

## Before Independent Hearing Commissioners In Ngāruawāhia

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Under the Resource Management Act 1991 (the Act)

In the matter of a submission by Ambury Properties Limited in respect of the proposed Waikato District Plan pursuant to Clause 6 of Schedule 1 of the Act seeking the rezoning of land at Ohinewai (Hearing 19)

And **Ambury Properties Limited (Ambury)**  
Submitter

And **The NZ Transport Agency (Waka Kotahi)**  
Submitter and Further Submitter

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### Legal submissions for the NZ Transport Agency (Waka Kotahi)

Dated 9 September 2020

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## 1 Introduction

1.1 The NZ Transport Agency (**Waka Kotahi**) lodged further submissions on Ambury Properties Limited's (**Ambury's**) further submissions on the Proposed Waikato District Plan requesting the rezoning of rural land at Ohinewai to residential, business and industrial at Ohinewai, the introduction of a new structure plan (**OSP**) and amendments to the policies and rules to support the rezoning.

1.2 Waka Kotahi has an interest in the rezoning because of its responsibilities:<sup>1</sup>

- a Managing the State highway network, seeking to deliver effective, efficient and safe highway solutions for customers;
- b Investing in the transportation network, seeking to maximise effective, efficient and strategic returns for New Zealand;
- c Planning the land transport network, seeking to integrate one effective and resilient network for customers; and
- d Providing access to the land transport system, seeking to shape smart, efficient, safe and responsible transport choices.

1.3 The further submissions of Waka Kotahi opposed Ambury's rezoning request on the basis that the the rezoning is inconsistent with the settlement pattern identified in Future Proof and the Waikato Regional Policy Statement (**WRPS**).

1.4 Waka Kotahi has invested significant effort into discussions with Ambury since January 2020 including onsite meetings, discussions between the transport and planning experts and expert conferencing in June 2020. This process has resulted in refinements to some aspects of Ambury's proposal and has assisted in narrowing the issues. However, the position of Waka Kotahi remains that it does not support the rezoning for the reasons set out in section 4 of these submissions.

## 2 Scope of submissions

2.1 These submissions address the following matters:

- a The statutory objectives and functions of Waka Kotahi;

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<sup>1</sup> NZ Transport Agency Statement of Intent 2018-22.

- b The key concerns of Waka Kotahi relating to the proposed rezoning;
- c Changes to the proposal; and
- d The statutory framework.

### **3 The statutory objectives and functions of Waka Kotahi**

- 3.1 Waka Kotahi is a Crown entity with the sole powers of control and management for all purposes of all State highways.<sup>2</sup> The objectives, functions, powers, and responsibilities of Waka Kotahi are derived from the Land Transport Management Act 2003 (**LTMA**) and the Government Rounding Powers Act 1989. As explained by Ms Loynes, the statutory objective of Waka Kotahi is to “*undertake its functions in a way that contributes to an effective, efficient and safe land transport system in the public interest*”.<sup>3</sup>
- 3.2 In performing its functions, Waka Kotahi must give effect to the strategic priorities and transport outcomes set by the Government through the Government Policy Statement on Land Transport 2018/19 – 2027/28 (**GPS**). The GPS is in the process of being updated. The new draft GPS (2020/21-2030/31) sets out four strategic priorities for the land transport system: safety, better travel options, improving freight connections (including improving interregional freight corridors) and climate change.<sup>4</sup> The draft GPS also sets out the Minister of Transport’s expectation that Waka Kotahi will:
- a Encourage consistent, good practice planning so that the interaction between transport use and land use is well managed;<sup>5</sup>
  - b Work collaboratively with local government to ensure that transport infrastructure effectively supports urban growth and aligns with wider initiatives to provide quality urban form;<sup>6</sup> and
  - c Consider the extent to which urban development supports ‘quality urban environments’, improve transport choice, support the reduction of greenhouse gas emissions and are consistent with and have regard to spatial planning exercises.<sup>7</sup>

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<sup>2</sup> Section 93(2) LTMA.

<sup>3</sup> Section 94 of the LTMA.

<sup>4</sup> Draft GPS, page 13 and Ms Loynes, EIC, paragraph 7.2.

<sup>5</sup> Draft GPS, page 39.

<sup>6</sup> Draft GPS, page 39.

<sup>7</sup> Draft GPS, page 39.

