

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a submission in respect of the
**PROPOSED WAIKATO DISTRICT
PLAN** by **AMBURY PROPERTIES
LIMITED** pursuant to Clause 6 of
Schedule 1 of the Act seeking the
rezoning of land at Ohinewai

**OUTLINE OF LEGAL SUBMISSIONS OF COUNSEL FOR AMBURY PROPERTIES
LIMITED**

1. INTRODUCTION

- 1.1 This is the hearing of submissions on the Proposed Waikato District Plan ("PWDP") concerning the zoning of land in Ohinewai, in particular, the Ambury Properties Limited ("APL") submission seeking to amend the zoning of 178 hectares of land to provide the policy and planning framework for the development of the "Sleepyhead Estate", a \$1 billion industrial, residential and commercial development underpinned by a 100,000m² factory to be built for The Comfort Group ("TCG").
- 1.2 The "Ohinewai Structure Plan Area" comprises six parcels of land located at 52, 56 and 58 Lumsden Road, 88 Lumsden Road and 231 Tahuna Road ("the site"). The site was selected by APL and TCG after an extensive search throughout Auckland and the Waikato for a location that met all of their criteria, including being of sufficient scale to accommodate the development, and with excellent connectivity to State Highway 1 and the North Island Main Trunk Line ("NIMT").
- 1.3 The site is zoned Rural in the operative Waikato District Plan and in the PWDP and cannot therefore be developed for urban use without rezoning. Were it not for the Waikato District Plan Review process, APL would have lodged a private plan change request to establish a planning framework for the development of the site.
- 1.4 To achieve its objective, APL lodged a submission on the PWDP under clause 6 of Schedule 1 to the Resource Management Act 1991 ("RMA" or "the Act"), which seeks to:
 - (a) Rezone the site from Rural to a mix of Industrial, Business and Residential to facilitate and support development of the Sleepyhead Estate; and
 - (b) Insert an Ohinewai Structure Plan ("OSP") for the site and associated plan provisions which are intended to enable development in accordance with the Sleepyhead Estate Masterplan.

The Sleepyhead Estate proposal

- 1.5 The Sleepyhead Estate proposal is the product of a comprehensive masterplanning and structure planning exercise which aimed to achieve TCG and APL's objectives while responding appropriately to the characteristics of the site and locality.

- 1.6 The Sleepyhead Estate concept is a unique proposal comprising four components:
- (a) Industrial component: The Ohinewai Zoning Plan provides for a zoned industrial area of 75ha. The Ohinewai Structure Plan ("OSP") provides for a gross industrial area of 61.5 hectares, which will provide for the factory, the rail siding, and other industrial users.
 - (b) Business component: The Ohinewai Zoning Plan provides for 6.19ha of the Site to be zoned for Business use, comprising provision for local convenience needs including a service station, bus terminal, and emergency vehicle station, and a neighbourhood centre comprising convenience stores.
 - (c) Residential component - providing financially accessible housing: The OSP provides for a residential area of 52ha (gross). A key driver of the Sleepyhead Estate Masterplan ("Masterplan") is to deliver residential development in a manner that enhances the opportunity for selected qualifying staff to achieve home ownership.
 - (d) Recreation / open space component: The OSP provides for 55ha of land to be allocated to reserves, stormwater infrastructure, fitness tracks, community playing fields, community vegetable plots, barbeque areas and playgrounds. A Sleepyhead Estate Residents Society will be established to manage and maintain the community facilities.
- 1.7 The result is a compelling proposal which represents a very significant opportunity for the Waikato District (and the Waikato Region if the Waikato Regional Council ("WRC") could only see that).

Structure of APL's case

- 1.8 There is an enormous amount of information before the Panel in the context the Ohinewai rezonings. The purpose of these legal submissions is to put all of that material into context in a manner and in an order that assists the Panel to make its findings on all key issues. These submissions address:
- (a) Framing the key issue - Opportunity versus Orthodoxy (Section 2);
 - (b) Procedural background (Section 3);
 - (c) The section 42A rebuttal report (Section 4);
 - (d) Evidence circulated and order of presentation (Section 5);
 - (e) The Sleepyhead Estate - vision and rationale (Section 6);
 - (f) Consultation and stakeholder engagement (Section 7);
 - (g) Statutory and planning framework (Section 8);
 - (h) The National Policy Statement on Urban Development 2020 (Section 9);
 - (i) The National Policy Statement on Freshwater Management 2020 (Section 10);
 - (j) Site suitability and potential site constraints (Section 11);
 - (k) Strategic infrastructure provision, servicing and funding (Section 12);
 - (l) Economic issues (Section 13);

- (m) Traffic and transportation (Section 14);
- (n) Social impacts (Section 15);
- (o) Acoustic effects (Section 16);
- (p) Landscape and visual effects (Section 17);
- (q) Ecological issues (Section 18);
- (r) Maori cultural and spiritual issues (Section 19);
- (s) The Ralph Estates further submission (Section 20);
- (t) Planning issues and assessment (Section 21); and
- (u) Principal submission (Section 22).

2. FRAMING THE KEY ISSUE – OPPORTUNITY VERSUS ORTHODOXY

- 2.1 The Sleepyhead Estate is the brainchild of Craig and Graeme Turner, the owners of TCG, which is Australasia’s biggest bedding and foam manufacturer. TCG has around 1,000 staff at seven manufacturing facilities in Australia and New Zealand, manufacturing the Sleepyhead brand and a range of other products.
- 2.2 TCG is currently operating out of manufacturing facilities in Avondale and Otahuhu which have passed their “use by” date and are operating well beyond capacity. Mr Turner decided that TCG should consolidate its Auckland operations at a single location that has direct access to the State Highway network and rail. After an extensive site selection process, Ohinewai was identified as a highly suitable location. The Sleepyhead Estate idea was born.
- 2.3 TCG’s vision is neatly captured in the summary of Mr Turner’s evidence in chief and, to set the scene, is worth repeating here:

"2.14 *The aim of The Sleepyhead Estate is to deliver a comprehensively masterplanned community that will enable TCG to consolidate its manufacturing operations and provide high quality affordable housing for Ohinewai...*

2.15 *The Ohinewai site presents a unique opportunity for TCG to consolidate its operations and ultimately expand them, and to bring an existing, proven, and thriving industry to the district, along with the immediate and future associated job opportunities.*

2.16 *We are aware that there are significant sums to be expended on infrastructure to enable the Sleepyhead Estate concept to be delivered. TCG is committed to bearing our fair share of these costs.*

2.17 *We want to create a legacy that will continue to add long term value not only to TCG but to the part of Waikato District that we have chosen to make TCG’s corporate home after nine decades in Auckland.*

2.18 *We recognise that the development is ambitious and challenging but with...strong support from the Waikato District Council we are confident that a project capable of generating*

over \$100M / year in an area that is clearly under pressure from a socio-economic perspective is both commercially viable and beneficial for the community."

(Our emphasis.)

- 2.4 Putting the development together has been challenging given the Rural zoning and lack of services. However, a massive effort has been made and it is clear that the development is feasible from a technical perspective.
- 2.5 It is also clear and that the infrastructure and the funding that is needed to service the development will be in place by the time each relevant stage is to be embarked upon. Of particular note:
- (a) Ohinewai has been included in Watercare's Mid-Waikato Servicing Strategy; and
 - (b) APL and the Waikato District Council ("WDC") have done a lot of work identifying infrastructure requirements and have entered into a memorandum of understanding which will result in a private development agreement in relation to the provision and funding of infrastructure.
- 2.6 Tangata whenua are major supporters of the proposal, as is evident from Glen Tupuhi's evidence.
- 2.7 A small number of further submissions have been lodged in opposition to the APL submission and a great deal of work has been done to address the issues that have been raised.
- 2.8 It is noteworthy (but perhaps unsurprising) that the only vociferous "in principle" opposition to the Ohinewai development has come from the Waikato Regional Council ("WRC") and the Waka Kotahi New Zealand Transport Agency ("NZTA"). The Future Proof Implementation Committee ("Future Proof") is not far behind but is adopting a less doctrinaire position than the 'old guard', WRC and NZTA.
- 2.9 Locals are supportive because they can see the benefit of the huge boost to the economy and the employment that will result in the development of The Sleepyhead Estate. They wonder why the bureaucrats in Hamilton want to take this opportunity away from them.
- 2.10 In that regard, the thrust of WRC and NZTA opposition is that Ohinewai has not been provided for in the strategic planning documents, in particular the Future Proof Strategy 2017 and the RPS. The various concerns that they raise about the effects of the OSP are underpinned by that inflexible and philosophical position which they have then endeavoured to support by "throwing the book" at the proposed Ohinewai rezoning down to a surprising level of detail for a zoning hearing.
- 2.11 With all due respect, we submit that this "black letter" approach to land use planning reflects an overly conservative, outdated and doctrinaire "fixed point in time" approach that fails to recognise the significant one-off opportunity that The Sleepyhead Estate proposal represents.
- 2.12 The WRC and NZTA position is also inconsistent with (or conveniently overlooks) the statement in the FP summary statement¹ that:

"The Future Proof settlement pattern needs to be agile enough to respond to change. A settlement pattern that has some built-in

1 <https://www.futureproof.org.nz/assets/FutureProof/Future-Proof-Strategy-Nov-2017-Summary-Final-211117.pdf>

responsiveness provides an ability to capitalise on new opportunities that have potential to contribute significant economic, social or cultural benefits to our communities."

(Our emphasis.)

2.13 We submit that the OSP epitomises an opportunity that may be outside the Future Proof land use pattern, but is an opportunity that the 2017 Strategy (and the other strategic planning documents) are sufficiently agile to capitalise on. One is left to wonder: if The Sleepyhead Estate proposal does not represent the type of opportunity contemplated by this statement, what would?

2.14 WRC Chair, Russ Rimmington, was quoted in a recent press article² as saying that the Ohinewai development would "undermine Huntly and bugger up green pastures". The article went on to capture what he said:

"How can a development be good for jobs in Huntly when it is going to be 9 kilometres down the road?"

He said the factory and housing should be based in Huntly town itself, not in the middle of nowhere.

The developments shouldn't be "ad hoc" or "hotch potch" that is why we have planning in decent countries, he said.

Nor should it be on flood prone land, where there is no infrastructure or public transport access, he said."

2.15 This typifies the position being adopted by WRC, which completely overlooks (or ignores) the work that APL has been done to address the issues Mr Rimmington has raised, each of which is comprehensively addressed as part of APL's case.

2.16 WRC's approach also risks passing up the massive one-off opportunity that the Ohinewai development represents. Mr Rimmington has been called out on that by members of the Huntly Community Board. In that regard, the same article quotes Community Board member, Red Wootton, who has described WRC's resistance as "ridiculous", saying:

"Sure there could be things done in Huntly, but these people want to come along and spend a billion dollars bringing some of their people with them, giving them the opportunity to have homes and put their people and other locals into the homes, and bring educational opportunities too.

Why would you turn something like that down?

...

The Sleepyhead development would be fabulous for Huntly, a town "put on the backburner for years".

I think the development in itself will bring jobs and creativity that we haven't seen in this town since the power station came in, Wootton said."

2 Stuff article by Ellen O'Dwyer, 2 September 2020 "You're taking our jobs - Huntly locals slam opposition to giant Sleepyhead plan." <http://www.stuff.co.nz/national/122627525/youre-taking-our-jobs--huntly-locals-slam-opposition-to-giant-sleepyhead-plan?cid=app-android>

2.17 Another Huntly Community Board member, Kim Bredenbeck, said the Sleepyhead development will be “transformational” for Huntly and believed it would lead to business opportunities for Huntly CBD and its surrounds.”

2.18 In his rebuttal evidence, Craig Turner expressed disappointment at WRC’s opposition, particularly when WRC had originally been supportive noting that:

“5.2 Potential adverse economic effects on Huntly are addressed in Mr Heath’s evidence. TCG does not want to cause Huntly any harm; indeed, quite the opposite. We are committed to providing opportunities for economic uplift to Huntly and the surrounding area. That is one of the key drivers underpinning everything we are doing, including our drive to recruit and train locals and to establish an academy where people can be trained in key skills.

5.3 I am aware that there have been plans to reinvigorate Huntly for a long time but I do not see any evidence that they have been successful. The re-routing of State Highway 1 may lead to even worse decline.

5.4 Our proposal is a real opportunity to reverse that decline. It is a huge move for us to shift to Ohinewai and inevitably we will lose some staff who we will need to replace. We will therefore offer opportunities to members of the existing community for training and stable employment. The benefits to the community will only increase as the Sleepyhead Estate is developed.

5.5 The economic analyses indicate that the introduction of new investment can provide a much-needed stimulus which is likely to have beneficial consequences at scale and act as a catalyst for exactly the type of regeneration envisaged by the various agencies to date. This has value – particularly when other approaches have to date failed.”

(Our emphasis.)

2.19 It is interesting to note in that regard that Ms Trenouth now acknowledges that³:

“I no longer consider the proposal to have significant adverse economic effects on the vitality and vibrancy of Huntly.”

Opportunity versus orthodoxy

2.20 The distinction between the position adopted by WRC, NZTA and FP as compared with the enthusiastic support of the WDC, local iwi (represented by the Tangata Whenua Governance Group (“TWGG”)) and Huntly locals is best epitomised by a phrase that Craig Turner coined in his rebuttal evidence: “opportunity versus orthodoxy”. His rebuttal evidence states:

“6.1 We are fully committed to proceeding with this development if our rezoning is approved. The level of overall expenditure is very significant (in excess of \$1 billion) and the economists agree that it would provide 2,600 jobs. Frankly, I am very surprised that WRC and FP would set their face against this development when such an opportunity exists. Whilst the Sleepyhead Estate was not provided for in the long-term planning documents, it represents an opportunity to create much needed jobs and prosperity in the area.

6.2 To conclude, the Sleepyhead Estate represents a massive, one-off opportunity, the like of which does not come along very often. Particularly in the current economic climate, such opportunities are all the more important. In my view, approving the rezoning of our Ohinewai site to enable the Sleepyhead Estate proposal to become a reality would represent a triumph of opportunity over orthodoxy..."

(Our emphasis.)

- 2.21 Part of the reason for the recent National Policy Statement on Urban Development ("NPSUD") was to enable provision to be made for urban development that was not planned. This aspect was drafted to counter the tendency for councils to reject private plan change requests to authorise rezoning and development on the basis that they do not conform with existing planning documents.
- 2.22 On that basis, it is clear that "opportunity versus orthodoxy" neatly frames the respective positions of TCG, APL, WDC and local iwi, on the one hand, and WRC, NZTA and FP, on the other.
- 2.23 The choice is stark:
- (a) Opportunity brings with it \$1 billion expenditure which will eventually generate \$100 million a year and 2,600 jobs in an economically challenged and socially deprived part of the Waikato, along with opportunities for capacity building and recreational opportunities.
 - (b) Orthodoxy brings with it no investment, no jobs, no capacity building and continuing with the status quo under the existing planning documents that thus far have dismally failed to deliver any economic recovery in Huntly.
- 2.24 In saying this, we are not saying that the approach that APL has adopted is not orthodox; this is made clear in Mr Olliver's evidence. The relevant planning instruments can easily be interpreted to enable this to proceed. It is extremely surprising that WRC, in particular, should wish to pass up the opportunity of thousands of jobs having regard to what we submit is an overly literal and narrow interpretation of the WRPS.
- 2.25 If it is accepted that opportunity should override that rigid orthodoxy, the rest becomes about nuts and bolts around servicing and addressing potential adverse effects.
- 2.26 We turn now to our main case.

3. **PROCEDURAL BACKGROUND**

3.1 This section briefly rehearses the procedural background. In that regard, APL wishes to express its gratitude for the excellent case management that has been undertaken, particularly the opportunity for expert conferencing, which assisted a great deal in clarifying issues and identifying key contentious matters.

Further submissions

- 3.2 Eighteen further submissions were lodged on APL's submission. Of these:
- (a) Three supported APL's submission⁴;

4 Konini Farms Limited, Paul Tubic and Wayne Cooper, Ian and Luressa McDonald.

- (b) Four supported APL's submission with amendments⁵;
- (c) One was "ambivalent" but sought further information⁶;
- (d) Nine were opposed to the submission⁷.

3.3 APL representatives have worked hard to consult with submitters and have been able to resolve a number of the issues raised, as outlined in more detail in Sections 11 to 21 of these submissions.

Expert conferencing

3.4 Expert conferencing took place between 15-26 June 2020. APL and the following six further submitters took part in that process:

- (a) WRC;
- (b) NZTA;
- (c) Future Proof;
- (d) Mercury NZ Limited ("Mercury");
- (e) Auckland Waikato Fish and Game Council ("Fish and Game"); and
- (f) Waikato Tainui.

3.5 As noted, that process proved exceptionally useful in terms of identifying and narrowing the issues raised by the parties and APL is grateful to the Panel for its helpful facilitation of the process.

Other parties' evidence

3.6 APL's efforts to consult with submitters and the effectiveness of the expert conferencing process are reflected in the relatively limited amount of expert evidence lodged by further submitters, which comprises:

- (a) Five statements of evidence for WRC;⁸
- (b) Two statements of evidence for NZTA;⁹
- (c) One statement of evidence for NZTA and WRC;¹⁰
- (d) One statement of evidence from Future Proof;¹¹
- (e) Two statements of evidence from Mercury;¹²

5 David and Tiffany Whyte, Future Proof Implementation Committee, Ohinewai Land Limited, Shand Properties Limited.
6 Ohinewai Area Committee.
7 Bruce Holmes, Fish and Game, the Ralph Estates, Richard and Shanette Marsh, Suzanne Stow, Mercury NZ Limited, New Zealand Transport Agency, Waikato Tainui, Waikato Regional Council.
8 Being from Ghassan Basheer, Blair Keenan and Vincent Kuo.
9 Being from Robert Swears, Sarah Loynes.
10 Being from Ian Mayhew.
11 Being from Ken Tremaine.
12 Being from Grant Webby and Angus McKenzie.

- (f) One statement of evidence for Fish and Game;¹³
- (g) Two statements of evidence for the Ralph Estates;¹⁴
- (h) One (late) statement of evidence for Waikato Tainui;¹⁵ and
- (i) One (late) statement of evidence for Ohinewai Lands Limited ("OLL").¹⁶

3.7 As the evidence prepared by APL's expert team will demonstrate, none of the specific concerns raised by those parties about the effects of the OSP stand up to critical examination. What is at issue, therefore, is whether strict adherence to the development pattern anticipated in the Future Proof Strategy should be preferred over the benefits for the Waikato District offered by the APL proposal, which is a massive, one-off opportunity the likes of which do not come along very often.

3.8 In terms of the outstanding issues raised by other further submitters:

- (a) Future Proof supports the industrial component of the OSP but not the residential component;
- (b) Mercury requests that the PWDP:
 - (i) Spatially references the flood plain around Lake Waikare, including on the Site;
 - (ii) Requires that the cumulative effects of development on the flood storage capacity of Lake Waikare be considered.
- (c) Ralph Estates opposes APL's submission on the basis of concerns about the "sterilisation" of mining interests through the development of the OSP;
- (d) Fish and Game requests:
 - (i) Greater certainty in respect of the content of the Predator Control Programme required by the OSP plan provisions; and
 - (ii) That the Predator Control Programme requires cats and mustelids to be excluded from the OSP area and a dog proof fence at the boundary.
- (e) Waikato Tainui seeks greater certainty about long term water and wastewater infrastructure provision; and
- (f) OLL requests amendments to the OSP to provide a suitable interface for future development of its land, specifically:
 - (i) Recognition of its land as a "potential future growth area";
 - (ii) An intersection on Tahuna Road in the east of the OSP area to enable connectivity with its land;
 - (iii) Provision for development along Tahuna Road to interface with the land to the south;
 - (iv) Inclusion of Ohinewai Reserve in the OSP area.

13 Being from David Klee.

14 Being from Dean Fergusson and Gary Gray.

15 Being from Gavin Donald.

16 Being from Tony McLaughlan.

4. **SECTION 42A REBUTTAL REPORT**

- 4.1 Ms Trenouth's "Section 42A Report – Rebuttal Evidence" dated 7 September 2020 ("Rebuttal report") is essentially an update of her section 42A report dated 13 March 2020 in light of the evidence, expert conferencing, and further work that APL has undertaken. The report helpfully acknowledges that many of the issues raised in her initial section 42A report have already been addressed.
- 4.2 The report confirms her support for the industrial component of the OSP but recommends that the residential component be declined, and given that the OSP has been treated as a whole package, recommends that the whole submission be declined.
- 4.3 Reading through Ms Trenouth's report and noting the significance of the issues that have been addressed, it is disappointing and concerning that an unfavourable recommendation has been made. This is the result of adopting a narrow and conservative "black letter" interpretation of the WRPS and related documents. The unfortunate impression one is left with is that Ms Trenouth has started and finished with trying to identify every conceivable reason for declining the rezoning.¹⁷
- 4.4 Some of the reasoning in the report is circular or inconsistent with other parts of her report, or with her ongoing support for the industrial component of The Sleepyhead Estate.
- 4.5 Also noteworthy is the apparent unwillingness to grasp the concept of The Sleepyhead Estate and the very significant economic, social and cultural benefits it can and would deliver to this economically depressed and socially deprived part of the Waikato. As noted in Section 2, the rezoning will result in \$1 billion expenditure which will eventually generate \$100 million a year and 2,600 jobs in an economically challenged and socially deprived part of the Waikato, along with opportunities for capacity building and recreational opportunities. Declining the rezoning guarantees the continuation of an unsatisfactory status quo.

Reasons for recommending that the rezoning be declined

- 4.6 At paragraph 114 of her Rebuttal report, Ms Trenouth confirms her view that most of the effects of the proposal can be appropriately managed:

114. *The assessment of environmental effects determines that many but not all adverse effects can be mitigated by the proposed plan provisions.*

115. *Proposed plan provisions (subject to fine-tuning) could address adverse effects associated with:*

- *Flooding*
- *Geotechnical*
- *Ecological*
- *Stormwater*
- *Acoustic*
- *Landscape and visual*
- *Transport in terms of local road upgrades*

17 As Viscount Samuel said of the British Civil Service: "A difficulty for every solution."

- *Wastewater and water supply in the short term*
- *Cultural values.*"

4.7 Quite an impressive list and very positive that none of the items in this list of key issues stand in the way of the implementation of The Sleepyhead Estate. One might have thought that that would be seen as good news, alongside a desire to consider how the other issues might be constructively addressed in order to facilitate this boost to the local economy. Unfortunately, this is not the case. Instead there is an assumption in the Rebuttal report that the remaining issues cannot be adequately addressed, an assumption that in our submission is simply not correct.

4.8 Ms Trenouth then goes on to consider the five outstanding issues that she does not consider can be appropriately mitigated and why The Sleepyhead Estate should not proceed, as follows:

"116. I consider that the following adverse effects however could not be mitigated by the proposed plan provisions and therefore are significant:

- *Safety effects associated with the NIMT overbridge being inadequate to accommodate trucks turning without crossing the centreline.*
- *Uncertainty remains regarding servicing the site in the medium to long term, particularly security of water supply.*
- *Poor integration of land use and transport resulting in car-centric development and a dormitory town.*
- *Density of residential development is not supported by adequate amenity.*
- *Social impacts on countryside living and rural outlook of existing residents, from uncertainty that affordable housing will be provided, and creating a community in a rural area without existing services and amenities."*

4.9 These issues are identified again in her conclusion.¹⁸

4.10 So, these are the five issues that Ms Trenouth has identified as the reasons why The Sleepyhead Estate should not proceed. Let's break them down.

NIMT overbridge – safety issues

4.11 This is one of only two practical issues raised:

"Safety effects associated with the NIMT overbridge being inadequate to accommodate trucks turning without crossing the centreline."

4.12 It is submitted that this an issue that will, without any doubt, have an engineering solution if there is, in light of Mr Inder's evidence, any need for one.

4.13 The short point is that, if there is a willingness to capitalise on the opportunity that The Sleepyhead Estate represents, a single traffic issue which will lend itself to an engineering solution surely cannot stand in the way. Given WDC's support for the project, it can be assumed that this issue will be addressed. It cannot be regarded as a "showstopper".

18 Section 42A rebuttal report, 7 September 2020, paragraph 201.

Uncertainty re servicing the Ohinewai site in the medium term

4.14 Practical issue 2 is:

"Uncertainty remains regarding servicing the site in the medium to long term, particularly security of water supply."

4.15 APL's evidence demonstrates that:

- (a) There is a clear way ahead in terms of the medium and long-term servicing of the Ohinewai development.¹⁹ WDC, as a council, wholeheartedly supports the proposal. WDC and its water / wastewater managers / providers, Watercare Services Ltd ("WSL") have been in discussions for a significant period, with the result that Ohinewai has been identified in Watercare's Mid-Waikato Servicing Strategy.
- (b) APL acknowledges the need to pay its fair share of the infrastructure costs associated with Ohinewai. This has resulted in an MOU that will result in a private developer agreement.

