231 Tahuna Road and 52, 56 and 58 Lumsden Road, Ohinewai from Rural Zone to Ohinewai Zone, with three precincts being Ohinewai Industrial Precinct, Ohinewai Business Precinct and Ohinewai Residential Precinct. The district plan map for the site is contained in Appendix 3 and the provisions are in Appendix 4.
398. We accept the intent of the submission from Ambury Properties Ltd comprising submission points 764.1-6, although have mostly accepted in part each of APL's submission points. This is because of the specific nature of the changes to provisions, the zoning map and structure plan sought in APL's primary submission. The zoning pattern and structure plan has evolved considerably through the process and is now somewhat different from the original submission, hence our accepting in part the submission points. We accordingly accept, accept in part or reject the further submissions.
399. Our decisions on APL's submission points and the attendant further submissions are contained in Appendix 2.



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P H Mitchell (Chair)

For the Hearings Panel

24 May 2021



## APPENDIX I – PARTICIPANTS IN THE HEARING

Organisation or submitter	Representatives (and area of expertise)
Waikato District Council	Bridget Parham (Counsel) Chloe Trenouth (author of Section 42A Report and planning) Matthew Jones (landscape and urban design) J W Bradley (wastewater) Joanne Healy (social effects) Naomi McMinn (transport) Dr Douglas Fairgray (economics)
Waikato District Council	Mayor Allan Swanson (on behalf of the councillors of the Waikato District Council)
APL	Simon Berry and Kate Storer (Counsel) Craig Turner (corporate evidence) David Gaze (project manager) Cameron Inder (transport) Jonathan Broekhuysen (landscape) Nicholas Speight (geotechnical) David Stafford (groundwater) Ajay Desai (flooding) Carl O'Brien (site contamination) Cameron Lines (geologist) Matthew Gainsford (archaeology) Robert White (water and wastewater) Ben Pain (erosion and sediment control) Pranil Wadan (stormwater) Tim Heath (economics) Dr Brent Wheeler (economics) Philip Osborne (economics) Robert Quigley (social effects) Ben Lawrence (acoustic) Michael Graham (landscape) Chad Croft (ecology) Stuart Penfold (planning) John Olliver (planning)
Tangata Whenua Governance Group (on behalf of APL)	Glen Tupuhi
Waikato Regional Council (WRC)	Gerald C Lanning (Counsel) Ian Mayhew (planning) Blair Keenan (economics) Dr Melissa Hackell (social effects) Vincent Kuo (public transport) Dr Tom Wilding (ecology) Ghassan Basheer (flooding)
Waka Kotahi New Zealand Transport Agency (Waka Kātahi)	Christina Sheard (Counsel) Ian Mayhew (planning) Robert Swears (transport) Sarah Loynes (transport planning)

The Ralph Estates	Bill Loutit and Sarah Mitchell (Counsel) Dean Fergusson (resources and mining) Gary Gray (mineral resource valuation)
Ohinewai Lands Limited (OLL)	Sam Hutchings (Counsel) Tony McLauchlan (valuation and property management)
Waikato-Tainui	Gavin Donald (planning)
Future Proof Implementation Committee	Kenneth Tremaine (strategic planning)
Ohinewai Area Committee	David White
David and Tiffany White	David and Tiffany White
Auckland/Waikato Fish and Game Council (Fish & Game)	David Klee (ecology)
Mercury NZ Limited	Angus McKenzie (planning) Murray Webby (flooding and floodplain management)