3.3 Waka Kotahi works proactively with local authorities to ensure that land use and transport planning are integrated in a way that delivers on the GPS priorities and Ministerial expectations for mode shift. Part of delivering on these outcomes, and the Government's mode shift aspirations, requires a shift from private vehicles to walking, cycling, and public transport to reduce the problems arising from New Zealand's high rates of private vehicle dependency and reduce carbon emissions.

#### **4 Waka Kotahi's key concerns**

4.1 Waka Kotahi's key concerns relating to the proposal are summarised below.

##### ***Car oriented development***

4.2 The s42A report observes that the Ohinewai proposal is not a "self-contained settlement" as it "lacks the size/critical mass to be a fully functioning 'town'".<sup>8</sup> Mr Mayhew points out that the proposal does not contain basic services such as retail, healthcare, high schools and tertiary education and therefore residents will need to travel to Huntly to access such services.<sup>9</sup> Dr Hackell<sup>10</sup> and Mr Keenan<sup>11</sup> express concerns that Ohinewai could become a 'dormitory town' given its distance from Huntly.

4.3 These issues are compounded by the lack of 'teeth' in the planning provisions to deliver the limited range of services and facilities identified in the masterplan, for example:

- a The masterplan anticipates the development of a service centre with a truck stop and convenience retail in the Business zone. The Business zone rules provide for 'commercial activities' as a restricted discretionary activity<sup>12</sup> but there is no *requirement* to provide any convenience retail.<sup>13</sup> As a result, the Business zone could, for example, develop as a service station and fast food restaurant.
- b Rule 17.6.2.RD2 provides for a service station and public transport facility in accordance with the OSP as a restricted discretionary activity in the Business zone. The OSP does not show any such facilities and there is no specific requirement in the staging plan to provide them.

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<sup>8</sup> S42A report paragraph 343.

<sup>9</sup> Mr Mayhew's EIC, paragraph 11.81.

<sup>10</sup> Dr Hackell's EIC, sections 6.1 – 6.6, 7.2 and 9.3.

<sup>11</sup> Mr Keenan's EIC, paragraph 9.5.

<sup>12</sup> See rule 17.6.2.RD1.

<sup>13</sup> The rules provide for a maximum floor area of 1,000m<sup>2</sup> for "any grocery store" but do not require a grocery store to be provided.

- c There is no requirement in the staging plan to provide the community corner shop shown on the masterplan. Convenience retail is not provided for in the Residential zone where the community corner shop is located on the masterplan.
  - d The staging plan requires certain community facilities to be provided at various stages of the development but there are no details as to the nature, size or location of these facilities.
- 4.4 Ohinewai residents will therefore need to travel to access a range of services – either by walking, cycling, public transport or private vehicle:
- a The existing primary school is the only existing essential service within walking distance of the OSP residential area. The distance between the school and the nearest OSP dwelling, approximately 2km, is twice the distance of the average walking journey to schools and will therefore be unattractive as a means of transport.<sup>14</sup> Mr Swears remains of the view that a walking distance that is twice the average walking to school journey will discourage many trips by foot.<sup>15</sup>
  - b The distance between Huntly and Ohinewai (a 16 - 20 km round journey) makes the option of cycling (as opposed to a private vehicle journey) to access services unattractive. As a result, residents are unlikely to cycle to Huntly to access services and retail, even with the recent uptake of e-bikes.<sup>16</sup>
  - c Mr Kuo is of the view that a public transport service between Ohinewai and Huntly will not be viable.<sup>17</sup> Such a service would not be cost-efficient or represent an effective and efficient use of public funding, a core requirement under the LTMA when considering transport outcomes.<sup>18</sup> Even if a relatively frequent public transport service was operating, a car based journey would offer superior travel time advantage and flexibility over public transport particularly in the absence of congestion or parking restrictions/charges that would encourage people to use public transport.<sup>19</sup>
  - d Ms Loynes, Mr Swears, Mr Kuo, Ms Trenouth and Ms McKinn all agree that the large-scale development in a location isolated over 5km away from the

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<sup>14</sup> Mr Swears, EIC, paragraph 6.18.

<sup>15</sup> Mr Swears, summary statement, Appendix 1, column 1.

<sup>16</sup> Mr Swears, EIC, paragraphs 6.61 and 6.64 and summary statement, Appendix A column 2.