4.16 The short point is that, if The Sleepyhead Estate get the "green light", everything else will follow, save in the knowledge that:

- (a) Necessity is the mother of invention and the solutions to these issues will be found. They are not difficult – it is not surprising that, some years out, we do not have complete certainty what that final solution will be but to decline the opportunity to implement such a solution would be tragic given the prospect of 2,600 jobs.²⁰
- (b) The solutions will deliver outcomes required by the Vision and Strategy, Waikato planning instruments and the RMA.
- (c) If the solutions are not available, the next stage of implementing the OSP will be delayed.

4.17 APL's submission is that the degree of uncertainty identified by Ms Trenouth in relation to medium-term infrastructure provision should not stand in the way of the rezoning of a piece of land that is going to take several years (particularly when the PWDP will contain safeguards to ensure that development is appropriately serviced) and which needs to respond to market conditions, especially in a Covid / post Covid world.

Poor integration of land use and transport

4.18 Ms Trenouth's next concern is:

- *Poor integration of land use and transport resulting in car-centric development and a dormitory town.*

4.19 In that regard, Ms Trenouth suggests that:²¹

"...the labour force requirements are larger than the local economy would sustain, and may generate substantial workforce flows from Hamilton and South Auckland."

19 Robert White evidence and rebuttal evidence.

20 As agreed via Economists' Expert Conferencing.

21 Section 42A rebuttal report, 7 September 2020, paragraph 38.

- 4.20 Ms Trenouth also appears to have accepted Ms Hackell's concern that Ohinewai will become a "dormitory town" or "bedroom community" in which people live at Ohinewai but travel further afield (Auckland or Hamilton) for work and social lives. It is hard to see how those can be consistent.
- 4.21 First, APL is entirely satisfied that, in the present economic climate, it will have no difficulty filling the positions at its factory.
- 4.22 APL disputes that that a dormitory suburb will eventuate. The nature of the residential offer is still being worked up but will definitely include a typology that will enable lower priced housing so that Sleepyhead (and other) employees will be able to live there. That, in and of itself, is the proposal to provide 'affordable housing'.
- 4.23 Much has been made about the extent to which this will be achieved. As between TCG and its workers, that is between them. To the extent that this is not a Special Housing Area, APL's response is that the mix of housing typologies is sufficient to provide an opportunity that does not exist now. Ms Trenouth's concerns are based on speculation. Housing price points are addressed in Mr Gaze's evidence.
- 4.24 Further, and importantly, Ms Trenouth's support for the industrial component of the development²² suggests that this issue cannot be as significant as she suggests. If people are unable to live at Ohinewai, they will be forced to drive from further afield to the jobs in the industrial area. And yet she considers that to be acceptable. It is a non sequitur.
- 4.25 APL's submission is that:
- (a) In 2020, and in this part of the Waikato, growth and jobs are of very significant importance in terms of the purpose of the RMA and that the enabling element of our planning system must come to the fore.
 - (b) The risks that Dr Fairgray has postulated are more imagined than real and that whatever "risk" this poses is not sufficient to weigh against the Ohinewai rezoning.

Inadequate amenity in medium density housing

- 4.26 Ms Trenouth's fourth issue is:
- *Density of residential development is not supported by adequate amenity.*
- 4.27 This concern arises as a result of the advice that Ms Trenouth has received from her urban design expert, Mr Jones, who is critical of the Ohinewai concept and is concerned that the level of amenity in the medium density housing will not be adequate. In that regard, there is a conflict with the evidence of APL's urban designer, Jonathon Broekhuysen in affirming the appropriateness of the typology. APL relies on Mr Broekhuysen's evidence and submits that this is an issue that could be addressed further if the Panel was concerned.

- 4.28 Either way, we submit that it is not a sufficient basis for declining the rezoning.

Impact on Ohinewai locals

- 4.29 Ms Trenouth's fifth ground is about local amenity in Ohinewai:

"Social impacts on countryside living and rural outlook of existing residents, from uncertainty that affordable housing will be provided,

22 Section 42A rebuttal report, 7 September 2020, paragraphs 21 and 182.

and creating a community in a rural area without existing services and amenities.”

- 4.30 What this would appear to be saying is:
- (a) Some locals may have their view / outlook impacted; and
 - (b) There will be inadequate services and amenities that do not exist now.
- 4.31 Who are the people Ms Trenouth are concerned about? Only two of the residents on the western side of Lumsden Road lodged submissions in opposition:
- (a) Sue Stow of 81 Lumsden Road; and
 - (b) Richard and Shanette Marsh at 75 Lumsden Road.
- 4.32 No submissions were received from any of the other properties on the western side of the road. There are also submissions from the three residents of the eastern side of Lumsden Road (within the site):
- (a) Bruce Holmes;
 - (b) Daniel and Rebekah Holmes; and
 - (c) The McDonalds – who support APL’s submission as long as their land is zoned Industrial.
- 4.33 Mr Gaze is in discussion with the Holmes’ in about the purchase of their properties. They happily provided very valuable evidence of their local experience in relation to transportation issues that are reported in Mr Inder’s rebuttal evidence.
- 4.34 How concerned are the locals that Ms Trenouth has put up as one of only five reasons why the Ohinewai rezoning should not proceed? We really do not know because they did not file any evidence. And we know from Mr Gaze’s evidence that they are in discussions with him.
- 4.35 In any event, if a property purchase does not occur, measures will be put in place to protect their amenity.
- 4.36 Further, any impacts on their amenity would arise as a result of the Industrial zoning (and industrial development). Ms Trenouth supports that zoning.
- 4.37 It is therefore respectfully submitted that, as one of five reasons why the APL rezoning should not occur, this reason should be accorded very little weight.
- 4.38 A couple of other aspects of the report are worth mentioning in this context.

Impact on Huntly

- 4.39 In her original report, Ms Trenouth was concerned about the effects of the commercial component (including the discount factory outlet) on Huntly. In response to those concerns the DFO has been removed and the remainder of the development has been specifically designed to support Huntly’s regeneration, by providing only convenience retail such that residents will travel to Huntly for other goods and services. Ms Trenouth now acknowledges that:²³

"I no longer consider the proposal to have significant adverse economic effects on the vitality and vibrancy of Huntly."

4.40 But Ms Trenouth also says:²⁴

"I do not agree with Mr Olliver that the proposal will support the existing urban area of Huntly, although the new settlement will be reliant on Huntly for many services and amenities it remains separated from it."

4.41 What is she saying? If Ohinewai residents and workers being reliant on Huntly for some of their services and amenities is not "supporting" Huntly, what is?

4.42 The apparent problem is that Ohinewai residents will have to drive 9km for their goods and services on an Expressway that has capacity.

Flooding

4.43 Notwithstanding her acknowledgement that all flooding issues have been appropriately addressed, Ms Trenouth nevertheless states:²⁵

"...as a principle development should be directed away from natural hazard areas. While the flooding effects can be mitigated, development has not been directed away from the flood hazard."

4.44 APL's fundamental submission is that, when it comes down to it, if these are the reasons why Ms Trenouth considers that the huge benefits of the proposal, including the creation of 2,600 jobs, should not be realised, the balance of convenience lies in creating a context for a \$1 billion investment and 2,600 jobs rather than declining the rezoning.

The industrial component

4.45 As is apparent, Ms Trenouth is still able to support the proposed industrial zoning but has recommended that the rezoning be declined, despite that. on the basis that the elements of the OSP "cannot be considered separately".

4.46 However, it is important not to conflate APL's position that the entire concept must be understood and assessed as a whole with whether it is an "all or nothing" proposition" from a decision-making / zoning perspective.

4.47 For reasons best articulated in Mr Turner's evidence, The Sleepyhead Estate is envisaged as a total concept of which the residential component is a critical element. Due to the comprehensive and integrated nature of the proposal, APL's consistent position is that it is not appropriate to 'slice and dice the Ohinewai pie' by looking at each of its component parts - 'oh yes, we'll have the industrial zoning and maybe some wetland and parks, but we don't much like the houses."

4.48 That is APL's position as regards the appropriate way to understand and assess the proposal. But, to be clear, APL is not saying to the Panel that it is an "all or nothing" proposition from a decision-making perspective. If after considering all of the evidence, the Panel was minded to approve the Industrial zoning but not the rest, APL would still welcome that. It has already lodged a resource consent application for its foam factory component of its operations and an industrial zoning will facilitate that, and its further operations and development should APL decide to proceed in the absence of the total package.

24 Section 42A rebuttal report, 7 September 2020, paragraph 164.

25 Section 42A rebuttal report, 7 September 2020, paragraph 169.

5. **EVIDENCE CIRCULATED AND ORDER OF PRESENTATION**

- 5.1 On 14 July 2020, APL submitted 22 statements of evidence in relation to all the key issues and all potential effects plus an accompanying memorandum to assist the Panel with its review of that material.
- 5.2 Following receipt of the evidence of other submitters, 14 statements of rebuttal evidence were filed on 24 August 2020. In addition, a statement of evidence from Glen Tupuhi, the Chairman of the TWGG was filed on 31 August 2020.
- 5.3 A three page "highlights package" summarising the evidence of each witness was filed on 9 September 2020 in order to provide context for any questions that the Panel may have, as contemplated by paragraph 27 of the Panel's first directions dated 21 May 2019. We remind the Panel that each of APL's witnesses also has a slightly longer summary at Section 2 of their evidence, which may assist at deliberation time.
- 5.4 As indicated in the accompanying memorandum filed on 14 July 2020, the evidence has been organised in a series of tranches in order to most logically tell "the story" of the Sleepyhead Estate proposal in the context of the structure planning for and development of Ohinewai.
- 5.5 For completeness, the witnesses who will present evidence are set out again below and will be presented in that order as far as practicable. The one change to the order set out in the memorandum is that the economics experts, who were identified as Tranche 4 in the memorandum will now present their evidence as Tranche 2.

Tranche 1 – the Ohinewai development proposal - concept / overview and Planning

Craig Turner – owner, TCG – context and vision (evidence in chief and rebuttal)

- 5.6 Mr Turner's evidence outlines the driver for TCG to move to Ohinewai. TCG also has a very strong "family" and social ethic and sees Ohinewai as an opportunity to assist TCG workers into residential accommodation that they would be unable to afford in the Auckland housing market. His commitment is to build a town that will provide a boost to the local economy and have long lasting benefits for the area, including Huntly.

Jonathan Broekhuysen - landscape architect, Adapt Studio – masterplanning (evidence in chief)

- 5.7 Jonathan Paul Broekhuysen is an NZILA registered landscape architect and masterplanner and the director of Adapt Studio Limited, a firm he operates as a sole practitioner.
- 5.8 Mr Broekhuysen's evidence describes the masterplanning process in some detail and takes the Panel through the key elements of the proposal and the rationale for their location, size, etc.
- 5.9 Mr Broekhuysen echoes the rationale as explained by Mr Turner, that community is at the heart of the proposal. The Sleepyhead Estate seeks to bring together a mix of land uses to help create a "mixed-use resilient community".

David Gaze – Project Manager, Gaze Commercial – project management and miscellaneous (evidence in chief and rebuttal)

- 5.10 David Gaze is an experienced Project Manager who has been assisting TCG for many years. He has been the primary mover in organising land purchase, liaison with local

landowners, institutions, and other consultation undertaken by TCG, as well as “nuts and bolts” issues relating to provision of the infrastructure etc. His evidence addresses:

- (a) Site selection criteria and process.
- (b) APL’s landholdings at Ohinewai and other landowners.
- (c) The Sleepyhead Estate concept.
- (d) Time frames and staging.
- (e) Servicing and accessing the development.
- (f) Funding the infrastructure needed to implement The Sleepyhead Estate development.
- (g) Consultation and stakeholder engagement.
- (h) TCG’s contribution to the local community.

5.11 Much of the material touched on in Mr Gaze’s evidence is addressed in more detail by the expert witnesses that follow.

Glen Tupuhi, Chairman, Tangata Whenua Governance Group (evidence in chief)

5.12 Glen Tupuhi is the chair of the TWGG which was formed to formalise the relationship between mana whenua and TCG and to enable ongoing consultation and collaboration between TCG/APL and mana whenua in respect of the Sleepyhead Estate development.

5.13 His evidence describes the formation of the TWGG, its purpose and the strong support for the OSP from mana whenua.

Tranche 2 – economic issues

5.14 The second tranche of evidence addresses economic issues and social benefits that the district and this part of the region can expect to derive from the injection of capital and ongoing employment that The Sleepyhead Estate will bring.

Tim Heath – consulting economist, Property Economics – economic effects (evidence in chief and rebuttal)

5.15 Tim Heath is a consulting economist and Director of Property Economics. Mr Heath’s evidence focusses on the economic impact that the proposal will have on other towns in the area, particularly Huntly, Te Kauwhata and Hamilton.

Dr Brent Wheeler – consulting economist, Wheeler Consultants – economics peer review and economic effects (evidence in chief and rebuttal)

5.16 Dr Brent Wheeler is a highly experienced independent economic consultant who also has a planning qualification. Dr Wheeler was engaged to undertake a peer review of the Property Economics report that had been supplied to the Council. His evidence presents the outcome of his peer review, which confirms that he agrees with the economic analysis undertaken by Property Economics.

5.17 His evidence quantifies the opportunity costs associated with declining the rezoning – based on the number of jobs agreed by the economists via expert witness conferencing – 2,600 jobs versus no jobs.

Philip Osborne - Consulting Economist, Property Economics – economic effects (evidence in chief and rebuttal)

- 5.18 Philip Osborne is an economic consultant for Property Economics Limited. His evidence focuses on the broader economic benefits from a spatial perspective. He addresses in particular the demand for and supply of housing in the area.

Tranche 3 – potential site constraints and site suitability

- 5.19 The third tranche of evidence considers (mainly) engineering issues but also other potential issues or constraints relevant to site suitability or the ability to develop the site. It presents the analysis of several experts who consider these engineering-related issues and other issues from the viewpoint of their expertise.

Nicholas Speight, geotechnical specialist, Initia – geotechnical issues (evidence in chief and rebuttal)

- 5.20 Nick Speight is a senior geotechnical engineer and a director of Initia Limited, a specialist geotechnical consulting company. Mr Speight's evidence addresses the earthworks and civil infrastructure construction and assesses the geological and geotechnical implications of the proposal. His evidence is also relevant to the Ralph Estates further submission in that it considers the geotechnical effects associated with widespread dewatering (groundwater level reduction) which would inevitably be the result of a deep open cast coal mine.

David Stafford – groundwater engineer, Pattle Delamore Partners – groundwater (evidence in chief and rebuttal)

- 5.21 David Stafford is a senior hydrogeologist who specialises in groundwater science and works for the consulting firm, Pattle Delamore Partners Limited. Mr Stafford has analysed the site's hydrogeological system and associated processes, and in the wider vicinity, to assess any effects that the conversion of land use from farming to industrial / residential / business may have on the groundwater system. His evidence also addresses the hydrological effects that coal mining on the site would cause, including the risk to Lakes Rotokawau and Ohinewai.

Cameron Lines – engineering geologist, Baseline Geotechnical - coal resource (evidence in chief and rebuttal)

- 5.22 Cameron Lines is an engineering geologist and a Principal and Director of Baseline Geotechnical Limited, specialising in cut slope design, overburden disposal design, geotechnical risk assessment, slope stability and natural hazard assessment.

- 5.23 Mr Lines' evidence has been prepared to put into context the further submission by the Ralph Estates that the rezoning will "sterilise" the coal resource that they own under the site.

Ajay Desai – civil engineer, Woods – flooding potential (evidence in chief and rebuttal)

- 5.24 Ajay Desai is a civil engineer at Wood and Partners Consultants. Mr Desai has undertaken detailed modelling of the potential for flooding in a variety of different scenarios, in accordance with WRPS requirements. His evidence provides an overview of the flood modelling and its results, which confirm that there is no risk to the site in terms of flooding that cannot be appropriately managed.

Carl O'Brien – environmental scientist, Geosciences Ltd – site contamination (evidence in chief)

- 5.25 Carl O'Brien is an environmental scientist and a specialist in site contamination, and the General Manager of Geosciences Limited. Mr O'Brien undertook a full investigation of the site in accordance with guidelines developed by the Ministry for the Environment and by reference to applicable planning rules. He initially undertook a Preliminary Site Investigation ("PSI") followed by a Detailed Site Investigation ("DSI") for part of the site as a result of which he was able to confirm that there are no "showstoppers" from a contaminated land perspective.

Matthew Gainsford – consulting archaeologist, W Gumbley – archaeology (evidence in chief)

- 5.26 Matthew Gainsford is a consulting archaeologist working for W Gumbley Limited who assess the impact of potential development on archaeological and heritage matters.
- 5.27 Mr Gainsford undertook a comprehensive assessment of the archaeological features at the Site using conventional, well-accepted techniques and confirms that there are no known archaeological sites that preclude the rezoning and development of the site nor do any existing archaeological features need to be factored into the masterplanning for the site.

Tranche 4 – infrastructure provision and servicing

- 5.28 The site is currently used for farming activities that are self-sufficient in terms of water and wastewater requirements. It is a self-evident proposition that a development hosting significant industrial processes, and a population approaching 3,000 people, will need to be serviced efficiently and effectively in terms of three waters infrastructure (wastewater, water and stormwater) and other utilities.
- 5.29 Mr Gaze's evidence confirms that arrangements will be put into place to ensure that a reliable supply of electricity, gas and broadband will be provided.

Robert White – environmental engineer, GHD – water and wastewater provision (evidence in chief and rebuttal)

- 5.30 Robert White is a professional environmental engineer who has been involved in the water and wastewater industry for over 30 years. GHD was engaged to consider options for dealing with the water and wastewater requirements for Ohinewai. Mr White's evidence sets out the options for water and wastewater servicing and the servicing plan over the short, medium and long term.

Ben Pain – civil engineer, Woods – erosion and sediment control (evidence in chief)

- 5.31 Ben Pain is a civil engineer with Wood & Partners Consultants Limited. Mr Pain's evidence addresses the feasibility of suitable erosion and sediment control measures to be implemented for construction earthworks, which is pertinent given the volume of earthworks to be undertaken.

Pranil Wadan – civil engineer, Woods – stormwater management (evidence in chief)

- 5.32 Pranil Wadan is a civil engineer also working for Wood & Partners Consultants Limited, who is highly qualified to advise on stormwater management. He co-authored and reviewed the Sleepyhead Estate – Stormwater Management Plan ("SMP") report dated 30 November 2019.
- 5.33 Mr Wadan's evidence addresses stormwater management issues and the SMP for the Site and outline the process and technical assessments used to develop it.

Tranche 5 – assessment of effects

- 5.34 This tranche of evidence assesses the effects of the development proceeding in accordance with the rezoning.

Cameron Inder, Traffic expert, Bloxam Burnett & Olliver– Traffic effects (evidence in chief and rebuttal)

- 5.35 Cameron Inder is a transportation engineer and is the Transportation Engineering Manager at Bloxam Burnett & Olliver. Mr Inder has been engaged to provide traffic engineering related input and advice in relation to the proposal.

- 5.36 Mr Inder’s evidence describes the transport characteristics of the proposal, its expected effects, and the mitigation measures recommended to address those effects.

- 5.37 Specifically, Mr Inder’s evidence addresses:

- (a) The existing traffic environment.
- (b) The predicted traffic generation as a result of the proposed rezoning.
- (c) A summary of the recommended upgrades to the existing transport network to mitigate the potential traffic effects of the proposed rezoning.
- (d) A description of the effects on the network once the upgrades are completed.

- 5.38 His fundamental conclusion is that while a number of traffic and transport-related measures will need to be addressed, there is no basis from a traffic perspective why the rezoning cannot proceed.

Robert Quigley – Social Impact Consultant and Director, Quigley and Watts Limited – social effects (evidence in chief and rebuttal)

- 5.39 Robert Quigley is a specialist in assessing the social effects of change, developments, etc. and is a director of Quigley and Watts Limited. He was engaged by APL in order to assess the likely effects of the OSP development on the people of Ohinewai and nearby towns.

Ben Lawrence – Acoustician, Marshall Day – acoustic and vibration effects (evidence in chief)

- 5.40 Ben Lawrence is an acoustician, working for Marshall Day Acoustics. Mr Lawrence assisted with the preparation of the Acoustic Assessment accompanying the Assessment of Environmental Effects for the proposal.

- 5.41 Mr Lawrence’s evidence addresses the following issues:

- (a) The existing ambient environment;
- (b) The requirements of the PWDP in relation to noise; and
- (c) Potential activities on the site and their ability to comply with the relevant noise rules.

Michael Graham, Landscape Architect, MGLA – landscape and visual effects (evidence in chief)

- 5.42 Michael Graham is a landscape architect and Director at Mansergh Graham Landscape Architects. Mr Graham's evidence will assess the landscape and visual effects of the proposal. He authored the Landscape and Visual Assessment appended to the Assessment of Environmental Effects and Section 32AA assessments.

Chad Croft, Principal Ecologist, Ecology NZ – ecological effects (evidence in chief and rebuttal)

- 5.43 Chad Croft is an ecologist at Ecology New Zealand and has been involved with the proposal as the Principal Ecologist. Mr Croft's evidence will address the ecological characteristics of the Site, the likely ecological impacts, and opportunities for ecological enhancement. Specifically, Mr Croft's evidence will cover the following:
- (a) The ecological setting of the Site.
 - (b) The outcomes of the ecological investigations undertaken, for both terrestrial and aquatic ecology.
 - (c) Consultation that has been undertaken with key stakeholders (iwi and DoC) as to mitigation of potential ecological effects.
 - (d) The proposed planting, wetland and open space network and the extent to which it will mitigate effects arising from the proposed development.

Tranche 6 - evaluative / planning assessment

- 5.44 The final tranche of evidence addresses planning issues and is addressed by two planners given the sheer quantity of analysis that needs to be presented – one focussing on effects and issues arising out of expert conferencing, submissions, etc.; the other, on strategic planning.

Stuart Penfold – Planning specialist, Bloxam Burnett Olliver – assessment of effects and planning issues (evidence in chief)

- 5.45 Mr Penfold is a planning consultant and Senior Planner at Bloxam Burnett & Olliver, with 17 years' experience in the field.
- 5.46 His evidence focusses on issues arising out of the planners' expert conferencing; key effects-related issues; issues raised in submissions; and proposed plan provisions.
- 5.47 The outcome of Mr Penfold's analysis is that he considers that there are no impediments from a planning perspective that would preclude the rezoning.

John Olliver – Planning specialist, Bloxam Burnett Olliver – strategic planning (evidence in chief and rebuttal)

- 5.48 John Olliver is a planning specialist, and a founder / director at Bloxam Burnett Olliver, with 30 years' experience in the field. He has been the planner with overall responsibility for the proposal and the principal author of the plan provisions before the Panel.
- 5.49 Mr Olliver's evidence takes a "deep dive" into the relevant statutory and plan provisions, including the Vision and Strategy for the Waikato River, the WRPS and Future Proof. In that regard, his position is that the WRPS and Future Proof need to be viewed "in the round" and that there are no effects or issues arising in relation to the proposal that are not envisaged by the provisions of these documents that

preclude the Ohinewai development and the massive opportunity it represents for this area (especially in a post-Covid world).

6. **THE SLEEPYHEAD ESTATE - VISION AND RATIONALE**

- 6.1 APL is a property-owning and development focused, associated company of TCG, a highly successful company that manufactures bedding and a range of other products under well-known brands, including Sleepyhead, SleepMaker and Dunlop Foams.
- 6.2 APL's submission on the PWDP will facilitate the implementation of APL's Ohinewai development proposal, a \$1 billion industrial, residential and commercial development on the site.

Rationale for APL's move to Ohinewai

- 6.3 TCG currently operates facilities at Otahuhu and Avondale in Auckland, but the operations of these facilities are exceeding capacity. TCG needs to eliminate physical and technical constraints imposed by its Auckland-based sites, consolidate operations, and thus improve efficiency.
- 6.4 Development of the site as proposed will enable the expansion and consolidation of TCG's foam and mattress manufacturing operations to the extent that they would be able to have a permanent home at Ohinewai. The site will:
 - (a) Enable technological improvements that cannot be implemented at TCG's current facilities.
 - (b) Improve output by improved technology, increased storage capacity, and improved transportation, and removing the need to travel between sites.
 - (c) Enable provision to be made for large format furniture / bedding discount retailing and other small-scale commercial activity to support it.
 - (d) Provide residential accommodation of 900-1,100 houses to enable TCG's employees to live, work, and play in one place.
- 6.5 The rationale for relocating to Ohinewai is:
 - (a) The ability to acquire a site of sufficient size to achieve TCG's objective of consolidating its two Auckland operations at one location, with room for further expansion; and
 - (b) Providing an opportunity for its workers to live near work, and an opportunity for home ownership that is more affordable than the Auckland housing market and ability to purchase a reasonably priced dwelling;
 - (c) The opportunity to connect to the NIMT and consequently, the ports of Auckland and Tauranga.