## APPENDIX 2 – DECISION ON SUBMISSIONS AND FURTHER SUBMISSIONS

Submission point	Submitter	Decision requested	Decision
<b>764.1</b>	<b>Ambury Properties Limited</b>	<p><b>Amend</b> the zoning of the property at 231 Tahuna Road and 52, 56 and 58 Lumsden Road, Ohinewai from Rural Zone to Industrial, Business and Residential Zone as shown on the plan attached to the submission (see Attachment 1 of the submission).</p> <p>AND</p> <p><b>Add</b> the Ohinewai Structure Plan attached to the original submission in a new 'Appendix 13' within the Proposed District Plan.</p> <p>AND</p> <p><b>Amend</b> the Proposed District Plan as necessary to support the relief set out in the submission.</p>	<b>Accept in part</b>
1277.51	Waikato Regional Council	Oppose	<b>Accept in part</b>
1207.10	Ohinewai Area Committee	Neutral	<b>Accept in part</b>
1145.22	Ohinewai Area Committee	Neutral	<b>Accept in part</b>
1191.2	Shand Properties	Support	<b>Accept in part</b>
1108.127	Waikato-Tainui	Oppose	<b>Accept in part</b>
1387.1124	Mercury NZ Limited	Oppose	<b>Accept in part</b>
1206.6	Ohinewai Land Limited	Support in part	<b>Accept in part</b>
1202.123	NZ Transport Agency	Oppose	<b>Accept in part</b>
1224.13	Ambury Properties Limited	Support	<b>Accept in part</b>
1391.2	Konini Farms Ltd	Support	<b>Accept in part</b>
1045.19	Auckland/Waikato Fish and Game Council	Oppose	<b>Accept in part</b>
1399.1	Auckland/Waikato Fish and Game Council	Oppose	<b>Accept in part</b>
1404.1	Ambury Properties Limited	Support	<b>Accept in part</b>
1396.1	The Ralph Estates	Oppose	<b>Accept in part</b>
1394.1	I and L Macdonald	Not stated	<b>Accept in part</b>
1405.1	S Stow	Oppose	<b>Accept in part</b>
1401.1	D and T Whyte	Not Stated	<b>Accept in part</b>
1402.1	R and S Marsh	Oppose	<b>Accept in part</b>
1403.1	B Holmes	Oppose	<b>Accept in part</b>
1406.1	D and R Holmes	Oppose	<b>Accept in part</b>
1398.1	Future Proof Implementation Committee	Support in part	<b>Accept in part</b>
<b>764.2</b>	<b>Ambury Properties Limited</b>	<p><b>Amend</b> Objective 4.1.2 Urban growth and development as follows:</p> <p>(a) Future settlement pattern is consolidated in and around existing <u>and planned</u> towns and villages in the district.</p>	<b>Accept in part</b>

Submission point	Submitter	Decision requested	Decision
		AND <b>Amend</b> the Proposed District Plan as necessary to support the relief set out in the submission.	
1224.14	Ambury Properties Limited	Support	<b>Accept in part</b>
1207.11	Ohinewai Area Committee	Neutral	<b>Accept in part</b>
1191.3	Shand Properties	Support	<b>Accept in part</b>
1206.7	Ohinewai Land Limited	Support	<b>Accept in part</b>
1387.1125	Mercury NZ	Oppose	<b>Accept in part</b>
1401.2	D and T Whyte	Not Stated	<b>Accept in part</b>
1402.2	R and S Marsh	Oppose	<b>Accept in part</b>
1403.2	B Holmes	Oppose	<b>Accept in part</b>
1399.2	Auckland/Waikato Fish and Game Council	Oppose	<b>Accept in part</b>
1398.2	Future Proof Implementation Committee	Support in part	<b>Accept in part</b>
<b>764.3</b>	<b>Ambury Properties Limited</b>	<b>Amend</b> Policy 4.1.3(a) Location of development as follows: <i>(a) Subdivision and development of a residential, commercial and industrial nature is to occur within existing and planned towns and villages where infrastructure and services can be efficiently and economically provided for.</i> AND <b>Amend</b> the Proposed District Plan as necessary to support the relief set out in the submission.	<b>Accept in part</b>
1224.15	Ambury Properties Limited	Support	<b>Accept in part</b>
1207.12	Ohinewai Area Committee	Neutral	<b>Accept in part</b>
1191.4	Shand Properties	Support	<b>Accept in part</b>
1206.8	Ohinewai Land Limited	Support	<b>Accept in part</b>
1387.1126	Mercury NZ	Oppose	<b>Accept in part</b>
1401.3	D and T Whyte	Not Stated	<b>Accept in part</b>
1402.3	R and S Marsh	Oppose	<b>Accept in part</b>
1403.3	B Holmes	Oppose	<b>Accept in part</b>
1399.3	Auckland/Waikato Fish and Game Council	Oppose	<b>Accept in part</b>
1398.3	Future Proof Implementation Committee	Support in part	<b>Accept in part</b>
<b>764.4</b>	<b>Ambury Properties Limited</b>	<b>Add</b> a new policy for Ohinewai to provide a policy framework for the subdivision, use and development of the Industrial, Business and Residential Zoned land at 231 Tahuna Road, 52, 56	<b>Accept</b>