<sup>17</sup> Mr Kuo, EIC, paragraph 7.1

<sup>18</sup> Mr Kuo, EIC, paragraph 7.11.

<sup>19</sup> Mr Kuo, EIC, paragraph 9.9.

edge of Huntly (and about 8km to Main Street) with easy access to the Expressway will likely result in a high dependency on private vehicle use.<sup>20</sup>

- 4.5 Ambury says the dwellings within the OSP will predominantly be occupied workers from the Sleepyhead factory, reducing the number of trips from Ohinewai to Huntly for employment. The proposed planning provisions do not contain any mechanism to ensure that the dwellings will be occupied by workers, or the affordability of that housing. Mr Mayhew notes that these outcomes are not easily secured through planning provisions or other mechanisms.<sup>21</sup> Ambury has not provided any evidence that Sleepyhead employees will want to live in Ohinewai. Mr Gaze says that it is not possible to provide such certainty and considers that it is too early to canvas the proposal for employees to live on site with the current Sleepyhead employees.<sup>22</sup>
- 4.6 As a result there is no certainty that workers will live on site or that the community, neighbourhood and convenience facilities shown on the masterplan will be developed. Residents will need to travel to Huntly to access services and employment and will largely do so by private vehicle. Reliance on private vehicles will not contribute to a reduction of greenhouse gas emissions and will in fact increase emissions.

### ***Strategic function of Expressway***

- 4.7 Mr Swears and Ms Loynes' evidence is that local trips from Ohinewai to Huntly will be in via the Expressway.<sup>23</sup> Mr Inder says that there is an opportunity to upgrade and reopen a connection of the old Ohinewai South Road to Great South Road (ex-SH1) at low cost for northbound traffic travelling from Huntly to Ohinewai.<sup>24</sup> Mr Swears expects that very few, if any journeys will be carried out using this route (unless they intend to stop at the school).<sup>25</sup> The reality is that trips from Ohinewai to Huntly will occur on the Waikato Expressway.
- 4.8 Mr Olliver<sup>26</sup> argues that the Proposal is acceptable because there is capacity in the Expressway to accommodate local trips. As Ms Loynes points out, it is not the capacity of the Expressway to accommodate traffic from the OSP that is the

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<sup>20</sup> Mr Kuo's EIC, paragraph 7.9.

<sup>21</sup> Mr Mayhew's EIC, paragraph 18.3(a).

<sup>22</sup> Mr Gaze's EIC, paragraph 2.4.

<sup>23</sup> Ms Loynes' EIC, paragraphs 9.9 – 9.10 and Mr Swears' EIC, paragraph 6.55.

<sup>24</sup> Mr Inder's rebuttal, paragraph 9.24.

<sup>25</sup> Mr Swears, summary statement, Appendix A, column 4.

<sup>26</sup> Mr Olliver's EIC, paragraph 7.22.

issue, but rather whether using the Expressway to make short local trips is consistent with its strategic function.<sup>27</sup>

- 4.9 The Expressway was constructed as a Road of National Significance and is managed in accordance with the Waikato Expressway Network Plan (**Network Plan**). The objectives for the Expressway are to connect large population centres (through interregional travel) and deliver efficient routes for large freight volumes. The Network Plan also emphasises the need for integrated land and transport planning to ensure that those objectives are achieved.<sup>28</sup> Ms Loynes' summary statement highlights the importance of this route in terms of national freight movements.<sup>29</sup>
- 4.10 Ms Loynes notes in her evidence that there is a strong policy direction in the WRPS to "protect" the "value and long term benefits of regionally significant infrastructure".<sup>30</sup> Use of the Expressway for local trips for daily needs erodes the ability of this high speed, high capacity transport corridor to cater for freight and interregional trips in the future.

#### ***Strategic planning issues***

- 4.11 Both the WRPS and the Proposed Waikato District Plan (**PWDP**) emphasise the importance of ensuring that the District's settlement pattern is consistent with Future Proof as embedded in the WRPS.<sup>31</sup> Ambury acknowledges that the proposal is out of sequence with the Future Proof growth pattern embedded in the WRPS<sup>32</sup> and therefore relies on the alternative land release mechanism in policy 6.14 of the WRPS. The development principles in clause 6A set out the expected outcomes for out of sequence development. As outlined by Mr Mayhew, the WRPS states that 'should' means that an outcome is expected to occur unless it is impracticable or there is a compelling reason not to do so.<sup>33</sup>
- 4.12 Transportation outcomes are a strong focus in the development principles including enabling a compact urban form, minimising energy and carbon use, minimising the need for private motor vehicles and maximising public transport, walking and cycling. As outlined by Mr Mayhew in his evidence,<sup>34</sup> the proposal will not achieve these outcomes.

