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 IN REPLY OF COUNSEL FOR

AMBURY PROPERTIES LIMITED

1. INTRODUCTION

1.1 On 14, 15 and 16 September 2020, the Hearing Panel heard evidence and submissions from Ambury Properties Limited ("APL") and further submitters in respect of APL's submission on the proposed Waikato District Plan ("PWDP") seeking the rezoning of 178ha of land at Ohinewai to accommodate the Ohinewai Structure Plan ("OSP") and to enable the development of the "The Sleepyhead Estate".

1.2 On 16 September 2020, we presented an oral reply in the form of a "highlights package" and were directed to file a full written reply by close of business on 23 September 2020. These submissions in reply / closing comply with that direction.

Issues that have been addressed

1.3 Counsel's perception is that a significant number of issues, particularly relating to effects, were satisfactorily addressed and do not call for further comment. Issues that we see as falling into that category comprise:

(a) *Geotechnical / construction feasibility* – APL's technical witnesses (particularly Mr Speight) addressed these issues, acknowledging that it is a "challenging site from a geotechnical perspective" but that suitable ground improvement methods have been proposed and successfully trialled at the site. The development of the site is therefore feasible using these industry accepted ground improvement techniques to mitigate the principal geotechnical risks of liquefaction and settlement.

(b) *Stormwater and flooding* – APL's witnesses do not see any need to respond to the evidence of Mr Basheer (WRC) or Mr Klee (Fish & Game). All issues arising in this regard have been addressed via expert conferencing and subsequent discussions as noted in Mr Desai's rebuttal.

(c) *Quantity / nature of earthworks* – APL's witnesses consider any issues relating to earthworks have been resolved. No issues were raised as to

the volume of earthworks proposed, nor of the source of fill. With regard to erosion and sediment control, it was confirmed that a four-step methodology representing best practice would be used for the site, using both structural and non-structural measures.

(d) *Noise* – APL's witnesses consider that there are no outstanding issues or points of contention. In particular, the concern raised by Auckland/Waikato Fish and Game relating to reverse sensitivity effects from gamebird shooting on Lake Rotokawau has been resolved with the inclusion of a no-complaints covenant on the residential area, and an acceptable level of amenity has been ensured for residents with a façade control for dwellings facing Lake Rotokawau Reserve. This was confirmed as being "no longer a live issue" by Mr Klee in his evidence at the hearing.

1.4 Those issues are not addressed further in these submissions. However, if there are issues that the Panel would like to receive further material on, we would be happy to oblige.

Scope of reply submissions

1.5 These submissions address the remaining issues arising on a topic-by-topic basis, as follows:

(a) Interpretation of relevant planning instruments – appropriateness of the OSP (Section 2).

(b) Other legal issues (Section 3).

(c) Other planning issues (Section 4).

(d) Economic issues (Section 5).

(e) Infrastructure provision, servicing and funding (Section 6).

(f) Traffic and transportation issues (Section 7).

(g) The residential component (Section 8).

(h) Social impacts (Section 9).

(i) Urban design (Section 10).

(j) Ecological issues (Section 11).

(k) The Ralph Estates further submission (Section 12).

(l) The Sleepyhead Estate (Section 13).

Comment re expert witnesses

1.6 The first issue I addressed in my oral reply submissions on 16 September 2020 was the criticism by counsel for the Waikato Regional Council ("WRC") and New Zealand Transport Agency ("NZTA") that by referring to those agencies as "the Old Guard" we had somehow called into question the impartiality of those agencies' expert witnesses.

1.7 It is abundantly clear from paragraphs 2.8 through to 2.11 of our Opening Submissions that these comments were directed at the outmoded and overly conservative approach that WRC and NZTA have adopted as agencies – not their witnesses. The essence of the criticism is that these agencies, which have

important planning and economic growth roles, could have adopted a much more helpful approach to facilitate the incredible opportunity that the OSP represents in terms of employment and economic opportunities.

1.8 Either way, there was no intention to call into question the impartiality of those agencies' expert witnesses and we apologise for any concern or upset that our comment may have caused.

2. INTERPRETATION OF RELEVANT PLANNING INSTRUMENTS – APPROPRIATENESS OF THE OSP

2.1 The central issue in relation to the proposed rezoning is whether it would "give effect to" the higher order planning instruments, in particular, the NPSUD and WRPS as required by section 75(3) of the RMA. The Supreme Court in *King Salmon* held that "give effect to" is a strong directive which means "implement".[1]

National Policy Statement on Urban Development 2020

2.2 Of fundamental importance to consideration of the OSP is the direction in the NPSUD to enable the growth of well-functioning urban environments.

2.3 The NPSUD replaces the NPSUDC, which was promulgated to ensure that district / city councils, in particular, would adequately plan for urban growth. As the Environment Court has said, the purpose of the NPSUDC was:[2]

> *"…to open doors for and encourage development of land for business and housing, not to close them."*

2.4 The NPSUDC did not, however, contain directive provisions relating to plan responsiveness and agility. In addressing why the NPSUD was needed"[3], the Ministry for the Environment ("MfE") website says:

> *"Some urban areas in New Zealand are growing quickly.[4] To support productive and well-functioning cities, it is important that there are adequate opportunities for land to be developed to meet community, business and housing needs.*
>
> *The 2015 Productivity Commission inquiry into using land for housing recommended that a national policy statement could help address the constraints on development capacity in the resource management system…*
>
> *In September 2017, the Government established the Urban Growth Agenda (UGA). The UGA is a programme that aims to remove barriers to the supply of land and infrastructure and make room for cities to grow up and out. The NPS-UD 2020 contributes to this. It does this by addressing constraints in our planning system to ensure our system enables growth and supports well-functioning urban environments.*
>
> (Emphasis ours.)