Submission point	Submitter	Decision requested	Decision
		and 58 Lumsden Road, Ohinewai, as sought in the submission. OR <b>Amend</b> Policy 4.1.13 Huntly to provide a policy framework for the subdivision, use and development of the Industrial, Business and Residential Zoned land at 231 Tahuna Road, 52, 56 and 58 Lumsden Road, Ohinewai, as sought in the submission. AND <b>Amend</b> the Proposed District Plan as necessary to support the relief set out in the submission	
1224.16	Ambury Properties Limited	Support	Accept
1207.13	Ohinewai Area Committee	Neutral	Accept
1191.5	Shand Properties	Support in part	Accept in part
1108.128	Waikato-Tainui	Oppose	Reject
1202.46	New Zealand Transport Agency	Oppose	Reject
1387.1127	Mercury NZ	Oppose	Reject
1396.2	The Ralph Estates	Oppose	Reject
1401.4	D and T Whyte	Not Stated	Accept
1402.4	R and S Marsh	Oppose	Reject
1403.4	B Holmes	Oppose	Reject
1399.4	Auckland/Waikato Fish and Game Council	Oppose	Reject
1398.4	Future Proof Implementation Committee	Support in part	Accept in part
<b>764.5</b>	<b>Ambury Properties Limited</b>	<b>Amend</b> objectives and policies to enable the subdivision, use and development of the property at 231 Tahuna Road, 52, 56 and 58 Lumsden Road, Ohinewai as sought within the submission. OR <b>Add</b> objectives and policies to enable the subdivision, use and development of the property at 231 Tahuna Road, 52, 56 and 58 Lumsden Road, Ohinewai as sought within the submission. AND <b>Amend</b> the Proposed District Plan as necessary to support the relief set out in the submission.	<b>Accept</b>
1224.17	Ambury Properties Limited	Support	Accept
1207.14	Ohinewai Area Committee	Neutral	Accept
1191.6	Shand Properties	Support in part	Accept in part
1387.1128	Mercury NZ	Oppose	Reject

<b>Submission point</b>	<b>Submitter</b>	<b>Decision requested</b>	<b>Decision</b>
1396.3	The Ralph Estates	Oppose	<b>Reject</b>
1401.5	D and T Whyte	Not Stated	<b>Accept</b>
1402.5	R and S Marsh	Oppose	<b>Reject</b>
1403.5	B Holmes	Oppose	<b>Reject</b>
1399.5	Auckland/Waikato Fish and Game Council	Oppose	<b>Reject</b>
1398.5	Future Proof Implementation Committee	Support in part	<b>Accept in part</b>
<b>764.6</b>	<b>Ambury Properties Limited</b>	<b>Add</b> an Ohinewai Structure Plan such as Attachment 2 within the submission as a new Appendix 13 in Chapter 29 Appendices. AND <b>Amend</b> the Proposed District Plan as necessary to support the relief set out in the submission.	<b>Accept in part</b>
1224.18	Ambury Properties Limited	Support	<b>Accept in part</b>
1108.129	Waikato-Tainui	Oppose	<b>Accept in part</b>
1387.1129	Mercury NZ	Oppose	<b>Accept in part</b>
1202.95	NZ Transport Agency	Oppose	<b>Accept in part</b>
1396.4	The Ralph Estates	Oppose	<b>Accept in part</b>
1401.6	D and T Whyte	Not Stated	<b>Accept in part</b>
1402.6	R and S Marsh	Oppose	<b>Accept in part</b>
1403.6	B Holmes	Oppose	<b>Accept in part</b>
1399.6	Auckland/Waikato Fish and Game Council	Oppose	<b>Accept in part</b>
1398.6	Future Proof Implementation Committee	Support in part	<b>Accept in part</b>
1206.9	Ohinewai Land Limited	Support in part	<b>Accept in part</b>

# APPENDIX 3 – DISTRICT PLAN MAP

## **APPENDIX 4 – DISTRICT PLAN PROVISIONS FOR OHINEWAI**



## **APPENDIX 5 - SECTION 32AA EVALUATION**