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<sup>27</sup> Ms Loynes' EIC, paragraph 9.20.

<sup>28</sup> Ms Loynes' EIC, paragraph 6.1.

<sup>29</sup> Ms Loynes' summary statement, paragraphs 2.8(b) (d) and (e).

<sup>30</sup> Ms Loynes' EIC, paragraphs 9.5 and 9.5 – refer policies 3.12(e), 6.3 and 6.6 of the WRPS.

<sup>31</sup> Mr Mayhew's EIC, paragraph 7.3.

<sup>32</sup> Mr Olliver's EIC, paragraph 2.13.

<sup>33</sup> Mr Mayhew's EIC, paragraph 11.67.

<sup>34</sup> Mr Mayhew's EIC, paragraphs 11.80 – 11.83.

- 4.13 Mr Mayhew notes that the OSP evaluation has not adequately assessed a range of growth scenarios in the area to assess the potential cumulative effects of development in this location.<sup>35</sup> This approach is inconsistent with policies 6.1<sup>36</sup> of the WRPS which requires the use and development of land to consider (and manage) cumulative effects.

***Transportation engineering issues***

- 4.14 Mr Swears' evidence highlights a range of transportation engineering issues with the proposal:
- a Using a short section of inter-regional arterial (Waikato Expressway) for local trips undermines the strategic function of the Expressway as explained above, and is also undesirable in terms of the inadequate distance between the Ohinewai and Huntly Northern interchanges. The alternative route is unlikely to be used by residents.
  - b The sight distances from the southbound off-ramp are inadequate and will likely require a compromise in driver reaction time. Ambury has not proposed any mitigation.
  - c The proposed roundabout designs that are inconsistent with the Austroads standards. Ambury has not displayed it can provide solutions for this, noting that it would require more land or relocation altogether.
  - d Pedestrian facilities that are inconsistent with the NZ Transport Agency Pedestrian Planning and Design Guide 2009 and Austroads. The raised crossings proposed are inappropriate for this location and will adversely affect accessibility for pedestrians to areas beyond the Site.
  - e Promoting heavy vehicle turning movements where the carriageway width is inadequate (the left turn from southbound off-ramp), which will result in the encroachment of heavy vehicles into the opposing lane.
  - f Uncertainty regarding the scale and nature of adverse effects as the site develops, the effect of trip adjustment factors on assessing the effects of the proposal and uncertainty regarding the data used in the traffic modelling.
- 4.15 The matters above highlight the transportation challenges associated with providing for the proposed scale of development in this location. Mr Swears

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<sup>35</sup> Mr Mayhew's EIC, paragraphs 7.2 - 7.10.

<sup>36</sup> Policy 6.1 requires coordination of the use and development of the built environment which recognises and addresses cumulative effects, based on sufficient information to allow assessment of long term effects, and has regard to existing built environment.



considers that the planning provisions should provide for the reassessment of the appropriate capacity improvements at the interchange as a result of the proposal. As noted by Mr Mayhew, rule RD6 for Industrial activities requires an updated ITA to be provided for all developments to 'confirm the staging and timing of transport infrastructure upgrades and recommends any necessary mitigation measures'. However, it is not clear whether this can result in staging being brought forward if traffic volumes are substantially different to those modelled in the ITA.<sup>37</sup> An updated ITA is not required for residential subdivisions.

## 5 Statutory framework

### **Sections 74(1) and 75 RMA**

5.1 The Council **must** prepare and change its district plan **in accordance with** the matters listed in 74(1). Section 75 sets out the requirements for the contents of district plans. The statutory framework for considering district plans and plan changes was set out in *Colonial Vineyards Limited v Marlborough District Council*.<sup>38</sup> Each of the relevant matters is addressed below.

#### *Functions under section 31 (section 74(1)(a))*

5.2 District plan provisions **must** be designed to **accord with** and **assist the** local authority to carry out its functions under section 31.