Site selection

- 6.6 As David Gaze's evidence in chief makes clear, TCG searched extensively for a new location that would be suitable to consolidate all operations at one purpose-built site, that would also be large enough to permit for further expansion. Given the nature of the business, which involves importing large quantities of raw materials, as well as export and distribution operations, a connection to the NIMT and State Highway 1 was considered essential.

- 6.7 To the extent that it is even relevant (which is not accepted), Mr Mayhew's suggestion that APL did not adequately consider alternative sites is simply factually incorrect.
- 6.8 The site is approximately 178ha and is located next to State Highway 1 and the NIMT. The size of the site is sufficiently large to allow for development of TCG's industrial facilities, as well as development of housing to accommodate TCG's employees (and others) and complementary business activities. These three components make up what will eventually be the Sleepyhead Estate.
- 6.9 The site was identified as being suitable for the proposed expanded operations. It is large and subject to few environmental constraints. It met the key criteria in terms of its proximity to NIMT and State Highway 1 and connectivity to transport options and being in the "Golden Triangle" between Auckland, Hamilton, and Tauranga. Further, the size of the site would not only accommodate the existing operations, but also provide opportunity for significant expansion as well as the construction of a custom manufacturing facility.
- 6.10 TCG also identified the site as highly suitable due to its strong local employment base. This factor is complementary to TCG's intention that the introduction of its operations to Ohinewai contributes positively to growth in Ohinewai and the Waikato, particularly by providing employment opportunities.

The Sleepyhead Estate concept

- 6.11 As Mr Turner's evidence makes clear, The Sleepyhead Estate concept is about much more than relocating TCG's operations. It is about providing for a new community that will deliver an economic and social uplift to this part of the Waikato. Mr Turner explains this in his rebuttal evidence, which states:²⁶

"...Our concept is for a large industrial development that makes provision for an industrial "community" where one can eat, sleep, live, work and play in one place. In that way, a true community can be built which will encourage families to belong to something. It will also provide an ability for workers who fit the criteria to buy into housing they actually can afford to buy, for example, not spending money on transport. It is our view that business needs to take responsibility for its people. A further and most important consideration is our ability to attract existing staff to Ohinewai; provision of housing represents a key element in achieving this, as does the community aspect."

- 6.12 The masterplanning for the Site is set out in Mr Broekhuysen's evidence and the document titled "Ohinewai Structure Plan, Illustrative Masterplan, Revision O (Adapt Studio). This version of the Masterplan (and associated structure plans) was provided to the Panel on 27 July 2020 by way of a memorandum from John Olliver ("Olliver Memorandum").

26 Rebuttal evidence of Craig Turner, paragraph 3.2.

- 6.13 The Sleepyhead Estate concept comprises four distinct but integrated and well-planned and complementary components as follows:²⁷

Industrial component

- 6.14 The OSP provides for a zoned industrial area of 75 ha comprising the following 61.5 ha net area of:
- (a) 22.39 ha of net land to be occupied by TCG for its 100,000 sq. m factory (to be built in stages).
 - (b) 7.55 ha of net land allocated to the rail siding, to be used by TCG and other industrial land owners in the Sleepyhead Estate and in the surrounding area, and for TCG storage.
 - (c) 31.55 ha net land for other industrial users.

Business component

- 6.15 6.19 ha in the south western corner is to be zoned for Business use, comprising a service station, bus terminal, and neighbourhood centre to cater for the local convenience needs.

Residential component

- 6.16 The OSP provides for a residential area of 52 hectares (gross) and circa 900 - 1,100 new homes. A key driver of the Masterplan is to deliver residential development that is capable of achieving that, in a manner that enhances the opportunity for some staff the opportunity of home ownership. 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.

Recreation / open space component

- 6.17 A key objective for the Sleepyhead Estate is to create a community that has a real culture and heart, compared to fragmented city style living. To achieve that, the OSP provides for 55ha of land to be allocated to reserves, stormwater infrastructure, fitness tracks, community playing fields, community vegetable plots, barbeque areas and playgrounds.

Removal of the DFO

- 6.18 In the latest version of the Masterplan (Revision O), the "Discount Factory Outlet" ("DFO") that was originally proposed for the south west part of the site has been removed. Concerns were raised about that aspect of the OSP by Ms Trenouth and a number of submitters, including in terms of the potential effect on existing discount outlets in Hamilton. In response to those concerns, APL decided to remove provision for the DFO from the OSP and replace it with an additional 5.5 hectares of industrial zoned land.
- 6.19 In order to accommodate this change, some additional minor changes were made to the Masterplan, which are described in the Olliver Memorandum.²⁸

27 The land areas for the industrial and business zones identified in paragraph 13 of the section 42A rebuttal report are incorrect. An "Areas Plan" showing details of land areas is attached to Mr Broekhuysen's summary statement.

28 The Memorandum from John Olliver dated 27 July 2020 records that: the neighbourhood centre has been relocated slightly so that it straddles the main road; the 5.5ha of additional industrial land is

- 6.20 The Masterplan reflects a carefully designed concept aimed at achieving all of TCG and APL's objectives. While some submitters have suggested that other parts of the Masterplan could be "carved off", leaving only the industrial areas of the development, that suggestion reflects a fundamental misunderstanding about the nature of the proposal. As Mr Gaze explains in his evidence:²⁹

"... the composition of these elements [of the Masterplan] have been thoroughly and carefully thought through and we see all elements of the proposal as being important to the success of the development - we have no wish, and would prefer not, to "slice and dice the Ohinewai pie"."

- 6.21 Having said that, APL and TCG have been responsive to constructive criticism and have amended the Masterplan a number of times to take into account submitter concerns (the reason for the provision of successive drafts of the Masterplan and associated structure plans and zoning plans to the Panel), including removing the DFO, which was a major element of the original Masterplan.

7. **CONSULTATION AND STAKEHOLDER ENGAGEMENT**

- 7.1 The significant benefit offered by the OSP to existing communities in the Waikato is a key motivation for TCG and APL and, as such, consultation with stakeholders has been a fundamental part of the development of the proposal.

Tangata Whenua Governance Group

- 7.2 The development of a strong relationship with mana whenua has been seen by APL as critical from the outset. That process of engagement from inception to the present day is described in the evidence of David Gaze, which records the engagement with mana whenua and the various hui on the issue, which culminated in the formation of the TWGG. The TWGG formalises the relationship between TCG/APL and mana whenua and establishes a framework for the parties to continue to work together. Mr Gaze says in this regard:³⁰

"A Memorandum of Understanding was signed on 20 November 2019 with four parties, as follows:

- (a) Waahi Whaanui Trust, representing hapuu / marae / whanau within the Raahui Pookeka (Huntly / Ohinewai area). This trust was established in 1983 and became an incorporated charitable trust in 1987. It provides health, social, education and employment services for their whanau and Hapuu;*
- (b) TROWL is a mandated company of Te Whakakitenga o Waikato overseeing 15 Marae & over 16,500 beneficiaries with the sole purpose to build and accelerate economic prosperity for the whanau, hapuu, marae and iwi.*

expected to be more suited to smaller scale light industrial activities as its configuration does not lend itself to large regular shaped blocks. The southern-most block will be serviced by a private lane on the south side of the lots so that buildings are oriented to the south, away from the neighbourhood centre; Additional landscaping is proposed along the Tahuna Road frontage; the east-west road connecting the neighbourhood centre to the service station / public transport centre will remain as an important pedestrian/cycle connection, albeit through a light industrial area. The road cross-section will include off-street cycling via shared walking and cycling paths on both sides of the road; The only minor change to the internal road network is to reclassify the north-south road immediately to the east of the new industrial area as Type 2 instead of Type 3 as it will be an industrial access road instead of a commercial one.

29 EIC Gaze, paragraph 5.26.

30 EIC Gaze paragraph 9.5.

- (c) *The Nga Muka Development Trust represents five marae spread between Rangiriri and the northern boundary of Lake Waikere. They are Maurea, Horahora, Waikare, Okarea and Taniwha.*
- (d) *Te Whakakitenga o Waikato incorporated is the Waikato Tainui post-settlement governance group consisting of 68 marae and 33 hapuu. It manages assets for their 72,000 registered tribal members."*

7.3 In his evidence, the Chairman of the TWGG, Mr Glen Tupuhi, explains the functions of the TWGG as follows:³¹

"Consistent with the MOU, the functions of the TWGG are to identify and promote the cultural, social, environmental, and economic aspirations of TWGG members. This is achieved via:

- a) *Ongoing email and telephone communications;*
- b) *Regular hui which are held in the Ohinewai/Huntly every month.*
- c) *Advocacy and enabling mechanisms.*

We have open lines of communication with TCG/APL and their advisers and have been involved in many of the planning phases of the development by reviewing and commenting on reports and plans and providing information on cultural matters. We have supported the project to date by:

- a) *Leading and delivering cultural protocols waerea karakia prior to initial site development and future significant milestones of the development.*
- b) *Negotiating environmental protection mechanisms that are mutually valued and beneficial.*
- c) *Supporting training initiatives such as the Sleepyhead Academy and identifying members for training and employment at the Sleepyhead Otahuhu factory."*

7.4 The substantial work undertaken to date represents just the start of the relationship between iwi and TCG/APL, which the parties intend to deepen and grow as the development proceeds.

Other stakeholders

7.5 APL has also undertaken a thorough programme of consultation and engagement with other key stakeholders and the general public on the Sleepyhead Estate Masterplan. As detailed in Mr Gaze's evidence, this commenced in early 2018 and has involved:

- (a) A community meeting on 19 June 2019;
- (b) An open day at the Ohinewai Community Hall on 31 October 2019 attended by APL's technical experts, at which key elements of the Masterplan were presented;

31 EIC Tupuhi, paragraphs 4.8-4.9.

- (c) Attendance at the Huntly Community meeting on 1 July 2020 in respect of the WDC Huntly/Ohinewai Blueprint;
 - (d) Frequent informal discussions with Ohinewai residents.
- 7.6 Mr Gaze and other APL representatives have also held meetings with specific submitters to discuss the issues they have raised and sought to resolve (or narrow) those issues where possible.
- 7.7 The engagement has also included regular meetings, discussions or correspondence with the following key stakeholders:
- (a) WRC;
 - (b) NZTA;
 - (c) Future Proof;
 - (d) Mercury;
 - (e) Watercare Services Limited;
 - (f) The Ohinewai Area Committee;
 - (g) Fire and Emergency New Zealand;
 - (h) Ministry of Education;
 - (i) Fish and Game; and
 - (j) OLL; and
 - (k) Ralph Estates.

Outcome of engagement with submitters

- 7.8 Since its submission was lodged, APL has continued to engage with stakeholders and has made a number of changes and refinements to the proposal to accommodate their feedback. The list is extensive but includes the following key changes:
- (a) Deletion of the DFO from the scheme and extension of the industrial zone into this land area;
 - (b) Refinement of the proposed plan provisions including in relation to:
 - (i) Inclusion of staging rules in the proposed plan provisions to ensure that development does not occur until infrastructure is available, including community infrastructure;
 - (ii) The content of the Ecological Rehabilitation and Management Plans required upon development;
 - (iii) Requirements for mechanical ventilation for residential development adjacent to the Rotokawau Reserve and agreement for the application of “no complaints” covenants to residential titles to address Fish and Game’s concerns about gun noise emanating from the Reserve;
 - (iv) Specifying building platform levels to address flood risk;

- (v) Including additional assessment criteria for design of multi-unit development and industrial development;
 - (vi) Introducing requirements to prepare ITA's for all development; and
 - (vii) Inclusion of a minimum density requirement for residential development.
- (c) Preparation of a concept Predator Control Programme for the site;
 - (d) Refinements to the flood modelling in response to feedback from WRC and Mercury; and
 - (e) Refinements to the traffic modelling and transport network layout including removal of one intersection from Tahuna Rd.
- 7.9 As a result, it is submitted that the Panel can be satisfied making a finding that the process of consultation and engagement that APL has followed has been extensive and robust.

8. **STATUTORY AND PLANNING FRAMEWORK**

- 8.1 The provisions of primary relevance to the rezoning proposal are sections 72 to 76 in Part 5 (standards, policy statements, and plans) of the RMA. Those provisions respectively set out the purpose of district plans, matters to be considered by the territorial authority in the preparation of district plans and the content of district plans.
- 8.2 In terms of the relevant provisions of the RMA, the Panel needs to be satisfied that the relief sought by APL:
- (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 WRPS³².
- 8.3 Clause 10(2) of Schedule 1 to the RMA provides that after considering the PWDP and matters raised in submissions, the Panel must issue a decision on the provisions and matters raised in submissions, which includes the reasons for accepting or rejecting those submissions.

Section 31

- 8.4 The functions of district councils are set out in section 31(1) of the RMA. Those most relevant with respect to the APL submission are as follows:

- "(1) Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:*
 - (a) The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:*
 - (aa) The establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district:*
 - (b) The control of any actual or potential effects of the use, development, or protection of land, including for the purpose of:*
 - (i) The avoidance or mitigation of natural hazards;*
 - (ii) [Repealed]*
 - (iia) The prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land:*
 - (iii) The maintenance of indigenous biological diversity:*
- ...*
- (2) The methods used to carry out any functions under subsection (1) may include the control of subdivision.*

Sections 72 to 76

- 8.5 Section 72 provides as follows:

"72 Purpose of district plans

- (1) The purpose of the preparation, implementation, and administration of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of this Act."*

- 8.6 As relevant, section 74 provides as follows:

"74 Matters to be considered by territorial authority

- (1) A territorial authority must prepare and change its district plan in accordance with:*
 - (a) Its functions under section 31; and*
 - (b) The provisions of Part 2; and*
 - (c) A direction given under section 25A(2); and*

- (d) *Its obligation (if any) to prepare an evaluation report in accordance with section 32; and*
 - (e) *Its obligation to have particular regard to an evaluation report prepared in accordance with section 32; and*
 - (ea) *A national policy statement, a New Zealand coastal policy statement, and a national planning standard; and*
 - (f) *Any regulations.*
- (2) *In addition to the requirements of section 75(3) and (4), when preparing or changing a district plan, a territorial authority shall have regard to:*
- (a) *any:*
 - (i) *Proposed regional policy statement; or*
 - (ii) *Proposed regional plan of its region in regard to any matter of regional significance or for which the regional council has primary responsibility under Part 4; and ..."*
- (2A) *A territorial authority, when preparing or changing a district plan, must take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on the resource management issues of the district."*

8.7 Also relevant, section 75 provides as follows:

"75 Contents of district plans

- (1) *A district plan must state:*
 - (a) *The objectives for the district; and*
 - (b) *The policies to implement the objectives; and*
 - (c) *The rules (if any) to implement the policies.*
- (2) *A district plan may state:*
 - (a) *The significant resource management issues for the district; and*
 - (b) *The methods, other than rules, for implementing the policies for the district; and...*
- (3) *A district plan must give effect to:*
 - (a) *Any national policy statement; and*
 - (b) *Any New Zealand coastal policy statement; and*
 - (ba) *A national planning standard; and*
 - (c) *Any regional policy statement."*

8.8 Finally, section 76 provides as follows:

"76 District rules

- (1) A territorial authority may, for the purpose of:
- (a) Carrying out its functions under this Act; and
 - (b) Achieving the objectives and policies of the plan,—
include rules in a district plan.
- ...
- (4) A rule may—
- (a) Apply throughout a district or a part of a district:
 - (b) Make different provision for:
 - (i) Different parts of the district; or
 - (ii) Different classes of effects arising from an activity:
 - (c) Apply all the time or for stated periods or seasons:
 - (d) Be specific or general in its application:
 - (e) Require a resource consent to be obtained for an activity causing, or likely to cause, adverse effects not covered by the plan."

Section 32

- 8.9 In exercising its functions under the RMA, WDC is required to undertake evaluations and further evaluations of objectives, policies and other methods in accordance with section 32 of the Act.
- 8.10 Section 32 requires an evaluation of the extent to which each objective is the "most appropriate" way to achieve the purpose of the RMA and of whether the provisions in a proposal are the most appropriate way to achieve those objectives. That second evaluation is required to be undertaken by identifying other reasonably practicable options for achieving the objectives, assessing the efficiency and effectiveness of the provisions in achieving the objectives and summarising the reasons for deciding on the provisions.
- 8.11 The evaluation is to be carried out initially when preparing a district plan (including a change to a plan). Decision makers must then have particular regard to the section 32 evaluation before making decisions on submissions³³.
- 8.12 It is submitted that the most relevant aspects of section 32 are as follows:

- "(1) An evaluation report required under this Act must—
- (a) Examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and

33 Schedule 1 of the Act, clause 10.

- (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; and*
 - (ii) *Assessing the efficiency and effectiveness of the provisions in achieving the objectives; and*
 - (iii) *Summarising the reasons for deciding on the provisions; and*
 - (c) *Contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.*
- (2) *An assessment under subsection (1)(b)(ii) must—*
- (a) *Identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—*
 - (i) *Economic growth that are anticipated to be provided or reduced; and*
 - (ii) *Employment that are anticipated to be provided or reduced; and*
 - (b) *If practicable, quantify the benefits and costs referred to in paragraph (a); and*
 - (c) *Assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions”.*

8.13 If changes are made to the proposal following notification, a further evaluation must then be made available at the time of the decision in accordance with section 32AA RMA and decision-makers must have particular regard to that further evaluation. Section 32AA aims to ensure any changes to plan provisions during the hearings process are subject to a similarly high level of analytical rigour and transparency as the original evaluation.

Long Bay test

8.14 The generally accepted formulation of the approach to be adopted in assessing proposed planning provisions can be found in *Long Bay-Okura Great Park Society v North Shore City Council*³⁴, (updated by the Environment Court to reflect legislative amendments in *High Country Rosehip Orchards Ltd v Mackenzie District Council*³⁵ and *Colonial Vineyard Limited v Marlborough District Council*)³⁶ in the following terms:

"A. *General requirements*

34 A078/08 (EC).

35 [2011] NZ EnvC 387.

36 [2014] NZEnvC 55.

1. A district plan (change) should be designed to **accord with**³⁷, and assist the territorial authority to **carry out** - its functions³⁸ so as to achieve, the purpose of the Act³⁹.
2. The district plan (change) must also be prepared **in accordance with** any regulation⁴⁰ (there are none at present) and any direction given by the Minister for the Environment;⁴¹
3. When preparing its district plan (change) the territorial authority **must give effect to**⁴² any national policy statement or New Zealand Coastal Policy Statement:
3. When preparing its district plan (change) the territorial authority shall:
 - (a) **have regard to** any proposed regional policy statement⁴³;
 - (b) **give effect to** any operative regional policy statement.⁴⁴
- ...
6. When preparing its district plan (change) the territorial authority must also:
 - **have regard to** any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations⁴⁵ 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 authorities⁴⁶;
 - take into account any relevant planning document recognised by an iwi authority⁴⁷; and
 - **not have regard to** trade competition⁴⁸ or the effects of trade competition;
7. The formal requirement that a district plan (change) must⁴⁹ also state its objectives, policies and the rules (if any) and may⁵⁰ state other matters.

37 Section 74(1) of the Act.

38 As described in Section 31 of the Act.

39 Section 72 and 74(1) of the Act.

40 Section 74(1) of the Act.

41 Section 74(1) of the Act added by section 45(1) Resource Management Amendment Act 2005.

42 Section 75(3) of the Act.

43 Section 74(2)(a)(i) of the Act.

44 Section 75(3)(c) of the Act.

45 Section 74(2)(b) of the Act.

46 Section 74(2)(c) of the Act.

47 Section 74(2A) of the Act.

48 Section 74(3) of the Act.

49 Section 75(1) of the Act.

50 Section 75(2) of the Act.

- B. Objectives [the section 32 test for objectives]
8. Each proposed objective in a district plan (change) **is to be evaluated** by the extent to which it is the most appropriate way to achieve the purpose of the Act⁵¹.
- C. Policies and methods (including rules) [the section 32 test for policies and rules]
9. The policies are to **implement** the objectives, and the rules (if any) are to **implement** the policies⁵²;
10. Each proposed policy or method (including each rule) is to be examined, **having regard to its efficiency and effectiveness**, as to whether it is the most appropriate method for achieving the objectives⁵³ of the district plan taking into account:
- (a) the benefits and costs of the proposed policies and methods (including rules); and
- (b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods⁵⁴.
- D. Rules
11. In making a rule the territorial authority must **have regard to** the actual or potential effect of activities on the environment⁵⁵
12. Rules have the force of regulations.⁵⁶
13. Rules may be made for the protection of property from the effects of surface water and these may be more restrictive⁵⁷ than those under the Building Act 2004;
14. There are special provisions for rules about contaminated land;⁵⁸
15. There must be no blanket rules about felling of trees in any urban environment.⁵⁹
- E. Other statutes:
16. Finally territorial authorities may be required to comply with other statutes
- ...”

51 Section 74(1) and Section 32(3)(a) of the Act.
 52 Section 75(1)(b) and (c) of the Act (also section 76(1)).
 53 Section 32(3)(b) of the Act.
 54 Section 32(4) of the Act.
 55 Section 76(3) of the Act.
 56 Section 76(2) of the Act.
 57 Section 76(2A) of the Act.
 58 Section 76(4A) of the Act.
 59 Section 76(4B) of the Act.

Part 2 of the RMA

- 8.15 Section 74(1)(b) of the Act provides that plans must be developed “in accordance with” the provisions of Part 2. However, the Supreme Court decision in *King Salmon*⁶⁰ makes clear 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 Act⁶¹. However, there are several ‘caveats’ to this general rule⁶². In particular:
- (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 Act⁶³;
 - (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 covered⁶⁴; 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 interpretation⁶⁵.
- 8.16 It is also apparent from the *King Salmon* decision (and subsequent decisions⁶⁶) that the way a policy or rule is expressed is important. Policies expressed in directive terms will carry greater weight than those which are less directive⁶⁷.
- 8.17 In the present case, it is submitted that there are generally no ambiguities in the relevant planning framework (including the PWDP and the WRPS such that recourse to Part 2 is not required, except in respect of the following key areas where there is “incomplete coverage”:
- (a) The PWDP and the WRPS were prepared prior to the promulgation of the National Policy Statement on Urban Development 2020 (indeed, the WRPS was prepared prior even to its predecessor, the National Policy Statement on Urban Development Capacity 2016);
 - (b) Section 6 of the WRPS (Built Environment) directs the implementation of the Future Proof Growth Strategy 2009. That document was updated in 2017 but this has not been reflected in the WRPS, such that there is some uncertainty in terms of the way the provisions of Section 6 should be applied.
- 8.18 These issues are addressed in more detail in Section 9 below and Mr Olliver’s evidence in chief. For now, it suffices to record that some recourse to Part 2 is required in terms of the consideration of APL’s submission. The key provisions of Part 2 are set out below.

Section 5 – sustainable management purpose of the RMA

- 8.19 Section 5 is the fundamental section in Part 2 as it sets out the purpose of the RMA, which is as follows:

60 *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] 1 NZLR 593 (SC).

61 *Ibid.*, at [85].

62 *Ibid.*

63 *Ibid.*, at [88].

64 *Ibid.*

65 *Ibid.*

66 Including *Royal Forest and Bird Protection Society Inc v Bay of Plenty Regional Council* [2017] NZHC 3080, (2017) 20 ELRNZ 564 and *Environmental Defence Society v Otago Regional Council* [2019] NZHC 2278, (2019) 21 ELRNZ 252.

67 *Ibid.*, at [129].

- "(1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) *In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—*
- (a) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) *Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- (c) *Avoiding, remedying, or mitigating any adverse effects of activities on the environment."*

Section 6 – matters of national importance

8.20 Section 6 matters must be "recognised and provided for". Assuming they are accepted to apply, the section 6 matters that the Panel might consider relevant in the context of the APL submission 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, which needs to be seen, alongside sections 7(a) (kaitiakitanga) and 8 (principles of the Treaty of Waitangi) as part of the triumvirate of provisions that to seek to recognise, protect and provide for Māori cultural and spiritual matters.
- (b) Section 6(h) - The management of significant risks from natural hazards.

Section 7 - other matters

8.21 "Particular regard" must be had to section 7 matters. Those which could be considered to be of particular relevance in the context of APL's submission are as follows:

- (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).

Relevant planning framework

8.22 The planning instruments, including non-RMA documents, that are relevant to consideration of APL's submission are set out in the section 42A report and fully canvassed in the evidence of Mr Olliver. The RMA instruments comprise:

- (a) The NPSUD;

- (b) The National Policy Statement for Freshwater Management 2020 ("NPSFM");
- (c) The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011;
- (d) The Waikato Regional Policy Statement ("WRPS");
- (e) The Waikato Regional Plan.