5.3 Section 31(a) requires the Council to establish objectives, policies and methods to achieve "integrated management" of the effects of the use, development and protection of land. In *Kennedys Bush Developments Limited v Christchurch City Council*,<sup>39</sup> the High Court found that the proposed rezoning would almost inevitably mean that sooner or later there would be an application for a resource consent or for a plan change for other rezoning of land and that this 'domino effect' was sufficiently probable to qualify as a cumulative effect.<sup>40</sup>

5.4 More recently in *Auckland Council v Cabra Rural Developments Limited*,<sup>41</sup> the High Court held that the Environment Court was required to consider cumulative effects in the context of appeals in relation to the subdivision provisions in the Auckland Unitary Plan (and in particular in relation to a cap in the number of lots designed to address the cumulative effects of further subdivision). The High Court also referred to the Environment Court's decision in ***Golden Bay Marine***

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<sup>37</sup> Mr Mayhew's EIC, paragraph 16.2.

<sup>38</sup> [2014] NZEnvC 55.

<sup>39</sup> CIV-2004-485-1189.

<sup>40</sup> *Ibid* at [18].

<sup>41</sup> *Auckland Council v Cabra Rural Developments Limited* [2019] HNZHC 1892 at [134].

***Farmers v Tasman District Council***<sup>42</sup> where the Court appeared to accept that cumulative effects need to be addressed at the plan stage:

*[425] ... It is submitted the Dye decision makes it clear that the opportunity to address such matters [whether the cumulative effects of a proposal are contrary to the objectives and policies of the plan] at the resource consent stage is limited. They need to be addressed at the plan stage. As the TDC submit, if whole block applications are filed at once and a large number of them are unable to be developed immediately, it becomes difficult to identify what adverse cumulative effects might be.*

5.5 Therefore, it is submitted that it is necessary to consider the cumulative effects of other potential rezoning around the Ohinewai proposal site. This approach is supported by policy 6.1 of the WRPS which emphasises the importance of considering cumulative effects (refer paragraph 4.13 above). As noted by Mr Mayhew, there has been no assessment of a range of growth scenarios in the area to assess potential cumulative effects, particularly in relation to transportation and land use integration.<sup>43</sup> This assessment is even more important in this case when development is proposed outside the settlement pattern required by the WRPS.

5.6 Waikato 2070 shows the potential for additional development around Ohinewai outside the OSP. Mr McLauchlan's evidence on behalf of Ohinewai Lands Limited is that there should be a wider structure plan considered than just for the land within the OSP.<sup>44</sup> The effects of the rezoning on the wider Ohinewai area have not been considered.

5.7 Section 31(aa) is also relevant to the Ohinewai provisions and provides that the Council has the following functions:

*The establishment of objectives and policies to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district.*

5.8 Mr Keenan's evidence is that there is sufficient residential capacity in the Waikato District in the short and medium term and ample capacity in the long term<sup>45</sup> and Mr Fairgray agrees with this assessment. Therefore, further residential zoned land is not necessary to enable the Council to discharge its functions under

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<sup>42</sup> *Golden Bay Marine Farmers v Tasman District Council* EnvC Wellington, W19/2003, 27 March 2003.

<sup>43</sup> Mr Mayhew's EIC, paragraph 7.7.

<sup>44</sup> Mr McLauchlan's EIC, paragraph 28.

<sup>45</sup> Mr Keenan's EIC, paragraph 9.2.

section 31 as there is sufficient residential land development capacity to meet expected demand.