8.23 Non-RMA documents comprise:

- (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) The Mid Waikato Water and Wastewater Servicing Strategy, June 2020;
- (f) The Ohinewai Area Blueprint in the Waikato District Blueprints, June 2019;
- (g) The Hamilton to Auckland Corridor Plan.
- (h) Government Policy Statement on Land Transport 2018;
- (i) National Land Transport Programme 2018-2021;
- (j) New Zealand Transport Agency Amended Statement of Intent 2018-2022;
- (k) Waikato Regional Land Transport Plan 2015-2045 (2018 Update).

9. NATIONAL POLICY STATEMENT ON URBAN DEVELOPMENT 2020

9.1 The NPSUD was gazetted on 23 July 2020 and came into force on 20 August 2020, when it replaced the National Policy Statement on Urban Development Capacity 2016.

9.2 The NPSUD contains a number of objectives and policies that are aimed at:⁶⁸

- *ensuring urban development occurs in a way that takes into account the principles of the Treaty of Waitangi (te Tiriti o Waitangi)*
- *ensuring that plans make room for growth both 'up' and 'out', and that rules are not unnecessarily constraining growth*
- *developing, monitoring and maintaining an evidence base about demand, supply and prices for housing and land to inform planning decisions*
- *aligning and coordinating planning across urban areas.*

(Emphasis ours.)

9.3 The document is therefore highly relevant to APL's submission insofar as it provides clear recognition of the national significance of well-functioning urban environments and direction that opportunities such as that offered by the OSP should not be unnecessarily constrained.

9.4 "Well functioning urban environments" are described in Policy 1, which states:

"Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:

- a) *have or enable a variety of homes that:
 - (i) *meet the needs, in terms of type, price, and location, of different households; and*
 - (ii) *enable Māori to express their cultural traditions and norms; and**
- b) *have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and*
- c) *have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and*
- d) *support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and*
- e) *support reductions in greenhouse gas emissions; and*
- f) *are resilient to the likely current and future effects of climate change."*

9.5 Mr Olliver has undertaken an assessment of APL's submission against the policy framework in the NPSUD. In his rebuttal evidence he says:

"I consider that the OSP will create a 'well-functioning urban environment' as it will enable a variety of homes. It will include approximately two-thirds of the yield as medium density terrace houses and duplex typologies which are quite different from the typologies in Huntly, increasing variety and choice. They will be modern, healthy homes in comparison to the Huntly housing stock which largely comprises dated single family dwellings. There is little new construction in Huntly.

The higher density of the residential housing proposed for Ohinewai will enable lower price points and, as described in the EIC of Mr Turner and Mr Gaze, a portion will be offered to Sleepyhead workers factory, which will be an entirely different part of the housing market. The housing will enable Maori to express their cultural traditions and norms, firstly by incorporating cultural narratives and symbols in the OSP design. Secondly there is agreement with Mana Whenua that a proportion will be made available for papakainga development.

The OSP has good accessibility. It will locate housing directly adjacent to industrial employment, enabling a completely different approach to home-work trips. There will be alternative modes available and only short distances between work and home."

- 9.6 Of particular note, Policy 8 requires local authority decisions to be “responsive” to plan changes that add significantly to development capacity, even if it out of sequence or is unanticipated by the relevant planning documents. Policy 8 is as follows:

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

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

- 9.7 Guidance as to the meaning of the term “responsive” is provided in the Implementation section (Part 2) as follows:

“3.8 Unanticipated or out-of-sequence developments

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

- 9.8 It is submitted that the effect of this provision is that in the present case, in making its decision the Panel is required to have particular regard to the development capacity provided by the OSP.

WRC position

- 9.9 Mr Mayhew has suggested that the policy framework in the NPSUD, and Policy 8 in particular, does not apply to APL’s submission, on the basis that:

- (a) The NPSUD only relates to “urban environments” and the OSP area is not an urban environment;⁶⁹
- (b) Policy 8 only applies to plan changes and not a district plan review.⁷⁰

- 9.10 It is submitted that this reflects an unduly narrow and strained interpretation of the NPSUD that is contrary to the clear purpose and intent of that instrument. Such an interpretation serves only to reflect the negative and closed-minded approach taken by WRC to APL’s proposal. We address these issues below.

69 Statement of evidence of Ian Mayhew, paragraph 8.1 – 8.3.

70 Statement of evidence of Ian Mayhew, paragraph 8.15-8.16.

Analysis

"Urban environment"

- 9.11 The NPSUD applies to all local authorities that have an "urban environment" within their district, and to all decisions that affect an urban environment. The term "urban environment" is defined in the interpretation section of the NPSUD 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."*

- 9.12 Mr Olliver's view is that Ohinewai, together with Huntly, comprise an "urban environment" consistent with this definition.⁷¹ His evidence is that:

"This definition is very broad insofar as it is not limited by geographic size, jurisdictional or other boundaries. It captures the situation of the OSP which is 2.5km from the urban limits of Huntly. Both the OSP and Huntly are 'urban in character' as they comprise residential development ranging from single dwellings to medium density, to be connected to urban infrastructure services, including commercial / industrial development and with community services and amenities. Together, they will be predominantly urban in character. While there is an undeveloped gap between them of approximately 2.5km, that distance is not significant in the context of Huntly township which extends along the Waikato River for a distance of some 8km. As planned for, Huntly's industrial growth will be towards Ohinewai."

- 9.13 Mr Mayhew and Mr Keenan suggest in their evidence that although Ohinewai and Huntly might in theory together form an "urban environment" in fact they do not because they do not have the requisite size labour market, adopting the position that the term "housing and labour market" requires:

- (a) A housing market of more than 10,000 people; and
- (b) A labour market of more than 10,000 people.

- 9.14 As Mr Olliver explains in his evidence, this interpretation is unnecessarily restrictive and illogical. He says:

"In my opinion, 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. Separating them out is illogical as a labour market will always be a much smaller subset of a housing market. If for the purposes of the NPS-UD the labour market itself (ie. people working or looking for work) had to be a minimum of 10,000 people, the minimum population would need to be much larger; in the order of 20,000. In any case, it would be anomalous for Waikato District's largest town not to be considered 'urban'."

(Emphasis ours.)

- 9.15 Mr Olliver's interpretation is supported by the various documents on the NPSUD produced by the Ministry for the Environment which all make clear that the intent of the provision is that the policy framework applies differently dependent on

71 Rebuttal evidence of John Olliver, paragraph 3.4.

population. For example, the Decisions and Recommendations report states (in respect of the original proposal):⁷²

"Less prescriptive policies would apply to urban environments of more than 10,000 inhabitants."

And in respect of the final Decisions Version:⁷³

"tier 3 will include all other urban environments with populations greater than 10,000."

9.16 The Regulatory Impact Assessment similarly states:⁷⁴

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

9.17 It follows that Mr Olliver's interpretation should be preferred. The OSP area and Huntly together form an "urban environment" for the purpose of the NPSUD. For different reasons, Ms Trenouth has confirmed her agreement with this conclusion.⁷⁵

Application of Policy 8 - interpretation

9.18 Policy 8 and associated Method 3.8 in subpart 2 direct local authorities to be "responsive" to unanticipated or "out-of-sequence" plan changes. Mr Mayhew suggests that "technically" the Policy does not apply to the APL submission because it only applies to plan changes and not submissions seeking rezoning.

9.19 Applying a narrow, literal interpretation, the policy on its face applies only to plan changes. However, in our submission, a "black letter" analysis of this provision does not appropriately reflect the purpose of the provision and its context.

9.20 The clear purpose of Policy 8 is to direct RMA decision makers to give proper weight to the benefits of unexpected development opportunities which are not anticipated or provided for in the relevant planning instruments – in other words, to ensure that opportunities to provide for much-needed urban development are not foregone as a result of precisely the "head in the sand" attitude that WRC and NZTA have adopted.

9.21 The starting point for considering a statute (including instruments prepared under the RMA) where ambiguity exists is section 5 of the Interpretation Act 1999 which states:

"5. Ascertaining meaning of legislation

(1) The meaning of an enactment must be ascertained from its text and in the light of its purpose.

(2) The matters that may be considered in ascertaining the meaning of an enactment include the indications provided in the enactment.

(3) Examples of those indications are preambles, the analysis, a table of contents, headings to Parts and sections, marginal notes, diagrams, graphics, examples and explanatory material, and the organisation and format of the enactment."

72 Page 29.

73 Page 32.

74 Regulatory Impact Assessment, Footnote 9.

75 Section 42A rebuttal report, 7 September 2020, paragraph 119.

(Our emphasis.)

- 9.22 In *Brownlee v Christchurch City Council*⁷⁶, the Environment Court set out the relevant factors to consider in the interpretation of a plan prepared under the RMA. These included the purpose of the provision, the context and scheme of the plan and any other permissible guides to meaning - including the common law principles or presumptions of statutory interpretation.
- 9.23 As such, Hansard has been referred to by the Environment Court on many occasions.⁷⁷ Other materials such as Cabinet papers and press releases have been introduced to various courts and have at times been accepted for consideration and at other times, declined.⁷⁸ The critical factor is whether that material is sufficiently relevant.⁷⁹
- 9.24 In light of the case law, we submit that there is nothing to preclude the Panel from considering extrinsic materials in respect of the NPSUD as we have set out above.
- 9.25 Principles of statutory interpretation support a deviation from rigid adherence to the wording of a provision where necessary, particularly where it would lead to an anomalous outcome. In this regard, in *Commerce Commission v Fonterra Co-operative Group Ltd*⁸⁰, the Supreme Court emphasised the important role of the purpose of a statute as follows:

"The meaning of an enactment must be ascertained from its text and in the light of its purpose. Even if the meaning of the text may appear plain in isolation of purpose, that meaning should always be cross checked against purpose in order to observe the dual requirements of s 5. In determining purpose the court must obviously have regard to both the immediate and the general legislative context. Of relevance too may be the social, commercial or other objective of the enactment."

(Our emphasis.)

- 9.26 To similar effect is the decision of Chambers J in *Beach Road Preservation Society Incorporated v Whangarei District Council*⁸¹, in which the High Court held:

"I also note s 76 of the Resource Management Act...Subsection (2) provides that every such rule is to have the force and effect of a regulation in force under the Act. The effect of subs. (2) is to make the Interpretation Act 1999 applicable to the interpretation of rules included in a district plan...Section 5(1) of the Interpretation Act requires the meaning of an enactment, which includes a rule by virtue of s 76(2) of the Resource Management Act and the definition of 'enactment' in s 29 of the Interpretation Act, to 'be ascertained from its text and in the light of its purpose'. That provision clearly requires the 'purpose' to be looked at."

(Our emphasis.)

- 9.27 Further, whenever there appear to be obscurities and ambiguities in plan provisions, assistance not only may but ought to be sought from the composite document taken

76 [2001] NZRMA 539 at [25].

77 For example, see *Tauranga City Council v Minister of Education* [2019] NZEnvC 32 at [67]; *Kaitiaki Tarawera Incorporated v Rotorua District Council* [1997] NZRMA 372 (HC) at 376; *Graham v Grey District Council* [2012] NZEnvC 102 at [6].

78 *R v Mist* [2005] 2 NZLR 791 at [98] (CoA); *Elliott v Work and Income NZ*, AP 143/02, High Court, Unreported (18 December 2002) at [18]; *Skycity Auckland Ltd v Gambling Commission* [2008] 2 NZLR 182 at [38]-[55] (CoA); *Pfizer Inc v Commissioner of Patents* [2005] 1 NZLR 362 at [69] (CoA).

79 *Skycity Auckland Ltd v Gambling Commission* [2008] 2 NZLR 182 at [38]-[55] (CA).

80 *Commerce Commission v Fonterra Co-operative Group Ltd* [2007] 3 NZLR 767 (SC), at [22].

81 Section 5(1) Interpretation Act 1999; *Beach Road Preservation Society Incorporated v Whangarei District Council* [2001] NZRMA 176 (HC), at [34].

as a whole.⁸² Finally, an interpretation that avoids absurdity and anomalous outcomes is to be preferred.⁸³

9.28 In the present context, it is also noteworthy that the scheme of the RMA provides some support for the interchangeable treatment of proposed plans and plan changes. In this regard, Section 43AA of the RMA defines most of the terms used in the RMA in relation to plans and policy statements. The term "plan" is defined as "a regional plan or a district plan".

9.29 The term "district plan":

- (a) *means an operative plan approved by a territorial authority under Schedule 1; and*
- (b) *includes all operative changes to the plan (whether arising from a review or otherwise)*

9.30 The term "change" is defined in section 43AA as:

- "(a) *a change proposed by a local authority to a policy statement or plan under clause 2 of Schedule 1; and*
- (b) *a change proposed by any person to a policy statement or plan by a request under clause 21 of Schedule 1."*

9.31 The term "proposed plan" is defined in section 43AAC as:

- (a) *means a proposed plan, a variation to a proposed plan or change, or a change to a plan proposed by a local authority that has been notified under clause 5 of Schedule 1 or given limited notification under clause 5A of that schedule, but has not become operative in terms of clause 20 of that schedule; and*
- (b) *includes a proposed plan or a change to a plan proposed by a person under Part 2 of Schedule 1 that has been adopted by the local authority under clause 25(2)(a) of Schedule 1.*

9.32 Sections 43AA and 43AC are both headed by the following rubric:

"In this Act, unless the context requires another meaning, -"

9.33 Parliament has therefore recognised that the definitions in the Act are not immutable and can have different meanings if the context requires a different interpretation in order to achieve the purpose of the document or sound resource management outcomes. This point is crucial in a context such as this.

9.34 In terms of the history of the NPSUD, there is nothing in the Cabinet Paper and associated documents which provides a rationale for limiting Policy 8 to plan changes, beyond the assumption that it is in the plan change context that an unexpected rezoning opportunity might arise.

9.35 Based on that material and, in particular, the purpose of this part of the NPSUD, it becomes clear that the focus on plan changes in the NPSUD is likely because issues of council pedantry and resistance to change is most likely to arise the context of private plan change requests. We have all seen it.

82 *J Rattray & Son Limited v Christchurch City Council* (1984) 10 NZTPA 59 (CA), at page 5.

83 *Nanden v Wellington City Council* [2000] NZRMA 562 (HC), at [48].

- 9.36 However, the current situation demonstrates that this issue can also arise in the context of a plan review. The difference is likely to be simply one of timing – a plan change request is not possible when a plan is under review. For that reason alone, there is no logical reason to distinguish between the two – indeed, it would be contrary to the very purpose of that provision, which must be the starting point for ascertaining the correct meaning.
- 9.37 It is thus submitted that Mr Mayhew’s black letter interpretation which applies Policy 8 only to plan changes:
- (a) Is illogical, self-serving and would defeat the clear purpose of Policy 8 of the NPSUD which is to be responsive to unexpected development opportunities.
 - (b) For the same reason that it is not consistent with the intent of the NPSUD, application of Mr Mayhew’s interpretation would lead to an anomalous outcome.
- 9.38 The short point is that, in this context, there is no material distinction between a plan change and a submission on a plan of the nature of the APL submission and this case is a prime example of why Policy 8 must also be interpreted to apply to submissions on a proposed plan. The plan change option was not open to APL.
- 9.39 Put directly, the need to confront the attitude of many councils as truculent gatekeepers who are resistant to change (including positive change) because ‘they know best’ is just as important in both contexts. On that basis, and applying a purposive approach to Policy 8, it is submitted that:
- (a) It is inconceivable that the Ministry for the Environment could have intended that Policy 8 would not apply to a submission while a proposed plan is undergoing the First Schedule process (when the option of private plan changes are not available);
 - (b) Mr Mayhew / WRC’s interpretation is self-serving and untenable; and
 - (c) The NPSUD is relevant in considering the APL submission.
- 9.40 In that regard, in terms of Implementation Method 3.8, it is submitted that particular regard should be had to the development capacity provided by the OSP because APL’s expert evidence demonstrates that development of the OSP area:
- (a) Would contribute to a well-functioning urban environment in terms of the criteria set out in Policy 1 (including in terms of offering housing choice and a range of commercial land with good connectivity); and
 - (b) Is demonstrably well connected along a transport corridor.
- 9.41 Obviously, the RPS has not yet been updated with criteria defining what is a “significant” contribution to development capacity. However, APL’s expert evidence (including in terms of urban design, infrastructure provision and planning) sets out the extent of development capacity provided by the OSP, which it is submitted, must be seen as “significant” in the context of the Waikato district.
10. **NATIONAL POLICY STATEMENT ON FRESHWATER MANAGEMENT 2020**
- 10.1 On 3 September 2020, the National Policy Statement for Freshwater Management 2020 (“NPSFM”) came into force. As this is a very new planning instrument, it was not addressed in APL’s evidence.

- 10.2 The fundamental concept underpinning the NPSFM 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”.⁸⁴
- 10.3 The underlying purpose of the concept is about restoring and preserving the balance between the water, wider environment and the community.
- 10.4 The objective of the NPSFM is to ensure that resources are managed in a way that prioritise:⁸⁵
- (a) The health and wellbeing 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 wellbeing, now and in the future.
- 10.5 The NPSFM sets out 15 policies for achieving the above objective. Of particular relevance are the following policies:
- (a) Policy 2: Tangata whenua are actively involved in freshwater management (including decision-making processes) and Maori freshwater values are identified and provided for.
 - (b) Policy 3: Freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments.
 - (c) Policy 6: There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.
 - (d) Policy 8: The significant values of outstanding water bodies are protected.
- 10.6 In terms of Policy 2, collaboration with tangata whenua is at the heart of APL’s proposal, including in terms of the TWGG’s involvement in the development of the SMP and other elements of the proposal and the commitment to ongoing collaboration.
- 10.7 In terms of Policy 3 and 8, the evidence of Mr Wadan and Mr Croft confirms the robustness of the stormwater management framework and the anticipated benefits in terms of the retirement of dairy farming activities from the Site.
- 10.8 One notable new requirement, set out in Policy 6, is the direction to avoid any further loss or degradation of wetlands, and to map existing wetlands and encourage restoration. As set out in Mr Croft’s evidence, there are no existing natural wetlands on the Site such that these requirements would be triggered. Ms Trenouth has confirmed her agreement with this conclusion.⁸⁶ The proposal will, however, enable the restoration and creation of new wetland habitat.⁸⁷
- 10.9 Ultimately, our submission is that the Panel can be satisfied that the OSP gives effect to the NPSFM without the need for any alterations to the Proposal.

84 National Policy Statement for Freshwater Management 2020 at [1.3].

85 National Policy Statement for Freshwater Management 2020 at [2.1].

86 Section 42A rebuttal report, 7 September 2020, paragraph 130.

87 Statement of Evidence of Chad Croft, 9 July 2020, at [2.7], [6.6].

11. SITE SUITABILITY AND POTENTIAL SITE CONSTRAINTS

- 11.1 For the reasons outlined earlier, APL is satisfied the site is a highly suitable piece of land to meet TCG's needs. Engineering investigations into geotechnical and hydrological issues, and other investigations (e.g., site contamination, archaeology) demonstrate that development of the site of the nature proposed is feasible and that there are no potential constraints on the use of the site that preclude its use for that purpose. This section addresses those assessments.

Geotechnical considerations

- 11.2 Mr Speight has undertaken geotechnical appraisal of the site, which included identifying the topographical features, soil types and underlying geology of the site, and undertaking geotechnical field investigations, including identifying potential site constraints. While some parts of the site are geotechnically challenging, the OSP has been designed so that those areas are identified for open space purposes.

- 11.3 Mr Speight's key conclusions in relation to geotechnical issues are as follows:⁸⁸

"The geotechnical effects of the proposed development on surrounding land, property and the environment are expected to be limited. The potential effects are settlement due to ground surcharging such as new fill and building loads, lowering of the groundwater level and vibrations from dynamic compaction. I have addressed each of these effects in my evidence and outlined methods for controlling and mitigating these. Consequently, it is my opinion that the geotechnical effects of the development can be adequately mitigated and controlled to no more than minor.

Despite the challenging ground conditions and geotechnical constraints outlined in my evidence, it is my opinion that the site is suitable for the proposed 'Sleepyhead Estate' development subject to the employment of suitable ground improvements and design to mitigate geotechnical risk. Further geotechnical investigation and analyses will be required to support design and consenting stages of the development."

- 11.4 As regards geotechnical issues, the section 42A report concludes:⁸⁹

"Overall, I consider that geotechnical matters do not preclude the rezoning sought by APL."

- 11.5 Ms Trenouth confirms that position in the section 42A rebuttal report, as follows:⁹⁰

"I retain my view that geotechnical matters do not preclude the rezoning of the site."

APL submission

- 11.6 On that basis, it is submitted that the Hearing Panel can safely find that there are no geotechnical issues associated with the proposal that cannot be addressed via conventional engineering measures.

Groundwater

- 11.7 A hydrogeological assessment of the site was undertaken by David Stafford. His evidence explains that the major aquifer on the site is the Tauranga Group aquifer. Mr Stafford's analysis indicates that the aquifer receives direct rainfall recharge from only a very small portion of the site, so the impact of development on aquifer

88 EIC Speight, paragraphs 11.6-11.7.

89 Section 42A report, 13 March 2020, paragraph 164.

90 Section 42A rebuttal report, 7 September 2020, paragraph 46.

recharge will be small. Consequently, the development will have no impact on aquifer flow, levels and connectivity with Lakes Rotokawau and Waikare.

11.8 His conclusions are as follows:⁹¹

"Based on my assessment, I conclude the following:

- a) *Development of the site is anticipated to have negligible impact on overall recharge to the Tauranga Group Aquifer or existing groundwater flow directions.*
- b) *Negligible change in groundwater levels within the Tauranga Group Aquifer is anticipated. Consequently, I have concluded that there will be no effect on neighbouring groundwater users surrounding the site.*
- c) *There is the potential for minor alteration to rainfall recharge pathways to the Rotokawau peat as a result of increased impervious surfaces associated with the development. Consideration of the potential requirement for stormwater soakage to maintain groundwater levels and/or adequate geotechnical ground conditioning prior to construction is recommended to mitigate potential ground consolidation.*
- D) *There will no off-site effects to groundwater levels within the Rotokawau peat as a result of the development."*

11.9 In terms of the potential for ground consolidation associated with development to alter recharge pathways to the Rotokawau peat, Mr Speight's evidence addresses the methods that are available to ensure that the issue is managed appropriately. He says in this regard:⁹²

"The potential effect of 'sealing' large areas of the site or so-called 'rain-shadowing' can reduce groundwater recharge from rainfall resulting in locally depressed groundwater levels. This has been identified as potential issue within the Rotokawau Formation geological unit, as set out in Mr Stafford's evidence. These on-site effects can be addressed if necessary, by preloading or other ground improvement methods for mitigating consolidation settlement. Groundwater levels can also be recharged by installation of soakage pits around the site to dispose of stormwater to ground and for recharging groundwater levels. The requirement for installation of soakage pits for groundwater recharge will need to be confirmed following further groundwater/geotechnical investigation and analysis during the Resource Consent/Subdivision Consent stage."

APL submission

11.10 On that basis, it is submitted that the Hearing Panel can safely find that there are no hydrogeological issues associated with the proposal that would indicate that the relief sought in the APL submission should not be granted.

Flooding

11.11 Detailed flood modelling has been undertaken to identify the extent of flood risk to the site, if any. The work undertaken is explained in the evidence of Mr Ajay Desai. Mr Desai worked closely with WRC to develop and refine the model, and a peer review

91 EIC Stafford, paragraph 8.1.

92 EIC Speight, paragraph 9.8.

by Tonkin and Taylor on behalf of WRC confirms WRC's support for its conclusions. In this regard, the Tonkin and Taylor peer review states:⁹³

"Work undertaken by Woods, with review input undertaken by T+T for and on behalf of WRC, has demonstrated the following, with respect to the proposed development at Sleepyhead Estate:

- *The proposed development is unlikely to have any effect on flood levels in the immediate area of the development;*
- *The proposed development will not increase water levels in Lake Waikare under flood event conditions;*
- *The proposed development will not be subject to a flood hazard from the Waikato River system;*
- *Under possibly stopbank breach scenarios, unsafe conditions will not be attained within the proposed development.*

As a result of the above, the proposed development is unlikely to create new flood hazards not already present prior to development. Overall resilience in terms of flood related hazards will therefore not be adversely impacted by the proposed development."

11.12 The methodology and results of the modelling has been the subject of detailed discussions between Mr Desai, Mercury and WRC. These discussions have resulted in a number of revisions and refinements to both the model and the proposed plan provisions.

11.13 The outcome is that WRC is satisfied that any potential risk in terms of flooding on the site, including in terms of stop bank breach, or increased risk to other areas as a result of development at the site can be addressed provided that the conditions that have been agreed are imposed.

11.14 Although Mercury has acknowledged that the effect of development on the flood storage capacity of Lake Waikare will be "insignificant"⁹⁴ it nevertheless has a broader concern about "an overall need within the Waikato district to assess development within the floodplain that involves volume infill to determine the cumulative effects of land use change on the floor storage capacity overall."⁹⁵

11.15 In his evidence Mr McKenzie signals that Mercury will raise this issue at the appropriate hearing on Stage 2 of the PWDP. It is submitted that that would be the appropriate forum for discussion of this issue, given that the contribution of the OSP to reduction in storage capacity, is, by itself, negligible.

11.16 In her rebuttal report, Ms Trenouth states:⁹⁶

"I retain my view that flooding does not preclude the rezoning of the APL site as a whole."

93 Ambury Development Flood Assessment, Tonkin and Taylor, 8 June 2020, attached as Attachment B to EIC Desai.

94 Statement of evidence of Angus McKenzie, paragraph 4.1.

95 *Ibid* paragraph 4.2.

96 Section 42A rebuttal report, 7 September 2020, paragraph 41.

APL submission

- 11.17 On the basis of the above analysis, it is submitted that the Hearing Panel can be satisfied that there is no reason relating to flood risk management that indicates that the relief sought by APL should not be granted.

Site contamination

- 11.18 In accordance with the requirements of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011, a preliminary site investigation ("PSI") was undertaken by Mr Carl O'Brien. The PSI indicated that contamination on the site is limited to that consistent with historic farming activities and aging infrastructure.

- 11.19 Detailed site investigations ("DSIs") will be undertaken on a staged basis as the site is developed. The first of these has been undertaken to inform the resource consent application for Stage 1A of the development (the TCG foam factory). Mr O'Brien records the outcomes of that investigation as follows:

"Based on the findings of the DSI, it was concluded that one discrete area of the Stage 1A Earthworks Footprint presented a potential risk to ecological receptors and would require remediation. A remediation action plan was prepared that contemplates a remedial approach of vertical mixing followed by placement within the landscape planting bunds required."

- 11.20 Mr O'Brien's ultimate conclusion in respect of contamination risk is that:⁹⁷

"Investigations of the Site have not identified any significant contamination constraints that would impact on the proposed development. Rather, those actually and potentially contaminating activities identified are typical of farming activities and aged infrastructure.

I consider that any further contamination identified within areas of the Site that are yet to be subject to a DSI will be able to be appropriately remediated and managed in an economic manner through a combination of onsite utilisation within appropriate land use scenario footprints or offsite disposal if necessary."

- 11.21 Ms Trenouth records her satisfaction with this conclusion in her report as follows:⁹⁸

"APL has provided a Preliminary Site Investigation which identified multiple discrete spots of potential contamination around farm buildings. This does not preclude the urban zoning of the site. Under the requirements of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health, detailed investigation would be required before any subdivision or change in activity took place. There is no reason at this stage to believe the contamination cannot be adequately mitigated. "

APL submission

- 11.22 On that basis, it is submitted that the Hearing Panel can be confident that there are no site contamination issues that would indicate that the relief sought in the APL submission should not be granted.

97 EIC O'Brien, paragraphs 12.1-12.2.

98 Section 42A report, 13 March 2020, paragraph 206.

Archaeology

11.23 Neither the operative Waikato District Plan nor the PWDP identify any archaeological features on the site. Mr Gainsford has undertaken an archaeological assessment of the site which confirms that indication that the site is unremarkable from an archaeological perspective.

11.24 On likelihood that such features would be found during earthworks, Mr Gainsford says:⁹⁹

"It is possible that subsurface archaeological features and deposits exist within the proposed development area that leave no surface visible trace. However, I consider that the potential for unidentified archaeological deposits is low because soils, landform and historical evidence do not support a high potential for unrecorded archaeological sites."

11.25 Ms Trenouth records her agreement with this conclusion as follows:¹⁰⁰

"From the information provided I am satisfied that the presence of known or likely archaeological sites do not preclude the development of the APL, OLL or Planning Focus Ltd sites."

APL submission

11.26 On that basis, it is submitted that the Hearing Panel can be confident that there is no archaeological reason why the relief sought in APL's submission should not be granted.

12. STRATEGIC INFRASTRUCTURE PROVISION, SERVICING AND FUNDING

Infrastructure provision – water and wastewater

12.1 Since the lodgment of APL's submission, Mr Tim Harty, and subsequently Mr Robert White, have been working assiduously to refine the strategy for water and wastewater provision to the site. Very significant progress has been made, such that after detailed investigations and discussions with WDC and Watercare, Mr White was able to conclude in his evidence that:¹⁰¹

"In my view, the options presented for wastewater and water servicing of the APL development are at an appropriate level and conceptually sound to enable the proposed re-zoning to be approved."

12.2 His key conclusions in reaching that view are:¹⁰²

- (a) *Proposed development for years 0-2 can be appropriately managed on-site via existing wastewater infrastructure and proposed water supply tanks included in Stage 1 and 2 of the Sleepyhead factory development.*
- (b) *For the medium term, Years 3-6, it is appropriate and practicably feasible that the wastewater and water servicing of the OSP area is via the Huntly WWTP and Huntly WTP or Te Kauwhata WTP.*

99 EIC Gainsford paragraph 8.2.

100 Section 42A report, 13 March 2020, paragraph 210.

101 EIC White, paragraph 9.1(h).

102 EIC White paragraph 9.1(f)-(h).

- (c) *There is sufficient capacity within the Huntly WWTP discharge consent to take wastewater flows from the development, and conveyance infrastructure offers an opportunity for future proofing connections to a yet-to-be-determined MWSS long-term solution. APL will work with WDC and WSL to provide an appropriate contribution to the plant upgrade so the performance of the WWTP are managed and responded to appropriately. It is intended that further information on any arrangements will be presented prior to or at the hearing.*
- (d) *Any septicity issues in the conveyance infrastructure from the APL development to the Huntly WWTP can be appropriately managed.*
- (e) *There is sufficient capacity at the Huntly WTP to supply the development, with additional water take required from years 3 (approx. 2023), however, when the consent limit of this water take is reached will depend on growth uptake of other areas such as Ngaruawahia. As such APL have also sought additional water supply arrangements and sources such as Te Kauwhata – with an agreement in place between APL and the Te Kauwhata Water Association.*
- (f) *For the long term, APL is actively discussing with WDC and WSL options relating to servicing the OSP area via the MWSS solutions under development. Information on the MWSS solutions are anticipated to be available in July 2020.*

12.3 Since APL's evidence was filed, the Waikato Watercare's Mid-Waikato Servicing Strategy ("MWSS") has been released for comment by stakeholders. This document represents the long term strategic plan for Ohinewai and how the OSP area should be serviced for water and wastewater.

12.4 The MWSS outlines long-term servicing solutions for the OSP area in relation to water and wastewater. These options align with the proposed solutions for the development of the OSP area from Stage 2 onwards:

- (a) For water supply: A centralised scheme for Mid-Waikato, with a new water intake and treatment plant at Te Kauwhata. Ohinewai is serviced initially from Huntly and then from Te Kauwhata. Huntly continues to be supplied from the Huntly WTP.
- (b) For wastewater: A centralised WWTP for the Huntly and Ohinewai catchments, located in Huntly. A standalone WWTP in Te Kauwhata for that catchment. Both WWTPs will be discharging to the Waikato River.

12.5 A number of submitters (including WRC, Future Proof and Waikato Tainui) have raised concerns about the performance of existing wastewater infrastructure (in particular the Huntly Wastewater Treatment Plant) and the cost associated with the necessary upgrades and new infrastructure required to service the OSP.

12.6 Infrastructure funding is addressed in detail in paragraphs 12.25-12.29 below. In terms of the performance of the Huntly Wastewater Treatment Plant, as Mr White states in his rebuttal evidence:¹⁰³

"[Upgrades to the plant to service the OSP] would need to be undertaken and the WWTP compliant with its discharge consent conditions before connection to the OSP area – with compliance levels also maintained after connection. Again, the levels of this contribution will also be addressed and secured via the PDA that is currently under development. In my view, the incorporation of the OSP area and the

103 Rebuttal evidence of Robert White, paragraph 6.6.

staging proposed for the development, enables and contributes to addressing the existing infrastructure deficits. It is appropriate that these are addressed prior to connection of OSP area wastewater flows."

- 12.7 Accordingly, there is no risk that the OSP will exacerbate the issues associated with the Huntly WWTP. To the contrary, development of the OSP is likely to be part of the solution.
- 12.8 Mr White's ultimate conclusion, having reviewed the MWSS and the evidence of other submitters is that:

"I remain of the view that the OSP area can be appropriately serviced for water and wastewater in accordance with the staging and planning provisions proposed. Upgrades and contributions to infrastructure that will ultimately be held and operated by WDC will continue to be refined, as will the development of the PDA. However, there are technical solutions available which, in my view, do not provide any reasons why the OSP area proposed zoning should be rejected from a water and wastewater servicing basis."

APL submission

- 12.9 It is submitted that it is appropriate to consider the provision of APL's water and wastewater needs in light of:
- (a) The proposed staging of the Ohinewai development;
 - (b) The ability for the plan provisions to link (and restrict) the staging of development to the provision of core infrastructure;
 - (c) APL's advanced discussions with WDC in relation to the provision and funding of infrastructure and the MOU that APL and WDC have entered into that will result in a private developer agreement if the rezoning is approved; and
 - (d) APL's advanced discussions with WDC and Watercare in relation to provision of water and wastewater (including provision for Ohinewai in Watercare's MWSS) which, as addressed in Mr White's evidence, demonstrates that provision of water and wastewater is feasible.
- 12.10 Having regard to the above, it is submitted that the Panel can be satisfied that water and wastewater provision (and related funding issues) have been addressed to a sufficient level to demonstrate that a rezoning of the Site is not precluded on the basis of this issue.

Infrastructure provision – construction erosion and sediment control

- 12.11 Mr Pain's evidence explains the scale of earthworks required on the Site in the development phase, and the feasibility of suitable erosion and sediment control measures. He proposes a four-step erosion and sediment control methodology to provide appropriate protection measures in accordance with WRC standards.
- 12.12 It is Mr Pain's expert opinion that the proposed methodology will sufficiently ensure erosion is minimised and sediment is adequately controlled and does not consider that there is any reason related to the required earthworks which renders the proposal inappropriate.

- 12.13 In her section 42A report, Ms Trenouth indicates that she agrees that appropriate erosion and sediment control measures:¹⁰⁴

"will be able to be achieved through future regional consenting processes e.g. for earthworks, discharges and works in watercourses."

APL submission

- 12.14 Having regard to the above, it is submitted that the Panel can safely conclude that there is no reason related to earthworks and sediment control why the OSP should not be approved.

Infrastructure provision – stormwater

- 12.15 In terms of stormwater management, Mr Wadan has designed a system which will ensure that stormwater is controlled in a way that manages water quality and erosion protection, informed by the relevant planning documents, including in particular the objectives for the restoration and protection of the Waikato River set out in the Vision and Strategy.
- 12.16 Masterplanning for the OSP was informed from the outset by stormwater management requirements. The SMP divides the site into three zones, with each zone having a unique stormwater management approach specific to the topography, discharge point, and land use characteristics. There are two designated stormwater management areas in the form of the Central Park area, which provides stormwater treatment and centralised conveyance via a series of stormwater devices, and the Wetland Park area which is an enhanced natural wetland planted with local flora.
- 12.17 The SMP provides for a treatment train approach of at least two devices in order to satisfy WRC's water quality and erosion control requirements as set out in Technical Publication TR2018/01. A "toolbox" of stormwater management devices is identified so that the most appropriate options can be selected for the particular context.
- 12.18 In terms of the ultimate impact of the conversion of the site from dairy farming to urban uses, Mr Wadan says:¹⁰⁵

"I anticipate that the proposed development will result in a decrease of nutrients from stormwater runoff (nitrogen, phosphorus) due to a change in land use from dairy farming to an urban environment. I base this conclusion on the following:

- a) *Currently, the Site discharges raw untreated dairy effluent to the receiving environment. Nitrogen discharges associated with dairy farming typically discharge volumes ranging between 1-70mg/L¹¹, with numerous studies showing much higher mean concentrations. Longhurst et. al. 2000 reported values in the order of 269mg/L¹².*
- (b) *Phosphorus discharged by dairy farms is typically in the order of 4-150 mg/L¹³ with Longhurst et. al. 2000 reporting a mean of 69mg/L¹⁴.*
- (c) *Urbanisation generally introduces different types of contaminants to the receiving environment particularly those associated with vehicular usage (heavy metals, PAH's etc). With respect to nutrients, the major contributing sources are fertiliser runoff, sewage overflows and soil loss. Long term baseline water quality monitoring carried out in the Auckland region, showed some urban catchments recording nitrate-*

104 Section 42A report, 13 March 2020, paragraph 172.

105 EIC Wadan, paragraph 6.13.

nitrogen levels between 1 and 2 mg/L and some with ammonia-nitrogen up to 2.9mg/L. Total phosphorus has been recorded between 0.06 to 0.28 mg/L16. According to TR2013/035, while nutrients have been identified as a contaminant of concern in certain water bodies, they are in general associated with wastewater overflow rather than stormwater contamination."

12.19 Mr Wadan also explains that the development of the SMP has also incorporated a matauranga Maori perspective, through consultation and engagement with tangata whenua, including via hui with the TWGG and a strong commitment to continue working together as the development progresses. He explains in detail how the SMP responds to the values identified in the Kaitiaki Environmental Values Assessment prepared on behalf of the TWGG.¹⁰⁶

12.20 Ultimately, Mr Wadan's key conclusions are:¹⁰⁷

"The stormwater management approach for the Ohinewai Structure Plan Area has been developed to respond to the particular characteristics of the Site and receiving environment.

The proposed stormwater approach incorporates a water sensitive design approach that manages the impact of land use change from predominantly rural/farmland to urban.

The proposed approach promotes at source stormwater management which is in line with Waikato Regional Council's Stormwater Management Guidelines.

The stormwater approach minimises the adverse effects on the water quality and ecological values of the receiving environment through the implementation of stormwater management devices to be selected using a toolbox of options and a minimum two stage treatment train approach.

As a result of the work undertaken to date, there is in my professional opinion no reason related to stormwater why the rezoning of the Ohinewai Structure Plan Area, as sought by APL, cannot be approved as proposed."

12.21 Ms Trenouth says in relation to stormwater:¹⁰⁸

"I retain my view that stormwater issues do not preclude the rezoning of the APL site and that there is sufficient information to show that detailed design of stormwater management would be able to be appropriately addressed through future stormwater discharge consents."

APL submission

12.22 Having regard to the above, it is submitted that the Panel can be satisfied that:

- (a) The SMP provides an appropriate framework for the management of stormwater in the OSP area;
- (b) The SMP gives effect to the Vision and Strategy insofar as it:

106 Attached as Attachment K to EIC Gaze.

107 EIC Wadan, paragraphs 9.1-9.5.

108 Section 42A rebuttal report, 7 September 2020, paragraph 55.

- (i) Incorporates a matauranga Maori approach;
- (ii) Enables the retirement of dairying and accordingly, a significant reduction in nitrogen and phosphorus discharges;
- (iii) Provides a robust system for the management of urban discharges; and
- (iv) Provides for the restoration and protection of wetlands that will link to the existing Rotokawau Reserve.

Infrastructure provision – other utilities

12.23 Providers of the other necessary utilities have been approached and have confirmed their ability to service the OSP. Mr Gaze’s evidence states in this regard that:¹⁰⁹

"WEL Networks, which services the northern and central Waikato, has indicated that it has sufficient capacity to service the development. This includes the high power consumption needed for the foam factory and subsequent stages.

We anticipate that the full development will require a further 8mVA (although this could vary depending on the needs of future proposed industrial tenants). By letter dated 10 October 2019 (attached as Attachment D), WEL Networks has confirmed that it is able to supply that capacity, on a staged basis, and will work together with APL to deliver the necessary network upgrades required. A location for a transformer station has been identified, in the south west corner of the Site near the State Highway 1 interchange.

FirstGas has confirmed that it supports the project and that the gas supply needed (in volume and pressure) could be delivered to Sleepyhead from a connection in its existing Huntly network. A letter from FirstGas is attached as Attachment E.

Ultrafast Fibre has also confirmed that it is able to service the development, as set out in the letter also attached under Attachment E."

APL submission

12.24 Having regard to the above, it is submitted that the Panel can safely conclude that all other necessary utilities can be provided to the development and that therefore there is no reason related to the provision of utilities why APL’s submission should not be approved.

Infrastructure funding

12.25 As is to be expected, substantial investment in new infrastructure will be necessary to enable the development of the OSP area. As Mr Gaze explains in his rebuttal evidence, APL has been working assiduously with WDC to progress the funding arrangements for the development.

12.26 APL has entered into a memorandum of understanding¹¹⁰ with WDC which sets out the principles under which the parties will progress the provision and funding of the

109 EIC Gaze paragraph 7.7-7.10.

110 Attached as Attachment B to the rebuttal evidence of David Gaze.

necessary infrastructure. Mr Gaze describes the content of the MOU as regards the key infrastructure elements as follows:¹¹¹

"Section 4 – Three Waters Principles

This section:

- a) *Confirms that APL recognises that any water and wastewater infrastructure proposed will need to be consistent with the draft Mid-Waikato Servicing Strategy ("MWSS"), alongside Watercare Services Limited ("WSL") which is WDC's contractor in relation to "three waters services, and associated advice and expertise."*
- b) *Outlines MWSS preferred options.*
- c) *Records the commitment that, "without guaranteeing a servicing solution" for WDC, WSL and APL to agree to work to identify finding a treatment and disposal solution for the proposed development at the Site.*

Section 5 – Transport

This section records that APL:

- a) *Intends to provide and fund its own local transport requirements including the cost of connecting to the existing road network and all local roads and vesting land for roads at no cost to WDC.*
- b) *Acknowledges WDC's requirement that it is for APL to construct and fund any necessary road and State Highway upgrades and to enable good circulation through the site for possible future development.*

Section 6 – Reserves and Community Facilities Principles

This section records that APL will:

- a) *Provide and fund appropriate and adequate land and associated community facilities for local reserves which will be available for public use and owned and maintained by APL.*
- b) *Consider the connection of open spaces to possible future development within the Ohinewai area."*

12.27 As Mr Gaze explains, the MOU will form the basis of a private development agreement ("PDA") in due course if the rezoning is approved (WDC being unable to progress a PDA until that time). Accordingly, a plan is in place to deliver the key infrastructure elements of the Masterplan.

12.28 The Environment Court has acknowledged on numerous occasions that it is "bad resource management practice" to zone land when there is no certainty that the infrastructure can be provided.¹¹² This is not such a case.

111 Rebuttal evidence of David Gaze, paragraph 3.9-3.11.

112 *Foreworld Developments Ltd v Napier City Council* W008/2005 at [15].

12.29 Similarly, there is no risk, as anticipated in *Norsho Bulk v Auckland Council*¹¹³ that the OSP will cause unnecessary expense to ratepayers, because APL has committed to funding its fair share of the development.

12.30 Furthermore, as Mr Olliver explains in his evidence, the staging rules in the proposed plan provisions link specific infrastructure upgrades to the appropriate stage of development, such that development beyond the capacity of the available infrastructure is prevented.¹¹⁴

APL submission

12.31 On the basis of the above, it is submitted that the Panel can be satisfied that:

- (a) The infrastructure upgrades necessary to service successive stages of the development have been appropriately identified;
- (b) WDC and APL are committed to working collaboratively to confirm funding arrangements for each infrastructure element and a framework is in place to enable that to occur; and
- (c) The proposed plan provisions ensure that development stages beyond the capacity of the available infrastructure will not occur until that infrastructure is provided; and therefore
- (d) There are no reasons related to infrastructure funding why APL's submission should not be approved.

13. ECONOMIC ISSUES

13.1 Detailed economic analysis of the effects of the OSP has been undertaken by APL's three economists, Mr Heath, Mr Osborne and Dr Wheeler (who undertook a peer review of Mr Heath and Mr Osborne's analysis).

13.2 These three economists have unanimously concluded that the OSP will have many significant benefits for the Waikato district which vastly outweigh the costs. In this regard, Mr Osborne's key conclusion is that:¹¹⁵

"The OSP provides for a regionally significant level of land use at Ohinewai. The catalyst for this proposal is the development of a TCG factory of 100,000sqm providing approximately 1,000 jobs to the Waikato Region. The development will also provide for additional housing to support the local workforce and a discounted retail offer that has the potential to attract retail spend into the Region.

The positive regional economic impact resulting from these activities is expected to be materially significant to the Waikato Region in terms of both jobs (in excess of 1,000 unique jobs) and economic activity, at over \$200m per annum. "

13.3 Dr Wheeler's peer review echoes that conclusion, stating:¹¹⁶

"The APL proposal, being far reaching and broad in its ambit, has arisen at a very opportune moment for Ohinewai and the Waikato district generally and more widely, the region.

113 (2017) 19 ELRNZ 774.

114 EIC Olliver, paragraph 5.13.

115 EIC Osborne, paragraph 10.1-10.2.

116 EIC Wheeler, paragraph 11.1-11.4.

The need for investment and job generation has never been greater. The fact that such can be achieved at a very minor cost is a further gain.

Measured in two contrasting ways benefits can be seen to exceed costs by a wide margin.

I therefore conclude that:

- a) *There are no economic effects which would amount to adverse effects likely to arise from the proposal; and that,*
- b) *There would be a significant adverse economic effect likely to arise from declining the APL proposal."*

Effects on existing centres

13.4 Mr Heath's assessment considers the economic impact of the retail and residential components of the development on other towns in the area, particularly Huntly and Te Kauwhata.

13.5 In terms of the commercial component, Mr Heath has considered Policy 6.16 of the WRPS which states:

"Management of the built environment in the Future Proof area shall provide for varying levels of commercial development to meet the wider community's social and economic needs, primarily through the encouragement and consolidation of such activities in existing commercial centres, and predominantly in those centres identified in Table 6-4 (section 6D)".

13.6 As Ohinewai is not a major commercial centre listed in Table 6-4, commercial development at that location is required to avoid adverse effects on existing commercial centres in the Future Proof centres hierarchy. Of particular relevance is Policy 6.16(g) which states:

- g) *...New centres will avoid adverse effects, both individually and cumulatively on:*
 - i) *the distribution, function and infrastructure associated with those centres identified in Table 6-4 (section 6D);*
 - ii) *people and communities who rely on those centres identified in Table 6-4 (section 6D) for their social and economic wellbeing, and require ease of access to such centres by a variety of transport modes;*
 - iii) *the efficiency, safety and function of the transportation network; and*
 - iv) *the extent and character of industrial land and associated physical resources, including through the avoidance of reverse sensitivity effects.*

13.7 Mr Heath's conclusion is that the development of the OSP will not have adverse effects on neighbouring towns; to the contrary, the development would add significant economic value to the area. He says in relation to Huntly:¹¹⁷

"Huntly is in close proximity to Ohinewai (approximately 5 minutes by car) and would benefit from attracting additional convenience spend

117 EIC Heath, paragraph 4.42-4.44.

generated by the Ohinewai development. Being the primary commercial centre in the Ohinewai / Huntly / Taupiri area (and only supermarket), Ohinewai residents would travel to Huntly on a regular basis for retail and commercial services requirements. This would assist to enhance the performance, vitality, amenity and vibrancy of the Huntly Town Centre. Any town centre would benefit from an injection of 1,100 homes and 2,000+ new employment hub within 5 minutes of its location to the tune of millions of dollars per year, and Huntly would be no different.

As such, any small grouping of convenience shops in Ohinewai has no propensity to adversely affect Huntly. In fact, the contrary would be the reality with Ohinewai adding significant economic value to the Huntly town centre and improve its current 'state' of performance and economic 'health'.

(Our emphasis.)

- 13.8 The potential adverse effect of The Sleepyhead Estate development on Huntly is a key concern of Future Proof. Mr Tremaine's evidence suggests that the OSP should not be approved because it will detract from economic development interventions planned for the town. However, as Mr Heath observes, such aspirations are all very well but are meaningless unless they are actually delivered. He says:¹¹⁸

"I agree with these sentiments, but they are only good sound bites (and reflect phrasing common in almost every district plan in the country) if nothing is done to achieve them. Sound bites alone do not represent a regeneration plan for Huntly. This ideological phraseology has been prevalent in planning for Huntly for some time now but has achieved very little economically and socially over the last 20 years, i.e. there has been no meaningful large scale development in Huntly for two decades that would provide sufficient stimulus to start its regeneration.

In my view the concept of regeneration of Huntly is a pipe dream unless a direct scheme is advanced outlining how meaningful regeneration is going to be achieved and development is actually delivered. The recent removal of State Highway 1 alone has yet to filter through Huntly's economy but will undoubtedly put Huntly further back both economically and in terms of its regeneration plans."

(Our emphasis.)

- 13.9 In contrast, Mr Heath concludes that the OSP:¹¹⁹

"...represents a 'real' project that has the potential to stimulate the regeneration of Huntly with business development, investment, job creation, community development and an increase in the local population base. Most small townships in NZ that are struggling to provide job opportunities and growth would welcome this opportunity with open arms. When considered in the round the OSP development represents a significant economic opportunity for Huntly and its regeneration."