*Relevant NPS (section 75(3))*

- 5.9 District plan provisions **must give effect to** any national policy statement. The new NPS-UD is now in force and is relevant to urban development proposals.
- 5.10 The planners have differing views on whether the term “urban environment” in the NPS-UD covers the Ohinewai proposal. Mr Mayhew considers that it is not covered because:
- a The physical separation between Huntly and Ohinewai means that the land in between is not ‘predominantly urban in character’;<sup>46</sup> and
  - b The combined Huntly and Ohinewai area does not form part of a labour market of more than 10,000 people.<sup>47</sup>
- 5.11 Mr Olliver’s argument is that “together, [Ohinewai and Huntly] will be predominantly urban in character”.<sup>48</sup> He says that Ambury’s rezoning submission indicates that Ohinewai is “intended to be” urban. Mr Mayhew disagrees with this approach. While it may be Ambury’s *desire* for the land to be developed, the development is out of sequence development under the RPS<sup>49</sup> and is only part way through the process to determine if the rezoning request should be granted. Mr Olliver also argues that the gap between Ohinewai and Huntly of 2.5km is “not significant” in the context of Huntly extending along the Waikato River for 8km.<sup>50</sup>
- 5.12 Ms Trenouth says that the NPS-UD specifically identifies Waikato District as comprising part of the Hamilton urban environment, which is identified as a Tier 1 urban environment.<sup>51</sup> Mr Mayhew disagrees and considers that the logical interpretation is that the classification in the NPS-UD relates to the Hamilton urban area, which the Waikato District abuts, and this does not logically translate to all townships within the Waikato and Waipa Districts being identified as ‘urban environments’ under the NPS-UD.<sup>52</sup>

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<sup>46</sup> Mr Mayhew’s EIC, paragraph 8.3.

<sup>47</sup> Mr Mayhew’s EIC, paragraph 8.3.

<sup>48</sup> Mr Olliver’s rebuttal, paragraph 3.4.

<sup>49</sup> Mr Mayhew’s EIC, paragraph 5.7 and 11.126-127.

<sup>50</sup> Mr Olliver’s rebuttal, paragraph 3.4.

<sup>51</sup> Revised s42A report, paragraph 119.

<sup>52</sup> Mr Mayhew’s summary statement, paragraph 5.3.

- 5.13 As Mr Mayhew points out,<sup>53</sup> the correct interpretation of ‘urban environment’ is somewhat moot in any event because the proposed rezoning is not consistent with the NPS-UD, as it:
- a Does not give effect to the objectives of the NPS-UD, particularly in relation to medium and long-term strategic planning and supporting reductions in greenhouse gas emissions; and
  - b Is out of sequence development that will not contribute to all, and in fact detracts from some of, the minimum requirements for a well-functioning urban environment.
- 5.14 Ms Trenouth agrees with Mr Mayhew’s conclusions in this regard.<sup>54</sup>
- WRPS (section 75(3)(c))*
- 5.15 When preparing its district plan, the Council **must give effect to** the WRPS. As noted by Mr Mayhew, the WRPS is “an extensive document,” but usefully the witness conferencing process narrowed the provisions of most relevance and the ultimate focus.
- 5.16 Mr Mayhew sets out a comprehensive assessment of the objectives and policies in the WRPS. He concludes that in the round the proposal does not give effect to key objectives and policies.<sup>55</sup> He highlights objective 3.12 which Mr Olliver describes as a “fundamental objective for the OPS”.<sup>56</sup> The requirements in objective 3.12 to **integrate** land use and infrastructure planning to ensure the safe, efficient and **effective** operation of infrastructure corridors is not compromised and to recognise and **protect** the value and long term benefits of regionally significant infrastructure are particularly important.
- 5.17 The WRPS and Future Proof do not anticipate development at Ohinewai and indicate a strong preference for growth within and adjacent to existing urban areas.<sup>57</sup> Policy 6.14 and Method 6.14.3 require alternative land release proposals to be consistent with the Future Proof Guiding Principles and the Development Principles in section 6A of the WRPS. Those criteria are not satisfied, as outlined by Mr Mayhew in his evidence.<sup>58</sup>

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<sup>53</sup> Mr Mayhew’s EIC, section 8 and summary statement, paragraph 5.4.

<sup>54</sup> Revised s42A report, paragraph 128.

<sup>55</sup> Mr Mayhew’s EIC, paragraph 11.1.

<sup>56</sup> Mr Olliver’s EIC, paragraph 7.17.

<sup>57</sup> Mr Mayhew’s EIC, paragraph 11.7.

<sup>58</sup> Mr Mayhew’s EIC, paragraph 11.127.

*Any relevant management plans and strategies under any other Acts (section 74(2)(b))*

- 5.18 In preparing its district plan, the Council is required to **have regard to** any relevant management plans and strategies prepared under other Acts. Mr Olliver argues that Waikato 2070 should be accorded “significant weight”.<sup>59</sup> Mr Mayhew disagrees noting that the Strategy is not a product of an RMA statutory process but rather a Special Consultative Procedure under the Local Government Act 2002. This process saw the residential component at Ohinewai included at the decisions stage with no opportunity for submissions.
- 5.19 Mr Olliver acknowledges that more weight should be placed on Future Proof, parts of which are embedded in the WRPS which the Council is required to “give effect to”.<sup>60</sup> The fact that Waikato 2070 identifies Ohinewai as a potential location for development is something that Council should “have regard to” but does not absolve the Council of the requirement to assess the proposal in accordance with the alternative land release criteria under the WRPS or provide a basis to read down the WRPS provisions.