- 13.10 It is submitted that TCG and APL's proposal, which is a well thought out proposition by committed people who are prepared to invest very substantially in the district, should be wholeheartedly embraced. That sentiment is encapsulated by the following statement in Mr Turner's rebuttal evidence:¹²⁰

"We are fully committed to proceeding with this development if our rezoning is approved. The level of overall expenditure is very significant

118 Rebuttal evidence of Tim Heath, paragraph 4.3-4.4.

119 Rebuttal evidence of Tim Heath, paragraph 4.5.

120 Rebuttal evidence of Craig Turner, paragraph 6.1.

(in excess of \$1 billion) and the economists agree that it would provide 2,600 jobs. Frankly, I am very surprised that WRC and FP would set their face against this development when such an opportunity exists. Whilst the Sleepyhead Estate was not provided for in the long-term planning documents, it represents an opportunity to create much needed jobs and prosperity in the area."

- 13.11 A number of the witnesses on behalf of NZTA, WRC and WDC, have raised a range of concerns about the "costs" of various theoretical scenarios, including for example if the development is not fully completed, if there is insufficient demand for the housing product, etc. It is submitted that such concerns are given unwarranted prominence in the evidence of those witnesses as compared to the vast benefits on offer. This is expressed by Mr Heath who says in relation to Mr Fairgray's "update" report:¹²¹

"Additionally, Dr Fairgray does not appear to give due consideration to the extensive gap between the economic benefits of the OSP as determined by Mr Osborne and Mr Wheeler and the likely economic costs of some of his concerns, i.e. household travel costs. These potential costs appear to be 'playing at the margins' at best with the costs needing to be out of rational expectation to even begin to start making a dent on the \$8b economic benefits determined by Mr Wheeler."

The need and demand for housing

- 13.12 True to form, NZTA and WRC have raised concerns about the appropriateness of the residential component of the OSP. Ms Trenouth and Future Proof have both taken the position that while the industrial component of the OSP will have significant benefits to the district and can be supported, the residential component should be declined.
- 13.13 To suggest this reflects a fundamental failure to understand the underlying premise of The Sleepyhead Estate. It confuses and conflates the need for housing (to make The Sleepyhead Estate concept 'work') with the demand for housing.
- 13.14 For people with vision, the difference is easy to understand: they are two different things.
- 13.15 First, Housing is needed to make the entire Sleepyhead Estate concept 'work' in terms of Craig Turner's vision. As Mr Turner and other APL representatives have repeatedly said, APL's objective is much more than simply relocating its factory. It is about creating a community. The residential component is critical to that goal. While Mr Tremaine and Ms Trenouth might prefer a different OSP comprising only industrial zoning, that is simply not what APL's proposal is about.
- 13.16 The residential portion of the Masterplan has been carefully designed to achieve the type of community that is desired and to keep the cost of homes as low as possible. As Mr Gaze explains:¹²²

"...The lot sizes are relatively small, but with large communal areas that are designed to create an engaging, vibrant community. APL anticipates that it will be able to construct three-bedroom homes that can be sold to workers for between \$480,000 to \$625,000, which is substantially cheaper than the equivalent in Auckland.

There is further opportunity to achieve economies of scale considering the sheer number of homes to be built at the Site. It may be that large

121 Tim Heath Summary Statement paragraph 2.15.

122 EIC Gaze paragraph 5.14-5.16.

blocks of housing are built at once to reduce the establishment costs on-site and provide efficiencies by building multiple homes at once.

There is also the potential to implement more efficient house building technologies such as prefabrication or modular housing. There is an opportunity to set up a warehouse or factory on-site to build prefabricated homes protected from the weather and in a production line type arrangement. This factory could be set-up on-site which would drastically reduce the transportation costs. This could result in substantial cost savings if implemented at a large scale."

- 13.17 The OSP will, as well as creating new demand for housing, contribute to a shortfall of housing in the Waikato District. As Mr Heath says in his evidence:¹²³

"In essence, Waikato District estimates a feasible residential capacity shortfall at a district level and at the more localised Huntly / Ohinewai level. TCG development will only 'add to' residential demand within the local Ohinewai / Huntly areas and assist the district in meeting the estimated long term feasible residential shortfall, and satisfy its NPSUDC obligations."

- 13.18 As Mr Heath notes, the Future Proof Housing and Business Development Capacity Assessment 2017 ("HBDCA") identifies a specific shortfall of capacity at the price point that would be offered by the OSP over the short and long term:¹²⁴

"[The proposed] residential price point range could accommodate the short term (2017-2021) district shortage of sufficient capacity within the lower (under \$580k) price bands as determined in the 2017 HDCA14, i.e. the Ohinewai development could deliver residential product at price points which the HDCA has already determined there is a material shortage. The district short term shortfall identified in the \$440k-\$580k price bracket alone is identified at over 500 dwellings. This is without consideration of the increased demand for product under \$580k as a result of the OSP. Over the long term this shortfall increases to over 3,100 dwellings in this price bracket."

- 13.19 In his evidence, Mr Keenan suggests that there is "ample" housing capacity over the long term when "anticipated capacity" is taken into account.¹²⁵ Apart from failing to recognise that there is unmet demand for the *type* of housing offered by the OSP, Mr Keenan's reliance on "anticipated capacity" identified in the HBCDA requires a number of assumptions which render his conclusion essentially meaningless. As Mr Heath explains:¹²⁶

"While the HBDCA report identifies at a broad level some of the potential growth areas as "anticipated capacity", reliance on those growth areas requires a number of assumptions. Development of these areas has only been identified as "plausible" by Future Proof. There is no certainty that areas proposed by Waikato DC for "live" zoning in the PWDP will be confirmed through the hearing process, or that the necessary infrastructure is available to service them or that they will be developed. This is important given the additional anticipated capacity represents a significant proportion of capacity Mr Keenan relies on. In my view, there remain formal processes the 'additional capacity' has to undergo before it is confirmed and can be relied upon."

- 13.20 Dr Fairgray's view is that the calculations of anticipated capacity in the HBDCA are "robust". There is no issue with those calculations so far as they go, but they are inevitably dependent on a number of assumptions which may transpire to be

123 EIC Heath paragraph 6.4.

124 EIC Heath paragraph 8.5.

125 Statement of evidence of Blair Keenan paragraph 9.2.

126 Rebuttal evidence of Tim Heath paragraph 2.11.

incorrect. Whereas “anticipated capacity” includes land which is not zoned, serviced or necessarily even the subject of a realistic development proposal, the OSP is a tangible project with proponents who are ready to get started.

- 13.21 Mr Fairgray appears to agree with Mr Keenan that there is no residential shortfall to support residential development at Ohinewai. That is surprising given his support for the residential development enabled by the Te Awa Lakes Plan Change, in relation to which he said (on behalf of the proponent of the plan change):¹²⁷

“The HDCA shows at the district level, there are substantial shortfalls in the sufficiency of capacity across the lower dwelling value bands within the Waikato District.”

- 13.22 Ultimately, as submitted at the outset, the key issue is reflected in Future Proof’s summary statement¹²⁸ which states that:

“The Future Proof settlement pattern needs to be agile enough to respond to change. A settlement pattern that has some built-in responsiveness provides an ability to capitalise on new opportunities that have potential to contribute significant economic, social or cultural benefits to our communities.”

- 13.23 Ohinewai epitomises an opportunity that is outside the Future Proof pattern that should be capitalised on.

APL submission

- 13.24 Having regard to the above, it is submitted that the Panel can be satisfied that:

- (a) The generated economic benefits of the OSP will vastly outweigh any potential adverse economic effects;
- (b) The OSP will not have adverse effects on the neighbouring communities of Huntly and Te Kauwhata and in fact will provide a significant opportunity for the regeneration of Huntly; and
- (c) The commercial element of the OSP is of a size that will not have adverse effects on existing commercial centres and therefore the proposal is consistent with Policy 6.16 of the WRPS which is aimed at consolidating commercial development in identified centres.

14. TRAFFIC AND TRANSPORTATION

- 14.1 We now address traffic and transportation which is relevant to site suitability, infrastructure provision and the effects of the OSP.

- 14.2 Mr Inder of Bloxam Burnett Olliver has been involved in traffic planning for the OSP area from an early stage, including supervising and reviewing the Integrated Traffic Assessment (“ITA”).

- 14.3 The ITA was included in the technical information provided in support of APL’s submission along with various updates to Mr Inder’s analysis in response to feedback from stakeholders (including via the expert conferencing process) and amendments

127 Te Awa Lakes PPC2 Economic Assessment Stage 1 Report, Market Economics, 21 August 2019, page 19.

128 <https://www.futureproof.org.nz/assets/FutureProof/Future-Proof-Strategy-Nov-2017-Summary-Final-211117.pdf>

to the proposal. The latest draft of the ITA was provided to the Panel prior to expert conferencing and is dated 20 May 2020.

Site suitability from a traffic / transportation perspective

- 14.4 Mr Inder's evidence addresses the ITA that he undertook. Mr Inder's key conclusions as a result of his analysis are:¹²⁹

"On the basis of the assessments carried out, I consider that the conclusions and recommendations of the Revision 1 ITA report (May 2020) for the proposed APL rezoning at Ohinewai, remain valid. That is, the overall transportation effects of the APL rezoning on the adjoining road network are likely to be moderate to significant without any transport mitigation measures, due to the limited infrastructure that exists. However, with the infrastructure upgrades recommended in this statement of evidence ... relating to capacity, safety, connectivity and accessibility for all anticipated vehicle and active travel modes, I consider that the transportation effects of the development will be sufficiently mitigated to an acceptable level, which is generally no more than minor."

(Our emphasis.)

- 14.5 Subsequent to the preparation of that evidence, APL made the decision, based on feedback from other stakeholders, to remove the DFO from the proposal. Mr Inder addresses the implications of this from a transport perspective in his rebuttal evidence, which states:¹³⁰

"Overall, the removal of the DFO removes approximately 320 business/commercial activity jobs. The replacement industrial activity is anticipated to provide approximately 150 additional jobs. Therefore, the net reduction is approximately 170 jobs with this change to the Proposal.

Replacing the DFO with industrial activity is therefore expected to reduce the AM and PM peak hour trips by 12.5% and 20% respectively. With the WRTM estimating that only about 20-25% of these trips will be internal trips, the OSP area (without the DFO) is now anticipated to generate approximately 1,220 and 1,730 external vehicle trips during the AM and PM peak hours, respectively."

- 14.6 Mr Inder's revised conclusion is that:

"The effects of the OSP traffic on the local road network are considered to be insignificant from a capacity perspective. The Ohinewai Interchange and the Tahuna Road / Lumsden Road intersection are expected to operate at high levels of service (LOS A and B), and LOS C for Lumsden Road during the PM Peak with the addition of the OSP traffic with no DFO.

Sensitivity testing of higher trip generation rate figures (>20% higher than published trip rate figures for the general industrial, commercial, and residential activities) demonstrates the following:

- (a) *The existing Interchange configuration (roundabout at the western ramp intersection and a compulsory stop intersection on the southbound off-ramp) remain suitable and sufficiently robust in terms of capacity to accommodate the traffic associated with the Proposal.*

129 EIC Inder paragraph 13.1.

130 Rebuttal evidence of Cameron Inder, paragraphs 2.2-2.3.

- (b) *The existing Tahuna Road / Lumsden Road roundabout configuration remains appropriate for the expected traffic generation; however, sensitivity testing shows that the capacity upgrades may be triggered (i.e. Lumsden Road approach degrades to LOS E or worse) if the actual trip generation of the industrial activities proves to be significantly higher than those incorporated into the WRTM predictions. In that regard, I reiterate that the WRTM trip generation for industrial activity is consistent with other industrial areas throughout the Hamilton area in the model."*

Transportation infrastructure upgrades

14.7 The OSP provides for a series of transport infrastructure upgrades to support the development, in particular, to provide for safe and pleasant walking and cycling. These include:

- (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 safe angle that is acceptable to both KiwiRail and WDC.
- (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);
- (f) A pedestrian/cycling path bridge over the 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.

14.8 The proposed plan provisions link the various infrastructure upgrades to stages of development, to ensure that development does not proceed beyond the capacity and safety of existing infrastructure. In that regard, the triggers have been identified with reference to the trip generation of each stage of development and the capacity and safety improvements necessitated by those additional trips.¹³¹

Issues raised by further submitters

14.9 NZTA and WRC have raised a very large number of concerns about transport related issues. It is submitted that while those issues are many and varied, they are more reflective of the inexorable opposition by those parties to the proposal than an indication of problems with the transport modelling and infrastructure solutions proposed.

14.10 The issues raised by those parties are as follows:

131 EIC Inder paragraph 7.42.

- (a) The Site is not an existing growth area in the Future Proof Strategy and the consequent absence of forward planning “to ensure the strategic integration of land use, infrastructure and service provision.”¹³²
- (b) Alignment of the OSP with WRC’s strategic priorities and objectives set out in the RPS, RLTP and RPTP.
- (c) The costs associated with providing a new public transport service.
- (d) Effects on the Waikato Expressway in terms of its strategic function and alignment with the Waikato Expressway Network Plan.
- (e) The potential for residents of the OSP to rely on private vehicles for journeys to work and to access services, including in terms of:
 - (i) The absence of planning provisions to ensure that dwellings in the OSP are occupied by employees working at Sleepyhead; and
 - (ii) The adequacy of provision for key services, meaning that residents will have to travel to Huntly.
- (f) Certainty that the rail siding will be provided.
- (g) The distance to Ohinewai School and Huntly and whether walking and cycling infrastructure will be used by residents.
- (h) The lane configuration at the westbound exit from Tahuna / Lumsden intersection.
- (i) The adequacy of sight distances at the Tahuna Road offramp.
- (j) The adequacy of the carriageway width for heavy vehicle turning movements turning left from the southbound off-ramp.
- (k) The appropriateness of the site access proposals.
- (l) The proposal for a raised zebra crossing on Tahuna Road.
- (m) The trip generation rates adopted in the transport modelling.

14.11 Each of these issues has been comprehensively addressed by Mr Inder in his evidence and in his rebuttal evidence. For present purposes, these numerous issues fit within the following broad categories:

- (a) Alignment with the strategic planning documents;
- (b) Strategic transportation effects (i.e. effects on the Expressway).
- (c) Public transport provision.
- (d) Certainty that the rail siding will be built.
- (e) The appropriateness of the transport infrastructure design for the development.

132 Statement of evidence of Vincent Kuo, paragraph 5.1.

- (f) The robustness of the transport modelling undertaken to inform the OSP design.

14.12 These are addressed in turn below.

Alignment with the strategic planning documents

14.13 Central to the issues raised by NZTA and WRC is the fact that the OSP is not anticipated in the relevant strategic planning documents, including the Future Proof Strategy and the Long Term Plan.

14.14 This issue and Mr Olliver's response are discussed from a planning perspective in Section 21 below. For present purposes, it suffices to say that while the OSP is of course not anticipated by those documents, the fundamental issue is whether the OSP is an appropriate land use in terms of its effects on the surrounding transport environment. As discussed below, Mr Inder's careful analysis has demonstrated that the OSP can be accommodated, and it is submitted that nothing in the evidence of WRC or NZTA demonstrates that this is incorrect.

Effects on the Waikato Expressway

14.15 The evidence of Mr Swears and Ms Loynes on behalf of NZTA suggest that "local trips" from Ohinewai on the Expressway will undermine the strategic function of the Expressway. However, beyond referencing the general statements about risks to the Expressway contained in the Expressway Network Plan, they have not quantified what the risk actually is in this case.

14.16 Mr Inder's response to their concerns is that:¹³³

"...neither Mr Swears nor Ms Loynes (as relied upon by Mr Mayhew) have quantified the level of these potentially adverse safety and efficiency effects that they claim may occur on the Expressway due to this development, to demonstrate that local trips should indeed be prevented.

The important point to note is that the Expressway already carries trips of many purposes, including "local trips", which I interpret as including travel for work and accessing essential services.

...

It seems to me there is a lack of consistency by NZTA applying the strategic objectives as an argument to protect the Expressway from being undermined by "local trips" despite...the rezoning proposal for Ohinewai includes the integration of large amounts of employment, residential and commercial land-use to reduce the need for private car-based "local trips".

In my opinion, the strategic objectives alone are not a sufficiently compelling reason to reject the proposed rezoning based on traffic / transportation effects. In my view, the transport effects of such economic development is critical to understand whether the strategic function of the expressway will in fact, be eroded by "local trips".

14.17 Ms Trenouth agrees with that view, stating in her rebuttal report:¹³⁴

133 Rebuttal evidence of Cameron Inder, paragraph 9.3-9.4, 9.7-9.8.

134 Section 42A rebuttal report, 7 September 2020, paragraph 73.

"I agree with Mr Olliver that any effects on the expressway from the additional short trips between OSP and Huntly would not be significant because there is existing capacity."

- 14.18 In terms of the function of the Interchange, Mr Swears and Ms Loynes suggest that because the interchange was not designed to cater for the volume of traffic movements that would be associated with the OSP it is "undesirable" to increase traffic volumes at the intersection¹³⁵ and that it is "unlikely to be entirely suitable for the type and volume of traffic associated with the proposal."¹³⁶ However, no detailed evidence has been provided that would go close to refuting Mr Inder's conclusion that:¹³⁷

"While [it may be correct that the interchange was not designed to accommodate the OSP], neither was Pokeno Interchange, which was built before Ohinewai Interchange. But, much like the work I have undertaken, the effects assessments for the rezoning of Pokeno demonstrated that it is capable of accommodating the proposed future traffic growth with little improvement or upgrade required. I consider that this outcome applies equally to the Ohinewai interchange, based on the comprehensive assessment evidence."

- 14.19 It follows that Mr Inder's detailed transport modelling and analysis which confirms that the Ohinewai Interchange can operate safely and efficiently with the OSP traffic should be preferred over the unsubstantiated and somewhat vague concerns raised by NZTA.

Private vehicle use and public transport provision

- 14.20 WRC and NZTA have raised a concern that adequate public transport provision is not available to the OSP and that the OSP will promote private vehicle use.
- 14.21 Notwithstanding the range of reasons identified in Mr Kuo's evidence as to why it is not possible to provide bus services to the OSP, the reality is that, as explained by Mr Gaze in his rebuttal evidence, APL has been engaged in constructive discussions with WDC about provision of public transport to the site and the MOU between APL and WDC, records APL's commitment to contribute to the costs of such public transport and sets up a framework for further discussion on this issue.

Certainty that the rail siding will be constructed

- 14.22 Mr Mayhew and Mr Swears have raised a concern that there is no certainty that the rail siding will be constructed. Proximity to the NIMT was an important reason why APL selected the Site and the rail siding is an important component of the OSP. APL has had ongoing communication with Kiwirail in respect of the feasibility of the rail siding and various technical design details. That is reflected in the communication from Mr Todd Moyle, Kiwi Rail Chief Operating Officer that:¹³⁸

"Kiwirail is more than happy to work alongside and in support of the Comfort Group's application to proceed with this exciting development."

- 14.23 APL's intention is that formal arrangements will be made with other industrial operators in the OSP to enable the construction and use of the rail siding. The rail

135 Statement of evidence of Robert Swears, paragraph 6.21.

136 Statement of evidence of Sarah Loynes, paragraph 8.7.

137 Rebuttal evidence of Cameron Inder, paragraph 9.10.

138 Letter from Todd Moyle dated 9 April 2020, attached as Attachment C to Mr Inder's rebuttal evidence.

siding is not, however, as Mr Inder makes clear in his evidence, necessary to mitigate the transport effects of the OSP. He says:¹³⁹

- "(a) *The effects of the OSP traffic on the local road network are considered to be no more than minor from a capacity perspective (even with no reduction in road trips due to rail freight trips) (paragraphs 2.4 to 2.7 of this statement); and*
- (b) *The road safety effects associated with road-based freight trips can and will be sufficiently mitigated (my EIC paragraphs 9.13 to 9.22, and section 5 of this statement)."*

14.24 On that basis, the rail siding is not an infrastructure upgrade that is necessary to support a specific stage of development and accordingly there is no obligation in the plan provisions to construct it at a specific stage. Mr Olliver addresses this as follows:¹⁴⁰

"Mr Mayhew raises a concern that the plan provisions do not include an obligation to construct the rail siding.³³ The plan provisions are enabling of development and the siding is an integral part of Stage 5 of the development as shown on the Staging Plan. It is intended to construct it as part of that stage. Therefore, it is different to the infrastructure upgrades contained in Table 20.4.6.1, which are required to address the effects of development as triggered by each stage. There is still a high level of certainty over the siding as it is included in the Structure Plan and the rules require that all subdivision and development be in accordance with the Structure Plan."

14.25 The short point is that the rail siding is seen by APL a key part of the OSP. Significant work has been expended with central government agencies to make it a reality. It is enabled by the proposed plan provisions and there is nothing to suggest that it will not be developed.

14.26 However, the provision of the rail siding (or otherwise) is not critical to the rezoning of the Ohinewai site and it is submitted that the Panel can be satisfied that the rezoning is appropriate irrespective of any uncertainty as to whether the rail siding will eventuate.

14.27 What this point reflects is the level of the straws that WRC and NZTA is prepared to clutch to stand in the way of the progress that The Sleepyhead Estate would bring.

Appropriateness of the transport infrastructure design and transport modelling

14.28 Mr Swears' extensive statement of evidence raises a large number of criticisms of the proposed transport infrastructure and the transport modelling, all of which have been addressed at length in Mr Inder's evidence and rebuttal evidence.

14.29 It is therefore not proposed to address those criticisms here beyond the observation that NZTA's suggestion that APL's desire to maximise the use of the site has resulted in "a number of transportation effects"¹⁴¹ is simply incorrect. The transport infrastructure provided for in the OSP has been carefully designed in line with best practice, as evidenced by Mr Inder's comprehensive and detailed analysis.

139 Rebuttal evidence of Cameron Inder, paragraph 6.4.

140 Rebuttal evidence of John Olliver, paragraph 7.4.

141 Statement of evidence of Sarah Loynes, paragraph 9.4.

APL submission

14.30 On the basis of Mr Inder's evidence it is submitted that the Panel can safely make findings that:

- (a) Mr Inder's assessment methodology and input assumptions are both appropriate and robust and represent best practice.
- (b) The OSP provisions, including the staging provisions have been appropriately drafted to ensure that development is supported by the appropriate transport infrastructure upgrades.
- (c) Accordingly, there is no traffic engineering or transportation planning reason to preclude acceptance of APL's submission.

15. SOCIAL IMPACTS

15.1 As Mr Turner explains in both of his statements of evidence, a fundamental element of the Sleepyhead Estate concept is the opportunity to make a real impact on an area of the country that is in need of revitalisation.

15.2 TCG and APL's commitment to that goal is evidenced by the enthusiasm with which Mr Turner explains his motivation and in the work that TCG is already doing in the area to improve the livelihoods of its residents. In this regard, Mr Gaze states:¹⁴²

"TCG is developing a technical training programme (covering IT, chemical and mechanical engineering, trades and marketing) that is available to its workers. It also intends to work with local schools, Waikato Tainui and other groups to support the development of the skills of the local labour force. In fact, TCG has already started work in this area.

Through TCG's engagement with Waikato Tainui, TCG was introduced to TROWL, which is a mandated company of Te Whakakitenga o Waikato Incorporated. With a cluster of 15 marae and over 16,500 beneficiaries, its purpose is to build and accelerate economic prosperity. TROWL's focus is on creating economic platforms to grow the social fabric of Waikato-Tainui whanau, hapu, marae and iwi.

... TCG and TROWL have built up a strong relationship over the last year, working together to recruit workers for TCG's operations.

By way of summary, TCG normally sources workers for its peak production period from temping agencies, but in 2019 TCG worked with TROWL to set up a recruitment scheme to provide opportunities to marae members to apply for these roles. Twelve people were engaged on five-month contracts, provided with training and transported daily from their homes in Huntly to the site in Otahuhu. From the original number of selected whanau to go through TCG's training /employment program, eight are now in full time employment of whom five have accepted permanent offers of employment with TCG.

Proposed training centre

In addition, TCG is currently working on opportunities for supporting and training youth in the Waikato, which TCG sees as key opportunity arising from the relocation of TCG from Auckland.

TCG is working with Waikato Tainui, the Waikato Institute of Technology ("Wintec") and the local community to develop the

142 EIC Gaze paragraph 10.3 - 10.9.

Sleepyhead Academy, a training centre at the Site that would provide a support and training programme for Waikato teenagers.

The programme is in the early stages of development but it is anticipated that it would offer NZQA level qualifications and ultimately the opportunity of jobs with TCG. Students would also be offered the opportunity to progress through Wintec's programme to achieve full university degrees. The vision is that students would be able to commence their training at around Year 9, in various trades that are relevant to TCG's development and operations (for example geotechnical, earthmoving, ecology, mechanics, horticulture and construction) in purpose built facilities on the Site."

(Our emphasis.)