*Section 32 test for objectives (section 74(1) and 32(3)(a))*

- 5.20 Each objective is required to be evaluated to the extent to which it is the most appropriate way to achieve the purpose of the Act. Ambury seeks the inclusion of a new objective in Chapter 4: Urban Environment as follows:<sup>61</sup>

*Development at Ohinewai is concentrated in Ohinewai East, providing a strategically significant area for industrial growth with supporting commercial and residential components.*

- 5.21 There is no assessment in the s32AA report as to whether this objective is the most appropriate way to achieve the purpose of the Act. The proposal simply assumes that development will occur at Ohinewai (presumably because this is where Sleepyhead has purchased its development site). The only alternatives considered in the s32AA report relate to the planning mechanisms to develop the land for this intended purpose.<sup>62</sup> This approach does not satisfy the requirements of s32, particularly where an entirely new objective is proposed that is inconsistent with the objectives in the WRPS and the PWDP, which clearly

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<sup>59</sup> Mr Olliver, EIC, paragraph 9.6.

<sup>60</sup> Mr Olliver's EIC, paragraphs 2.22 and 9.6.

<sup>61</sup> New objective 4.1.19.

<sup>62</sup> Section 7.2 of the s32AA report.

require development in accordance with the settlement pattern in Future Proof. As a result, a thorough assessment of alternatives is required.

5.22 In *King Salmon*, the Supreme Court stated that:<sup>63</sup>

*[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.*

5.23 The Court noted that whether an alternatives assessment is necessary will depend on the nature and circumstances of the site specific circumstances of the site specific plan change application<sup>64</sup> and the reasons advanced in support of it.<sup>65</sup> In this case Ambury is arguing that:

- a There are no other suitable alternative locations that would accommodate industrial or residential growth; and
- b Although the proposal is not anticipated in the relevant policy documents, it should be able to advance over other identified alternatives that have previously been assessed, included in Future Proof and embedded in the WRPS and the PWDP.

5.24 Therefore, there are compelling reasons why a thorough assessment of alternative sites should be undertaken in this case. As Mr Mayhew notes, there is no evidence that alternative opportunities for urban intensification and redevelopment have been considered (particularly of the residential component)

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<sup>63</sup> *King Salmon* at [168].

<sup>64</sup> *King Salmon* at [170].

<sup>65</sup> *King Salmon* at [173].

that are closer to schools, shops and social and other services and that avoid the use of the Expressway for short trips.<sup>66</sup>

*The section 32 test for policies and methods (section 75(1)(b))*

- 5.25 Consideration is required as to whether:
- a The policies are to implement the objectives;
  - b Each proposed policy or method is to be examined having regard to its efficiency and effectiveness as to whether it is the more appropriate method for achieving the objectives of the district plan taking into account the following matters which are relevant to the proposal:
    - i The benefits and costs of the proposed policies and methods;
    - ii The risk of not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods.
- 5.26 The proposed new objective for Ohinewai outlined above directs that development **will** occur in Ohinewai, leaving no scope for any kind of assessment of the policies and methods which seek to directly implement that objective against anything but a “do nothing” scenario.

*Relevance of Part 2 RMA*

- 5.27 The overview opening submissions for Waikato District Council set out the role that Part 2 plays in plan changes and plan reviews as articulated by the Supreme Court in the *King Salmon*<sup>67</sup> decision:
- a Absent invalidity, incomplete coverage or uncertainty of meaning in the relevant higher order statutory planning documents there is no need to refer back to Part 2 of the RMA when determining a plan change; and
  - b If there is conflict or tension in the higher order planning document between provisions that pull in opposite and competing directions, the provisions expressed in more directive terms carry more weight than those expressed in less directive terms.
- 5.28 The Council’s opening submissions then argue that because the WRPS was prepared well before the *King Salmon* decision, it cannot be said with any

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<sup>66</sup> May Mayhew’s EIC, paragraph 11.98.