15.3 And WRC wants to turn its back on that? An initiative that has commenced even before a rezoning hearing. Seriously?

15.4 The importance of TCG's investment in Ohinewai is expressed best by the people who understand the issues the best, that is, the people of the area. The strong support from the proposal from the TWGG is explained by Mr Tupuhi, who says:¹⁴³

"Development of the type proposed at the Sleepyhead Estate offers huge opportunities for our people. Crucially, there will be a post pandemic impact on whanau in Huntly as well as other pockets of deprivation across the north Waikato, adding considerable stressors to an already inequitably deprived population.

The combination of jobs and housing in the Sleepyhead Estate development proposal is a major attraction for TWGG. The proposal to provide the industry jobs and a home ownership incentive is also attractive to TWGG in that it adds a home retention insurance policy against future economic uncertainty.

TCG's commitment to the north Waikato is clear and has already been demonstrated through training and employment initiatives that are underway. Their family-based, socially responsible and inclusive approach to the development closely matches the values and aspirations of the TWGG. This coupled with their proposed investment in jobs, training and infrastructure in a deprived area of the Waikato means the TWGG strongly supports the development. This has always been on the basis of TCG/APL's equally strong commitment to environmental values and practices.

Comparing it to the current agricultural land use and taking into account the intergenerational environmental, cultural, social and economic impact that agriculture, and especially dairy has on our environment and communities, there is no obvious wealth trickle down to whanau, hapuu marae in the area and the return by way of direct benefits, i.e. employment, is miniscule. By comparison TCG have a proven track record in employing Maori and Pasifika people with an exemplary human resources record."

(Our emphasis.)

15.5 To provide expert analysis of the social impacts of the OSP, Mr Quigley has prepared a comprehensive social impact assessment. He undertook painstaking analysis including conducting a large number of interviews with people in the area. His evidence is comprehensive, but his opinions and conclusions are well summarised in section 2 of his evidence. His key conclusion is that:

143 EIC Tupuhi, paragraphs 2.5-2.8.

"Development of the Masterplan offers a range of potential district-wide social benefits arising from employment, particularly in the context of low median incomes and declining numbers of businesses in Huntly and Te Kauwhata. Local people look forward to the jobs and income that would be created, especially those in Huntly. Furthermore, the social benefits would be substantial, at the individual, family, and community level.

Development of the residential component of the Masterplan also has potential district-wide benefits. The Masterplan provides for affordable housing, allowing people to live, work, and play in the same township. The employment-led Masterplan is projected to potentially help maintain the population of Huntly (which is declining) and support the housing-led development in Te Kauwhata (which has not grown at the rate expected)."

- 15.6 WRC's social effects witness, Ms Hackell, has raised a number of, with all respect, illogical criticisms about Mr Quigley's methodology and in particular, the fact that he has not considered "reasonably foreseeable alternative scenarios" and did not seek the views of various other "stakeholders."¹⁴⁴

- 15.7 In respect of the former point, Mr Quigley's rebuttal evidence comprehensively addresses the robustness of his approach he has taken. He says in this regard:¹⁴⁵

"In summary, my SIA assesses the most likely, and largest, potential delta of change that might be experienced. That is the purpose of SIA within an RMA context. My role is not and should not be to compare the potential impacts a series of undefined hypothetical alternatives which might occur. Rather, my role is to assess the Masterplan, to assist decision makers to decide whether the proposed rezoning is appropriate. To that end, the Masterplan has been comprehensively considered. This approach aligns with best practice insofar as it provides the assessor the chance to identify the largest potential change in social effects.

In my view, any alternative approach, such as assessing a myriad of counter-factual scenarios, or scenarios in which of something less than the Masterplan is implemented, would require speculation and dilute the effects identified in this assessment (bringing them closer to neutral), or be based off assumptions which are not actively being pursued."

- 15.8 Ultimately, the range of other "reasonably foreseeable" scenarios identified by Ms Hackell and other WRC experts – including, for example, that Ohinewai becomes a "dormitory town", have no evidential basis, call for endless speculation and defy sound practice and, in this case, a common sense approach to professional analysis.

- 15.9 In terms of the range of stakeholders interviewed for the SIA, Ms Hackell suggests that the absence of various stakeholders (including, for example, current employees of Sleepyhead and a larger sample of the Ohinewai community) results in a "failure to establish a social licence for the development."¹⁴⁶ Mr Quigley roundly rejects that claim, stating in his rebuttal evidence:¹⁴⁷

"Guidelines on how to achieve Social Licence to Operate (of which I am the lead author of the NZ version) do not recommend use of a resource management application to achieve such an outcome. Instead, Social Licence to Operate is achieved over many years, and is based on trusted relationships, something this project has substantial amounts

144 Statement of evidence of Ms Hackell, section 5.

145 Rebuttal evidence of Robert Quigley, paragraphs 2.3 and 2.4.

146 Statement of evidence of Melissa Hackell, paragraph 5.3.

147 Rebuttal evidence of Robert Quigley, paragraph 3.4.

of. Achieving a Social Licence to Operate was not a purpose of my SIA and nor should it be."

- 15.10 With all due respect, it is submitted that the most informative aspect of Ms Hackell's evidence as far as the Panel is concerned, is the closed minded and overly conservative approach that has typified WRC's entire approach to this proposal, as well reflected in the uninformed comments from the WRC Chair cited at the outset.

APL submission

- 15.11 Having regard to the above, it is submitted that the Panel can be satisfied that the OSP offers significant and genuine district wide benefits, including in terms of job creation, provision of housing choice and broader social benefits.

16. ACOUSTIC EFFECTS

- 16.1 Mr Lawrence has undertaken an assessment of the existing noise environment, the Structure Plan and proposed plan provisions. In terms of the change in acoustic environment brought about by the development of the OSP, he states that:

"...the character of the existing rural environment would change as a result of the proposed rezoning due to the introduction of new noise sources. However, I consider that the overall ambient levels at nearby existing receivers would remain similar and still be controlled by traffic and train movements."

- 16.2 His conclusions in respect of the layout of the OSP and the proposed plan rules relating to noise are that they are appropriate and in particular, will ensure that noise from the Industrial and Business zones will not exceed reasonable levels at the adjacent Residential and Village zones.

- 16.3 Mr Lawrence has proposed specific plan provisions to govern noise limits at the boundary with the existing neighbouring residential properties (owned by Mr and Mrs Holmes, Mr Bruce Holmes and Mr and Mrs McDonald) that are significantly lower than what otherwise be allowed in the industrial zone, in the event that they are still resident at the time that development commences. These limits are the same as for the Business to Rural zone interface in the PWDP.

Game bird shooting at Lake Rotokawau

- 16.4 During the course of consultation with Fish & Game, an issue was identified in relation to potential reverse sensitivity effects arising from gun noise at Lake Rotokawau reserve. To address that issue, APL has proposed a rule requiring that habitable rooms with an acoustic line of sight are equipped with mechanical ventilation. In addition, APL has undertaken to apply a "no complaints" covenant to each of the residential lots. As Mr Klee confirms in his evidence on behalf of Fish & Game, this issue has therefore been resolved to the satisfaction of both parties.

APL submission

- 16.5 Having regard to the above, it is submitted that the Hearing Panel can be confident that there are no reasons relating to noise why the relief sought in APL's submission should not be granted.

17. LANDSCAPE AND VISUAL EFFECTS

- 17.1 Mr Graham has undertaken a detailed assessment of the landscape and visual effects of the introduction of the OSP. He identifies the key attributes of the landscape as

its rural pastoral character, with lakes and wetlands to the east (of which Lake Rotokawau Reserve is identified as part of the Lake Waikare Outstanding Natural Feature in the PWDP. The settlement of Ohinewai and the Expressway are located to the west.

17.2 Mr Graham concludes that the OSP will fit well within this landscape. He says:¹⁴⁸

"Due to the relatively contained nature of the area contained within the structure plan, I consider that a development carried out to comply with the restrictions that will be placed in the PWDP will not detract significantly from the existing amenity derived from the wider rural landscape patterns or the outstanding natural landscape features. The development will introduce an increased intensity of development associated with the Ohinewai settlement in relatively close proximity to two outstanding natural landscape features: the Waikato River and Lake Waikare.

Due to the presence of existing land uses (the transport corridor and Ohinewai settlement), the spatial separation between the proposal and the ONFs, the functional and ecological buffer containing the development; as well as the Wetland Park, it is considered that the development will not have a negative effect on the amenity values of these features, but may include some minor enhancement. The development will be seen as an extension of the Ohinewai settlement and a coherent extension of the existing transport linkages."

17.3 Mr Graham's key conclusions are that:¹⁴⁹

"In summary, I consider that as a result of:

- (a) The presence of existing land use patterns within the wider area, including; the ONFs, the transport corridor, interchange, and Ohinewai village;*
- (b) The configuration of the proposed development in terms of location of the various components within the structure plan; and*
- (c) The integration with the surrounding landscape through the functional and ecological vegetated buffers contained within the development itself;*

The proposed development will be a coherent extension of the Ohinewai settlement, expressed as an increased intensity of development formed around the existing transport interchange.

I consider that the proposed rezoning is appropriate within the wider landscape context. While subsequent development of the proposed rezoning area will alter the existing landscape pattern; introducing earthworks, infrastructure development and buildings over an extent and to a degree that are not present within the receiving environment, when considered within the context of the proposed zone, it is anticipated that a complying development with appropriate mitigation would result in an acceptable level of effect on landscape amenity."

17.4 As regards landscape and visual matters, the section 42A report confirms the support of WDC technical specialist Mr Jones for this conclusion. It states:¹⁵⁰

"Mr Jones considers that, when urban design, landscape and visual assessment matters are reviewed concurrently that the change from

148 EIC Graham, paragraph 8.2-8.3.

149 EIC Graham, paragraphs 11.10-11.11.

150 Section 42A report, 13 March 2020, paragraph 186.

rural to urban character is appropriate given the sites' location; that the proposed design and layout respects underlying landscape values and integrates with existing landscape patterns; and that the large scale of the proposal has allowed for an integrated design of the growth area."

17.5 Ms Trenouth's rebuttal report confirms that view as follows:¹⁵¹

"Overall, I am of the view that landscape and visual effects do not preclude the development."

APL submission

17.6 On the basis of Mr Graham's evidence, it is submitted that the Panel can safely find that there is no impediment to granting the relief sought by APL on visual and landscape grounds.

18. ECOLOGICAL EFFECTS

18.1 The majority of the site is in pasture and has been farmed for many years. Mr Croft's ecological assessment records that vegetation on the site is of low ecological quality, dominated by pasture grass with a few scattered exotic trees and hedgerows. A number of drainage channels cross the site. The site therefore encompasses a "highly modified" agricultural landscape, with no indigenous vegetation communities remaining, and with low value terrestrial and aquatic habitats.

18.2 The site is, however, located next to the Lake Rotokawau Reserve which is universally accepted by the ecological experts as having high ecological value.¹⁵²

18.3 Mr Croft concludes that the risk of actual significant adverse ecological effects is low, and that appropriate mitigation has been proposed to avoid and mitigate those possible effects. Overall, he concludes that the overall ecological impact for the project is low, and identifies that the development of the Site offers an excellent opportunity to enhance the ecological values of the reserve and the surrounding environment by:

- (a) Retiring the dairy farm, thereby reducing nitrogen and phosphorus discharges into the waterways; and
- (b) Undertaking extensive restoration planting and restoring wetland habitat in the east of the site where it will interface with the Department of Conservation land.

18.4 Ms Trenouth's section 42A rebuttal report confirms her agreement that:¹⁵³

"...ecological values do not preclude the rezoning of the APL site."

18.5 This conclusion was subject to ecological mitigation measures being implemented. Substantial work has been done on the proposed plan provisions relating to ecological mitigation, and Mr Olliver remains willing to work with Ms Trenouth and other planning witnesses on their content.

151 Rebuttal report, paragraph 67.

152 Ecology JWS paragraph 2.1.

153 Section 42A rebuttal report, 7 September 2020, paragraph 49.

Ecological Rehabilitation and Management Plan

- 18.6 To ensure APL's objectives for the ecological rehabilitation of the Site are achieved, APL proposes a plan rule¹⁵⁴ which requires an Ecological Rehabilitation and Management Plan ("ERMP") to be prepared upon the development of the site which will include the following components:
- (a) An indigenous fish management plan;
 - (b) A bat management plan;
 - (c) An ecological restoration plan for areas of the site that are to be converted to wetland;
 - (d) A Predator Control Programme ("PCP");
 - (e) Provisions for ongoing maintenance and management of wetland areas; and
 - (f) Evidence of engagement with tangata whenua in the preparation of the ERMP.

Indigenous fish management

- 18.7 WRC and Fish & Game raised a concern about the potential for black mudfish to be found in the farm drains on the site. Black mudfish are an indigenous species classified as "at risk – declining" in the Department of Conservation ("DOC")'s Threat Classification List.
- 18.8 No black mudfish have been found on the site, despite investigations. Because it is impossible to prove the absence of mudfish on the site absolutely, Mr Croft has recommended plan provisions that require detailed consideration of this issue at the time of development. His conclusion is that this issue:¹⁵⁵

"...can be addressed through the application of the Precautionary Principle and by taking a precautionary approach at the consenting stage. As part of any resource consent application, increased confidence in black mudfish presence can be obtained through the measurement of proven habitat predictors such as summer and winter water depth, level of vegetation disturbance and turbidity which have been found to successfully predict black mudfish presence. In addition, targeted black mudfish surveys can be undertaken at the appropriate times of year (mid to late winter) for both fry and juvenile / adult life stages to better understand presence across the Site. Measurement of habitat predictors can be conditioned to occur over multiple seasons and any additional sampling undertaken can utilise a full spectrum of sampling techniques suitable for the variable habitat characteristics of the Site.

- 18.9 In accordance with those recommendations, a key feature of the ERMP is the requirement to prepare an indigenous fish management plan which is required to include the following features:¹⁵⁶

- "i) a summary of fish habitat and species present;
- ii) a summary of planned works, permitting requirements, timing of works, procedures for dealing with pest fish, procedures for

154 Rule 16.6.3 RD5.

155 EIC Croft, paragraph 7.6.

156 Rule 16.6.3 RD5(a).

capturing and relocating indigenous fish prior to and during works and identification of indigenous fish release sites;

- iii) *roles and responsibilities of parties and their reporting requirements;*
- iv) *any specific mitigation measures; and*
- v) *a monitoring programme to enable an assessment of the success of any mitigation measures, including any translocations."*

18.10 Mr Croft has reviewed these provisions and confirmed that they are suitable to ensure specific and appropriate management requirements for the protection of black mudfish are implemented.

Bat management

18.11 During the course of site investigations, some limited bat activity was recorded at the site. Long tailed bats are classified as Threatened – Nationally Critical on the DOC Threat Classification List. Given this, Ms Trenouth states in her section 42A report:¹⁵⁷

"If the APL rezoning proposal is successful I would recommend a Bat Management Plan for the construction phase be required for future consent applications through plan provisions in the PWDP."

18.12 The ERMP requires the preparation of a bat management plan prior to development of the site, in accordance with this recommendation.

Predator Control Programme

18.13 The content of the PCP is of particular interest to Fish & Game. APL has been working constructively with Fish & Game on the content of a framework predator control programme and a concept PCP was attached to Mr Croft's rebuttal evidence. This document provides a general outline of the predator-prey dynamics of the Site and surrounding area and will be refined at the time of implementation.

18.14 Fish & Game has sought that the details of the predator control programme are "locked in" to the plan provisions to provide greater certainty. Mr Croft strongly disagrees that this is necessary, suggesting that in fact this would likely lead to worse outcomes. He says:¹⁵⁸

"I do not agree that it is necessary or appropriate for a complete detailed predator control framework to be finalised at this stage, given the temporal dynamics between the plan change decision, resource consenting and any potential development. Predator control is a rapidly advancing field and many new technologies and innovations are becoming available such as new traps, new lures and increased understanding of predator-prey dynamics in peri-urban environments.

In addition, developmental design of the site will have a significant influence on site specific conditions and potential habitat for both prey and predators. Consequently, locking in specific design and implementation details at this stage would in my opinion be premature. In particular, the opportunities to partner with other interested parties in a collaborative landscape approach may be limited if APL is forced to deliver on a specific programme designed without prior knowledge of

157 Section 42A report, 13 March 2020, paragraph 172.

158 Rebuttal evidence of Chad Croft, paragraph 3.2-3.3.

development design conditions, or baseline prey and predator populations.”

- 18.15 There have been subsequent discussions with the TWGG and DoC and both have expressed interest in being involved in a wider predator control programme if the development proceeds.

APL submission

- 18.16 On the basis of the above, the analysis in the section 42A report and the evidence of Mr Croft, Mr Penfold and Mr Olliver, it is submitted that the Committee can safely make findings that:

- (a) The ecological effects of the development of the OSP have been thoroughly and competently assessed and considered;
- (b) The regime that has been put in place via the proposed plan provisions represents the “most appropriate” planning regime; and
- (c) The measures proposed by APL will promote the objectives and policies of Chapter 11 of the WRPS and the objectives of the Vision and Strategy and Part 2 of the RMA, including section 5(2)(c), sections 6(e), 7(a) and 8, and sections 6(d) and (f).

19. MĀORI CULTURAL AND SPIRITUAL CONSIDERATIONS

- 19.1 As the Panel will be well aware, sections 6(e), 7(a) and 8 of the RMA are a triumvirate of provisions that to seek to recognise, protect and provide for Māori cultural and spiritual matters by providing for:

- (a) The relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga (section 6(e));
- (b) Kaitiakitanga (section 7(a)); and
- (c) The principles of the Treaty of Waitangi (section 8), which include active protection, good faith consultation, partnership and recognition of rangatiratanga¹⁵⁹.

- 19.2 A significant body of case law has developed around these provisions, the key points from which can be summarised as:

- (a) While the Act has a single broad purpose, sections 6(e), 7(a) and 8 are strong directions, to be borne in mind at every stage of the planning process¹⁶⁰.
- (b) Such Māori dimensions are important but not decisive, even if the subject matter is seen as involving Māori issues. While the Māori dimension, whether arising under section 6(e) or otherwise, calls for close and careful consideration, other matters may in the end be found to be more cogent¹⁶¹.

159 See for example *Carter Holt Harvey Ltd v Te Runanga o Tuwharetoa ki Kawerau* [2003] 2 NZLR 349 (HC), at [27].

160 *McGuire v Hastings District Council* [2002] 2 NZLR 577 (PC), at [21] – [22].

161 *Watercare Services Limited v Minhinnick* [1998] 1 NZLR 294 (CA), at [305].

- (c) While the Part 2 provisions do not afford Māori a right of veto, it is arguable that the section 6 and 8 factors should be the subject of "inbuilt preference" when considered against section 7 interests¹⁶².
- (d) The obligation in section 8 to have regard to the principles of the Treaty of Waitangi will have procedural as well as substantive implications, which decision makers must always have in mind¹⁶³.
- 19.3 It is not necessary to traverse these provisions in any detail. Suffice to say, APL has worked closely with all relevant iwi throughout the development of its Ohinewai proposal to an extent that clearly satisfies that the principles of the Treaty of Waitangi, in terms of section 8, with results that recognise and provide for Maori cultural and spiritual values and the exercise of mana whenua's responsibilities as kaitiakai, in terms of sections 6(e) and 7(a).
- 19.4 In that regard, that engagement has resulted in the production of the Kaitiaki Values Environmental Assessment which identifies the values of the Site to mana whenua and states:¹⁶⁴

"Mana Whenua seek to work with APL/NZCG to collaborate and co-design the development in a manner that it can support Mana Whenua in Ohinewai to uphold the above-stated values through:

- *Access to tuna and other hauaanga kai habitats ,*
- *Restoration projects to improve tuna and other hauaanga kai habitats*
- *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)"*

- 19.5 As noted in the section 42A report:¹⁶⁵

"Cultural effects are for tangata whenua to determine, and from the KEVA, do not appear to preclude the rezoning."

- 19.6 With respect, it is submitted that Mr Donald's concerns about whether the Vision and Strategy will be met are somewhat misdirected in the context of the APL submission. In that regard:
- (a) The Huntly WWTP's compliance (or otherwise) with its consent conditions is ultimately a matter to take up with WDC, not APL.
- (b) The Vision and Strategy will ultimately be met because further resource consents will be required and they will not be granted unless the Vision and Strategy is given effect to.
- (c) It would not be appropriate to include provisions in the PWDP that sought to impose any kind of control, or even policy, in relation to the Huntly WWTP so there is little or nothing that the Panel can do to address this issue.

162 *Ngati Maru Iwi Authority v Auckland City Council* AP18-SW01 (HC), at [22].

163 *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] 1 NZLR 593 (SC) at [88].

164 Kaitiaki Environmental Values Assessment, page 46, attached as Attachment K to EIC Gaze.

165 Section 42A rebuttal report, 7 September 2020, paragraph 77.

- 19.7 It is submitted that it is safe for the Panel to find that:
- (a) The engagement with iwi on the OSP epitomises a quality process which has clearly influenced the shape of the OSP;
 - (b) Tangata whenua strongly support APL's submission, as noted in the KEVA; and
 - (c) The provisions of the WRPS, WRP and PWDP relating to Maori cultural and spiritual considerations and the requirements of sections 6(e), 7(a) and 8 of the RMA are satisfied.

20. THE RALPH ESTATES FURTHER SUBMISSION

20.1 The further submission by the Ralph Estates opposes APL's submission on the basis that the rezoning would "sterilise" its interests in coal located on the Site and neighbouring land.

20.2 The evidence of Mr Fergusson and Mr Gray elaborate on that submission, suggesting that an open cast coal mine could be located on the site. There are a number of problems with that proposition. As Mr Lines explains in his evidence:

"It is my opinion that mining the Ohinewai resource by conventional opencast or underground mining methods is unlikely to be economic due to the technical challenges, potentially significant environmental impacts, low demand and high operational costs."

20.3 First, demand for thermal coal has reduced significantly, and is expected to continue to decline "for the foreseeable future."¹⁶⁶ Development of new mines will therefore become progressively less economic. Mr Fergusson acknowledges this declining demand, but suggests that there is one ongoing source of demand for coal in the Waikato, being steel milling operations at Glenbrook. In fact, however, as Mr Lines notes in his rebuttal evidence, Glenbrook's future is very uncertain.¹⁶⁷

20.4 Mr Lines, in conjunction with APL's geotechnical and hydrogeological experts Mr Speight and Mr Stafford, have considered the feasibility of an open cast mine at Ohinewai in terms of the challenging site conditions and the likely effects of the necessary dewatering programme on the sensitive surrounding environment, including Lakes Rotokawau and Waikare. Their conclusions are that:

- (a) Groundwater drawdown would result in a widespread cone of groundwater depression around the mine;
 - (b) The depth of drawdown required could be expected to result in significant widespread surface settlement; and
 - (c) Given the potential hydraulic connection between the Tauranga Group Sediments and the adjacent Lake Rotokawau and Lake Waikare, could result in the draining of those lakes.
- 20.5 Historically, there have been various mining proposals for Ohinewai, none of which have ultimately been realised, even when coal was in significantly greater demand than it is today. Furthermore, the site is not identified within any of the Mining and Minerals overlays in the PWDP and Ralph did not lodge a submission seeking that it be included.

166 EIC Lines paragraph 6.8.

167 Rebuttal evidence of Cameron Lines, Section 2.

- 20.6 The upshot is that the development of an open cast coal mine at Ohinewai is highly unlikely to be viable or consentable. Ralph Estates' submission that the OSP would "sterilise" its interests must be seen in this light.
- 20.7 The legal submissions filed on behalf of the Ralph Estates suggest that the OSP would render their interest in land incapable of reasonable use in terms of section 85 of the Act and that if the Panel grants the relief sought by APL "the Ralph Estates will have option but to lodge an appeal with the Environment Court."¹⁶⁸
- 20.8 In our submission, the issues are not nearly as clear cut as Ralph suggests. The term "reasonable use" is defined in section 85(6) as follows:
- "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."*
- 20.9 Based on the evidence of Nick Speight, Cameron Lines and David Stafford for APL, it is inconceivable that Ralph Estates could establish that a coal mining operation:
- (a) Would have adverse effects on any aspect of the environment that "would not be significant"; or
 - (b) Would have effects on APL that are not significant.
- 20.10 The one authority cited by Ralph Estates in relation to the meaning of "reasonable use" concerned the use of a derelict house which obviously represents a very different scenario than that before you. It is submitted that APL's evidence clearly demonstrates that mining the site would not be "reasonable use" of Ralph's interest in the land.
- 20.11 If the Ralph Estates are seriously suggesting that the Panel rejects the proposed rezoning on this basis, it is submitted that they were under an obligation to place far more material before you in relation to this issue than they have.
- 20.12 On appeal to the Environment Court, Ralph Estates would also have to demonstrate that the zoning poses an "unfair and unreasonable burden" which must be considered in the context of Part 2 of the Act. The test is intended to be onerous.¹⁶⁹ There is therefore a high bar to success which it is submitted Ralph is highly unlikely to meet.
- 20.13 Either way, this is ultimately a commercial issue which APL and Ralph Estates are working through constructively.