<sup>67</sup> *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38.

certainty that it gives substance to Part 2 in all respects and that there is therefore “incomplete coverage”.<sup>68</sup> There is no caselaw to support this approach. The correct approach is to assume that the higher level planning document (in this case the WRPS) gives effect to Part 2, unless there is invalidity, incomplete coverage or uncertainty of meaning. As Mr Olliver notes, “the WRPS and the PDP have generally been prepared in accordance with the matters in Part 2”.<sup>69</sup> It is irrelevant that the WRPS was formulated post the *King Salmon* decision as it was formulated under the RMA and so therefore should be assumed to have properly given substance to Part 2 matters.

5.29 Mr Olliver argues that the WRPS provides incomplete coverage because it does not:

- a Give effect to the NPS-UDC (now superseded by the NPS-UD); and
- b The land settlement pattern in the WRPS is now dated.

5.30 As pointed out by Mr Mayhew:<sup>70</sup>

- a The WRPS comprehensively addresses the issue of urban growth and incorporates the Future Proof settlement pattern and principles which have been recently reviewed and found to be even more relevant than when they were first developed.
- b The WRPS explicitly provides for departures from the Future Proof settlement pattern and criteria by which this should be assessed.

## **6 Witnesses**

6.1 Waka Kotahi has lodged the following evidence in support of its submission:

- a Transportation – Robert Swears;
- b Strategic Transportation Planning – Sarah Loynes; and
- c Planning – Ian Mayhew

6.2 All three experts have also prepared summaries of their evidence to assist the Hearing Panel and are available to answer questions.

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<sup>68</sup> Overview opening legal submissions on behalf of Waikato District Council, paragraphs 62 to 63.

<sup>69</sup> Mr Olliver’s EIC, paragraph 5.32.

<sup>70</sup> Mr Mayhew’s EIC, paragraph 14.3.



## 7 Conclusion

7.1 Ambury is clearly very committed to making the establishment of its new Sleepyhead factory work on its existing landholding in Ohinewai. However, the question is not whether this land is appropriate for the establishment of a new Sleepyhead factory, but rather whether it is an appropriate location for the rezoning of a substantial area of land for industrial, business and residential development.

7.2 As Ms Trenouth notes in the revised s42A report, the proposal:<sup>71</sup>

*... establishes a new urban area that is not adjacent to an existing urban area and does not achieve the integration of land use and transport. There is insufficient justification for establishing a residential community (900 – 1100 houses) at Ohinewai with poor accessibility to services and amenities. The proposal would be heavily car dependent with inadequate alternative transport modes and does not achieve a compact urban form.*

7.3 The WRPS contains very clear directives about where urban growth should occur within the Waikato District. The OSP sits well outside that anticipated settlement pattern and is not consistent with the alternative land release provisions in the WRPS. Critically, from a transportation perspective, local trips to Huntly by private vehicles to access services and retail will undermine the important strategic and economic function of the Waikato Expressway for freight and interregional travel. The effects of local trips on the Expressway are compounded by the fact that there is no mechanism to ensure that any of the dwellings are occupied by Sleepyhead workers.

7.4 As noted above, there has been no assessment of the cumulative effects of rezoning around Ohinewai or alternative sites for this type of industrial and residential development. An entirely new objective has been requested by Ambury which directs that this specific proposal occur at Ohinewai. There is no assessment of this new objective in the s32AA report or Ambury's evidence or any consideration of alternative locations for residential and industrial growth. The new objective is self-fulfilling and leaves a 'do nothing' approach as the only other option in terms of the framing policies and methods that implement that objective.

7.5 Without an assessment of the cumulative effects of the development of land around Ohinewai (including, for example, the OLL land) it is impossible to form an

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<sup>71</sup> Revised s42A report paragraph 200.

opinion on the long term effects of development in this location. It may well be that alternative locations within the Waikato District are much better suited to an industrial and/or residential development, but we do not know because that assessment has not been carried out.

- 7.6 For these reasons, it is submitted that Ambury's submission should be rejected. Without prejudice to that position, if the Hearing Panel is minded to accept the submission, it is respectfully suggested that an interim decision is issued which would allow the parties to work through the issues with the planning provisions outlined in Mr Mayhew's evidence and the revised s42A report.

Dated this 9 day of September 2020

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