APL submission

- 20.14 On that basis, it is submitted that the Hearing Panel can be confident that:
- (a) The OSP is the "most appropriate" land use in terms of the requirements of the Act;
 - (b) Mining the site would not be a "reasonable" use of Ralph's interest in the land in terms of section 85(2) of the Act; and that
 - (c) The issues raised in the Ralph submission are simply a matter that will be the subject of commercial resolution.

168 Legal submissions on behalf of the Ralph Estates, 7 September 2020, page 8.

169 *Steven v Christchurch City Council* [1998] NZRMA 289 at [14].

21. PLANNING ISSUES

Consistency with strategic planning documents

- 21.1 The key "planning issue" that arises is the fact that the OSP does not feature in the Future Proof Land Use pattern and the various strategic planning documents.
- 21.2 The philosophical opposition to the OSP expressed by WRC and NZTA is on the basis that the OSP is not recognised as a development area in the Future Proof Strategy and the WRPS. The concern raised by those parties appears to be that APL has started from the premise that it wishes to develop the Sleepyhead Estate on the Site, rather than taking "a long term strategic view of where and how communities should be developed in the Waikato District."¹⁷⁰
- 21.3 With respect, it is submitted that such unmovable adherence to the black letter of the long term planning documents, to the extent that opportunities such as that offered by the OSP are rejected out of hand, serves no one except the agencies who authored those documents. Mr Olliver says in this regard:¹⁷¹

"The unanticipated nature of the OSP development challenges the responsiveness of the relevant planning instruments. In an ideal world, the sequence of strategic and spatial planning should be undertaken first, and the subsequent development proposal neatly fitted into it. However, that is not always the case, given the dynamic and unpredictable nature of urban development in a growing region creates challenges."

- 21.4 APL's proposal is a huge opportunity for the Waikato District. It deserves to be assessed on its merits, not dismissed out of hand simply because it was not anticipated at the time the Future Proof Strategy was prepared. The District Plan review process provides the forum for that to occur. As Mr Olliver observes:¹⁷²

"The OSP is being advanced in the context of a District Plan review and submission process which is, in and of itself, a relatively high level 'strategic' process incorporating consideration of a wide range of land use options in the context of the RPS and Future Proof strategic framework. It has been, and is, subject to rigorous independent review through a contestable RMA process."

- 21.5 Furthermore, the WRPS does anticipate development outside the FP development pattern, provided that the development principles for alternative land use criteria (in Method 6.14.3) are complied with.
- 21.6 As Mr Olliver says in his evidence:¹⁷³

"Policies 6.14(c) and 6.14(g) of the RPS create flexibility for land use to depart from Tables 6-1 and 6-2 provided certain criteria and principles are met. The WRPS clearly envisages situations where the land areas contained in Table 6-2 can be varied by way of alternative land release or that new industrial development could locate outside the strategic industrial nodes. The Planning JWS confirmed this¹⁷⁴. The alternative release criteria in Method 6.14.3 are specifically designed to address this issue..."

This method has been applied several times over recent years to provide the necessary flexibility at the district level for zoned areas to

170 Statement of evidence of Sarah Loynes, paragraph 9.4.

171 EIC Olliver, paragraph 7.18.

172 Rebuttal evidence of John Olliver, paragraph 2.3.

173 EIC Olliver paragraph 7.50.

174 Planning JWS, para 9.19.

depart from the land allocations. This flexibility is essential to ensure that the strategic planning framework set out in the RPS is responsive to change and enabling for urban development and does not have unintended side effects of stunting economic growth or imposing excessive transaction costs or delays on land use change, by (for example) requiring a change to the WRPS."

- 21.7 Mr Olliver has forensically assessed the OSP against the alternative land use criteria and concludes that the OSP demonstrates "a high level of consistency" with the alternative land use criteria and the Development Principles in Section 6A.

Consideration of alternatives

- 21.8 A related issue is the suggestion by Mr Mayhew that APL's section 32AA analysis¹⁷⁵ should have contemplated alternative sites for the development and alternative development schemes.

- 21.9 Under section 32 of the RMA, the local authority is required to evaluate:

- (a) Whether the objectives of the particular proposal represents the "most appropriate" way to achieve the purpose of the Act (s32(1)(a)); and
- (b) Whether the provisions of the proposal are the "most appropriate" for achieving the objectives of the proposal, including identifying other reasonably practicable options and assessing the efficiency and effectiveness of the provisions of the proposal (s32(1)(b)).

- 21.10 In the context of a proposal for rezoning, this generally requires an evaluation of the costs and benefits of a proposed rezoning compared with the benefits and costs of the operative zoning.¹⁷⁶ The Courts have held that the "most appropriate" method does not necessarily need to be the superior method; rather, what is required is a value judgment as to what is the most appropriate when measured against the relevant objectives, whereby "appropriate" means "suitable".¹⁷⁷

- 21.11 The question of whether the assessment requires consideration of alternative "sites or methods" was addressed by the Supreme Court in *Environmental Defence Society v King Salmon*¹⁷⁸ in which the Court addressed the following question:

"Was the Board obliged to consider alternative sites or methods when determining a private plan change that is located in, or results in significant adverse effects on, an outstanding natural landscape or feature or outstanding natural character area within the coastal environment?"

- 21.12 The Board of Inquiry had noted that the Courts had previously consistently held that there is no requirement for consideration of alternatives when dealing with a site-specific plan change application. The Supreme Court agreed with the Board that there is no mandatory requirement. However, such an assessment is not precluded and may be appropriate in some circumstances. It quoted *Brown v Dunedin City Council* in which Chisholm J said:¹⁷⁹

[16] I am satisfied that the theme running through the Environment Court decisions is legally correct: s 32(1) does not contemplate that

175 Set out in Section 7 of the Assessment of Environmental Effects and section 32AA Evaluation dated December 2019 and addressed in Section 5 of Mr Olliver's EIC.

176 *Well Smart Investment Holding (NZQN) Limited v Queenstown Lakes District Council* [2015] NZEnvC 214 at [20].

177 *Rational Transport Society Incorporated v New Zealand Transport Agency* [2012] NZRMA 298 (HC) at [45].

178 [2014] NZSC 38(2014) 17 ELRNZ 442.

179 *Brown v Dunedin City Council* [2003] NZRMA 420 (HC).

determination of a site-specific proposed plan change will involve a comparison with alternative sites. As indicated in Hodge, 156 when the wording of s 32(1)(a)(ii) (and, it might be added, the expression "principal alternative means" in s 32(1)(b)) is compared with the wording of s 171(1)(a)¹⁸⁰ and clause 1(b) of the Fourth Schedule it appears that such a comparison was not contemplated by Parliament. It is also logical that the assessment should be confined to the subject site. Other sites would not be before the Court and the Court would not have the ability to control the zoning of those sites. Under those circumstances it would be unrealistic and unfair to expect those supporting a site-specific plan change to undertake the mammoth task of eliminating all other potential alternative sites within the district. In this respect a site-specific plan change can be contrasted with a full district-wide review of a plan pursuant to s 79(2) of the [RMA]."

(Emphasis ours.)

- 21.13 The High Court therefore suggested that in the context of a district plan review, consideration of alternative sites in the district may be required, though as the matter before it was a private plan change, it did not have to consider this question in detail.
- 21.14 The Supreme Court in King Salmon addressed the circumstances where consideration of alternatives may be required, again in the context of a private plan change. It said:

[168] We agree with Chisholm J that there may be instances where a decisionmaker must consider the possibility of alternative sites when determining a plan change application in relation to the applicant's own land. We note that where a person requests a change to a district or regional plan, the relevant local authority may (if the request warrants it) require the applicant to provide "further information necessary to enable the local authority to better understand ... the benefits and costs, the efficiency and effectiveness, and any possible alternatives to the request".

The words "alternatives to the request" refer to alternatives to the plan change sought, which must bring into play the issue of alternative sites. The ability to seek further information on alternatives to the requested change is understandable, given the requirement for a "whole of region" perspective in plans. At the very least, the ability of a local authority to require provision of this information supports the view that consideration of alternative sites may be relevant to the determination of a plan change application.

...

[170] This brings us back to the question when consideration of alternative sites may be necessary. This will be determined by the nature and circumstances of the particular site-specific plan change application. For example, an applicant may claim that that a particular activity needs to occur in part of the coastal environment. If that activity would adversely affect the preservation of natural character in the coastal environment, the decision-maker ought to consider whether the activity does in fact need to occur in the coastal environment. Almost inevitably, this will involve the consideration of alternative localities. Similarly, even where it is clear that an activity must occur in the coastal environment, if the applicant claims that a particular site has features that make it uniquely, or even especially, suitable for the activity, the decision-maker will be obliged to test that claim; that may well involve consideration of alternative sites, particularly where the

180 The provision relating to requirements for designations which requires consideration of whether "adequate consideration has been given to alternative sites, routes or methods of undertaking the work...where the requiring authority does not have a sufficient interest in the land to undertake the work..."

decision-maker considers that the activity will have significant adverse effects on the natural attributes of the proposed site. In short, the need to consider alternatives will be determined by the nature and circumstances of the particular application relating to the coastal environment, and the justifications advanced in support of it, as Mr Nolan went some way to accepting in oral argument."

(Emphasis ours.)

21.15 In summary, the legal position set out by the Supreme Court (in the plan change context) relating to the consideration of alternative sites is:

- (a) There is no mandatory requirement to consider alternative sites;
- (b) Consideration of alternative sites is not precluded, and in some circumstances will be necessary, particularly where:
 - (i) The activity is undertaken on public land; or
 - (ii) Will have significant adverse effects on the proposed site.

21.16 The High Court's decision in *Brown* suggests that consideration of alternative sites may be required in a plan review context. However, the matter was not addressed in detail, and in our view, the High Court's observation that it would be "*unrealistic and unfair to expect those supporting a site-specific plan change to undertake the mammoth task of eliminating all other potential alternative sites within the district*" would also apply in the context of a site specific rezoning request made in the context of a district plan review.

Designations – consideration of alternatives

21.17 In terms of the nature of an assessment of alternatives, the legal framework relating to designations is instructive. Section 171(1)(b) of the RMA requires consideration of whether:

- (1) When considering a requirement and any submissions received, a territorial authority must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to –
 - ...
- (b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if –
 - (i) the requirement authority does not have an interest in the land sufficient for undertaking the work; or
 - (ii) it is likely that the work will have a significant adverse effect on the environment

21.18 As regards the extent of that obligation, the Courts have made clear that the designating authority is not required to prove that its site is the best site or the best use of resources as that would be straying into the area of policy.¹⁸¹

181 *Beda Family Trust v Transit NZ* A139/04.

21.19 In considering the assessment of alternatives for a notice of requirement, the following relevant principles have been established:¹⁸²

- (a) The focus is on the process, not the outcome: whether the requirement authority has made sufficient investigation of alternatives to satisfy itself of the alternative proposed, rather than acting arbitrarily, or giving only cursory consideration to alternatives. Adequate does not mean “meticulous” or exhaustive consideration.
- (b) The question is not whether the best site has been chosen, nor whether there are more appropriate sites.
- (c) That there may be sites which may be considered by some to be more suitable is irrelevant.
- (d) The Act does not entrust to the decision-maker the policy function of deciding the most suitable site, the executive responsibility for selecting the site remains with the requiring authority.
- (e) The Act does not require every alternative, however speculative, to have been fully considered.

21.20 In determining whether consideration of alternative sites has been sufficiently undertaken, the Courts have held that the question is whether or not the decision was arbitrary. The Court’s jurisdiction on this question has been limited to assessing the *process* undertaken, not deciding the whether the outcome was the best one.¹⁸³

21.21 Another decision held that a more careful consideration of alternatives is permitted where there are more significant adverse effects; however, this does not require an authority to “evaluate fully every non-suppositious alternative”.¹⁸⁴

Summary – consideration of alternatives

21.22 As set out above, consideration of alternative sites is not mandatory. The alternatives assessment required depends on the nature of the proposal and the decision-making context.

21.23 APL’s evidence demonstrates that there will be no significant adverse effects that cannot be remedied or mitigated, such that consideration of alternatives is required for that reason.

21.24 Whereas *King Salmon* concerned a proposal to undertake an activity in the public sphere (i.e. the coastal environment) the OSP concerns land owned by APL and in that regard is the only location where the Sleepyhead Estate could locate. There are therefore significant practical difficulties involved in the consideration of “alternative locations” in the section 32 analysis given that no other possible sites are on the table – it would, as Brown J suggested be a “mammoth task” to specifically eliminate all other potential alternative sites within the district.

21.25 As explained by Mr Gaze, APL’s criteria for site selection were clear – focusing in particular on site size and site suitability, and being appropriately located closely enough to existing operations, and main transport routes. Its site selection process was extensive and robust, not cursory or arbitrary. Mr Gaze states:

182 Derek Nolan QC, “Chapter 4: Land use, subdivision, designations, resource consent procedures and appeals” in *Environmental and Resource Management Law* (6th ed), (LexisNexis, Wellington, 2018) at p 292-293.

183 *Sustainable Matata v Bay of Plenty Regional Council* [2015] NZEnvC 90 at [167].

184 *New Zealand Transport Agency v Architectural Centre Incorporated* [2015] NZHC 1991 at [157].

"We searched extensively for a suitable location in Auckland and the Waikato for a site that meet these criteria. We explored a number of areas located along the North Island main trunk line. Including Pukekohe, Tuakau, Pokeno, Meremere, Huntly, Ngaruawahia and Ruakura.

Few potential sites were identified. The largest industrial area identified was a 17 hectare area near Huntly. The potential of the site was limited by the presence of numerous non-surveyed underground mines. The site was not large enough to meet TCG's needs.

We eventually found the Ohinewai site, which is ideal in terms of its positioning in the "Golden Triangle" between Auckland, Tauranga and Hamilton; its proximity to the NIMT and State Highway 1 and its scale."

- 21.26 In terms of the consideration of alternative development schemes for the Site, APL's evidence explains in detail APL's vision and objectives and the Masterplanning process which led to the proposal. The development of an alternative scheme is simply not part of APL's vision and therefore not a realistic alternative outcome.
- 21.27 Ultimately, the key point is that the APL proposal represents a complete package. APL is proposing to develop the Sleepyhead Estate on the Ohinewai site. It is the only suitable location that APL has found, and if the Sleepyhead Estate is not developed at Ohinewai, it will not proceed at all.

Protection of the Expressway

- 21.28 NZTA has raised a specific concern about the alignment of the OSP with Objective 3.12 and (e) and Policy 6.6 of the RPS which require the "protection" of regionally significant infrastructure as follows:

"Objective 3.12 Built environment

Development of the built environment (including transport and other infrastructure) and associated land use occurs in an integrated, sustainable and planned manner which enables positive environmental, social, cultural and economic outcomes, including by:

...

- e) *recognising and protecting the value and long-term benefits of regionally significant infrastructure".*

Policy 6.6 Significant infrastructure and energy resources

Management of the built environment ensures particular regard is given to:

- a) *that the effectiveness and efficiency of existing and planned regionally significant infrastructure is protected:*

..."

- 21.29 NZTA's position appears to be that because the Expressway is a Road of National Significance, no "unplanned" development should occur adjacent to it in order to protect it. As Mr Olliver observes in his rebuttal evidence:

"I interpret the term 'protect' to mean to keep safe from harm or to maintain the integrity of something. It does not mean to preserve in its current state. In my opinion the significant employment and industrial

base of the OSP is very consistent with the key strategic outcomes of the Network Plan quoted in paragraph 8.2. Using an existing underutilised interchange 'protects investment in existing infrastructure' as otherwise those connections may need to be built somewhere else to accommodate the development. It is also consistent with the 'efficient and affordable provision of the development' in accordance with RPS Policy 6.3 i). That strategic alignment is not undermined by the use of a short section of the Expressway for the limited number of short trips outlined in the ITA and the EIC of Mr Inder, as they demonstrate that there are no adverse effects on its operation. If there are no adverse traffic impacts then the Expressway is protected."

The Waikato Tainui Raupatu Claims (Waikato River) Settlement Act 2010

- 21.30 The Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 incorporates into the WRPS the Vision and Strategy for the Waikato River, the primary direction-setting document for the Waikato River and activities within its catchment.¹⁸⁵ While part of the WRPS, in the event of a conflict, it takes precedence over any national policy statement.¹⁸⁶
- 21.31 The Vision and Strategy establishes the vision for the Waikato River along with a range of objectives and strategies for the purposes of achieving that vision. The Environment Court has held that there is an intention to improve the River and its catchment to a swimmable and fishable condition over its entire length within a reasonable period of time (i.e., several decades) and that any future resource consent applications affecting the river catchment would need to demonstrate the ways in which it protected and restored (incorporating some element of "betterment") the river.¹⁸⁷ The *Puke Coal* decision states:

"[90] We have concluded that the Supreme Court has identified that instruments may give primacy to some aspects of the matters under Part 2. Further, it is clear that the Settlement Act was intended, and did take effect, as a statutory provision overriding national policy documents. The Supreme Court noted in EDS v King Salmon at [152]:

[152] The NZCPS is an instrument at the top of the hierarchy. It contains objectives and policies that, while necessarily generally worded, are intended to give substance to the principles in Part 2 in relation to the coastal environment. Those objectives and policies reflect considered choices that have been made on a variety of topics. As their wording indicates, particular policies leave those who must give effect to them greater or lesser flexibility or scope for choice. Given that environmental protection is an element of the concept of sustainable management, we consider that the Minister was fully entitled to require in the NZCPS that particular parts of the coastal environment be protected from the adverse effects of development. That is what she did in policies 13(1)(a) and 15(a), in relation to coastal areas with features designated as "outstanding". As we have said, no party challenged the validity of the NZCPS.

This equally must be true for the Settlement Act to the extent that an application affects the Waikato River.

[91] In this case there was no dispute that the waterway was covered by the Act and was part of the Waikato River as defined. We conclude that

185 Section 5(1) of the Settlement Act.

186 Section 12(1) of the Settlement Act.

187 *Puke Coal Ltd v Waikato Regional Council* [2014] NZEnvC 223, at [132] – [134].

this application must, to the extent relevant, protect and restore the river (particularly this portion of it).

*[92] Implicit in the Supreme Court decision was the matter of workable practicality thus any protection or restoration must be proportionate to the impact of the application on the catchment. However, it is clear that it intends to go further than avoiding effect. We have concluded protection and restoration includes preservation from future and restoration from past damage. Restoration can only involve recreation of a past state. Thus, **some element of betterment is intended.**"*

(Emphasis ours.)

21.32 The objectives set out in the Vision and Strategy are of course aimed at the restoration and protection of water quality as well as restoration and protection of other values including:

- (a) Access to the river (Objective 2.5.2.1);
- (b) The relationship of Waikato Tainui, the River iwi and communities with the river, including economic, social, cultural and spiritual relationships (Objectives 2.5.2 (b), (c) and (d)).

21.33 As Mr Olliver observes in his evidence, APL's rezoning submission does not directly result in physical development that would generate effects on the River, whether positive or negative. He states:¹⁸⁸

"Rather, [the submission] enables development, with the development form being guided by District Plan provisions, and the future effects being governed by future detailed design and resource consents. In my opinion, this leads to a need to take an overall view of the development, providing certainty of outcome as far as practicable through Plan rules, but also taking into account matters that are not able to be incorporated in plan rules because they are outside the scope of the RMA.

This broad approach is consistent with the Vision, whereby the physical health of the river ('abundant life') sits alongside the non-physical 'prosperous communities' and the shared responsibilities for restoring and protecting it."

21.34 It is submitted that APL's evidence demonstrates that its submission gives effect to the objectives of the Vision and Strategy (to the extent that a rezoning submission is able to do so), including in terms of:

- (a) The commitment to partnership with mana whenua, through the TWGG;
- (b) The focus on improving the economic and social wellbeing of the iwi and the community through education, training and job creation and the creation of a development which provides social and economic support to Huntly;
- (c) Retirement of dairy farming activities and the consequent reductions in nitrogen and phosphorus discharges to the catchment, together with the development of a best practice stormwater management system to control discharges associated with urban development;
- (d) APL's advanced discussions with WDC and Watercare in relation to provision of wastewater infrastructure demonstrates that provision of wastewater infrastructure is feasible (and indeed may contribute to the critical mass

188 EIC Olliver, paragraph 7.4-7.5.

required to advance the necessary upgrades to existing underperforming infrastructure (i.e. Huntly Wastewater Treatment Plant).

- (e) Restoration and protection of wetlands that will link to the existing Rotokawau Reserve;
- (f) Enhancement of public access to the river, via walking and cycling connection along Ohinewai South Road adjacent to Ohinewai School, and on to Huntly on a path along the stopbank.

Consistency with higher order planning instruments

21.35 Section 6 of Mr Olliver's evidence in chief contains a detailed analysis of the OSP as assessed against all the relevant National Policy Statements, National Environmental Standards and the RPS.

21.36 It is submitted on the basis of that analysis that the Panel can be satisfied that the relief sought by APL is consistent with all higher order planning instruments.

22. PRINCIPAL SUBMISSION

22.1 In light of the conclusions reached in the evidence, APL's fundamental position is that there is no impediment to the rezoning proceeding and that that significant benefits will ensure if it does proceed.

22.2 Given the Supreme Court's decision in *Environmental Defence Society v NZ King Salmon Co Ltd*,¹⁸⁹ APL's planning analysis and other technical analyses have:

- (a) Identified any relevant constraints or limits¹⁹⁰ in higher order planning documents that the PWDP is required to give effect to,¹⁹¹ and
- (b) To the extent that there are such constraints or limits, demonstrated why those do not present any impediment to APL's submission being accepted.

22.3 APL submits that:

- (a) The objectives and policies sought to apply to the site:
 - (i) Appropriately give effect to all applicable higher order planning instruments (including all national policy statements and national environmental standards, and regional policy statements); and
 - (ii) Are not inconsistent with any directive objectives, policies or constraints from such higher order instruments.
- (b) The rules that will apply to the site as a result of the change in zoning appropriately implement the policies sought to apply to the site.

22.4 APL submits that it is appropriate that the submission be accepted on the basis that:

- (a) In terms of section 32 of the RMA:
 - (i) The proposed objectives are the "most appropriate" means of achieving the purpose of the RMA; and

189 [2014] NZSC 38.

190 For example, policies that use directive language.

191 ss 67(3) and 75(3) RMA.

- (ii) The proposed provisions¹⁹² are the most appropriate way to achieve the objectives of the PWDP (and the WRPS).
- (b) Acceptance of the submission would result in changes to the PWDP that are in accordance with WDC's functions under section 31 of the RMA.
- (c) Approving the submission would be consistent with and promote the sustainable management purpose of the RMA, particularly as:
 - (i) Any potential adverse effects can be avoided, remedied, or mitigated as necessary through:
 - Appropriate siting of the three zones that make up the proposal.
 - Introduction of clear and directive, site-specific objectives and policies.
 - Application of the rules applying to each zone.
 - Conditions at the resource consent stage; and
 - (ii) Use and development of the site as proposed by the Submission:
 - Represents an efficient use and development of the Site and its natural and physical resources.
 - Can be undertaken in a manner that ensures that amenity values and the quality of the environment are maintained or enhanced.

22.5 Relevant factors in that regard are that:

- (a) The WRPS provides criteria for exceptions to future development patterns reflected in regional planning documents, and APL's proposal meets those criteria.
- (b) The zoning layout is appropriate in terms of the nuances of the Site, and associated plan provisions will ensure that development is sensitive to the surrounding natural environment, and wider development in Ohinewai, the district and the region.
- (c) Use and development of the site as enabled by the submission is a logical extension of and complementary to Ohinewai Village and will not inappropriately predetermine rollout of wider development of Ohinewai or in the wider Huntly or Te Kauwhata areas. Nor will it compromise or preclude the current vision for future development of the wider district or region, as expressed in Waikato 2070.
- (d) There are no adverse effects that cannot be adequately and appropriately avoided, remedied, or mitigated.
- (e) The benefits of the proposal enabled by the submission are significant. It will introduce jobs, stimulate financial investment, increase the housing supply in Ohinewai and Huntly, and provide new public transport connections between those two areas. It presents a significant opportunity for the Waikato District.

192 Defined for section 32 purposes as "the policies, rules, or other methods that implement, or give effect to, the objectives of the proposed plan or change" (s 32(6)).

22.6 In closing, Counsel and the APL team would like to express their gratitude to:

- (a) The Panel for the guidance it has received in the lead up to this hearing;
- (b) Council officers / consultants, neighbours and stakeholders who have engaged with APL to work through and address a wide range of issues; and
- (c) The TWGG for its constructive engagement and support.

DATED this 14th day of September 2020

A handwritten signature in blue ink, appearing to be 'S J Berry' or 'K A Storer', written in a cursive style.

S J Berry / K A Storer

Counsel for Ambury Properties Limited