[1] *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] 1 NZLR 593 (SC) at [80].
[2] *Bunnings Limited v Queenstown Lakes District Council* [2019] NZEnvC 59, [2019] NZRMA 426 at [39].
[3] https://www.mfe.govt.nz/about-national-policy-statement-urban-development https://www.mfe.govt.nz/about-national-policy-statement-urban-development
[4] This includes Waikato District as a Tier 1 council.

2.5 As a result, Policy 8 of the NPSUD requires local authority decisions to be "responsive" to changes to plans that add significantly to development capacity, even if they are out of sequence or are unanticipated by the relevant planning documents. It states:

> *"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."*
>
> (Emphasis ours.)

2.6 The policy seeks to deliver development that will achieve Objective 1 of the NPSUD which states:

> *"New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future."*
>
> (Emphasis ours.)

2.7 Policy 8 was remedial for a very good reason. It was promulgated to address the tendency for local authorities to adopt precisely the type of outmoded attitude that WRC and NZTA have adopted in relation to this proposed rezoning – to be starkly contrasted with the facilitative and welcoming approach of the WDC. The NPSUD sends a very clear signal from the MfE that councils need to be sufficiently agile to take account of unanticipated opportunities such as Ohinewai.

2.8 All parties now accept that the NPSUD applies to the OSP and needs to be given effect to on the basis that Huntly and Ohinewai together meet the NPSUD's definition of "urban environment".

2.9 It is APL's submission that the rezoning (that will enable implementation of the OSP) will give effect to the NPSUD. We consider the relevance of each of the NPSUD policies and the consistency of the OSP with each relevant[5] policy in turn.

Policy 1 – planning decisions contribute to well-functioning urban environments

2.10 Policy 1 requires planning decisions to "contribute to well-functioning urban environments" - which in our submission the OSP manifestly does.

2.11 During the hearing Mr Mayhew and Ms Trenouth consistently reverted to their position that the OSP would not result in or create a "well-functioning urban environment". In accordance with Dr Mitchell's questioning of witnesses, we

[5] Policy 3 and 4 set out directions for "Tier 1 urban environments" (including Hamilton). Huntly/Ohinewai is not a Tier 1 urban environment so this policy does not apply. Policy 7 concerns a requirement for local authorities to set "housing bottom lines" and is not relevant.

submit that this issue needs to be considered "in the broad" and adopting an interpretation that seeks to achieve the purpose of the NPSUD.

2.12 The first, and fundamental, point to note in that regard, is that the NPSUD does not require the planning decision in question to 'create' a well-functioning urban environment – the planning decision needs to "contribute" to such an environment.

2.13 The question that was put during the hearing: Is Huntly a well-functioning urban environment?

2.14 It must be said that the answer to that question is an emphatic: No.

2.15 Mr Olliver's evidence on this issue is as follows:[6]

> *"3.11 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.*
>
> *3.12 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.*
>
> *3.13 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.*
>
> *3.14 I accept that Huntly will provide a majority of wider social and community services, but accessibility to and from Huntly will also be good, with provision of an off-road cycle connection and public transport. APL proposes to fund public transport initially and its ongoing operation is the subject of an MOU with Waikato District Council ("WDC").*
>
> *3.15 In my opinion, there is a low risk of Ohinewai becoming a dormitory town as it is a combined residential / employment area. A dormitory town is one where there is insufficient employment so residents have to travel to work. Because they travel to work they tend to connect socially with the location of their workplace rather than their home; Te Kauwhata is an example. That is not to say some people will not choose to live at Ohinewai and travel somewhere else to work, but the development is*

[6] J Olliver, statement of rebuttal evidence dated 24 August 2020, at paragraphs 3.11 – 4.18.

planned to enable and encourage the opposite approach.

3.16 For the above reasons, I do not see Ohinewai as significantly increasing greenhouse gas emissions. The home-work trip will be short and the OSP will be self-sufficient in terms of recreational open space and convenience shopping. It is only for trips for other services that travel to Huntly will be needed.

…

3.18 The OSP is unanticipated and it will add significantly to development capacity as it will supply 67ha of industrial land and 52ha of residential land. It will contribute to a well-functioning urban environment in accordance with my assessment of Policy 1. Policy 8 is particularly apposite as it clearly directs that adding capacity is more important (subject to some provisos) than inflexible adherence to planning documents."

Policy 2 – provision of development capacity

2.16 Policy 2 requires Tier 1, 2 and 3 local authorities to provide at least sufficient development capacity to meet expected demand for housing.

2.17 The OSP provides housing supply at lower price points. Mr Heath explained that there is a shortfall in development capacity at these lower price points over the short and long term.[7] The OSP will also generate demand for housing via the massive economic benefit provided by the jobs that it will bring to the district.

Policy 5 – height and density

2.18 Policy 5 provides that district plans applying to Tier 3 urban environments (of which Huntly/Ohinewai is one):

"…enable heights and density commensurate with the greater of":

(a) The level of accessibility by existing or planned active or public transport; and

(b) Relative demand for housing and business use in that location..."

2.19 In terms of this policy, it is submitted that the OSP has been carefully designed to provide appropriate heights and housing density commensurate with both the planned availability of public transport and active transport and demand for housing and business use.

Policy 6 – matters to be had "particular regard" to

2.20 Policy 6 requires that decision makers "have particular regard" to a range of factors.

2.21 In terms of Policies 6(a) and (b), the planned built form anticipated by the relevant RMA documents is a matter that you are required to "have particular regard" to.

[7] T Heath, statement of rebuttal evidence dated 24 August 2020, at Section 2.

2.22 We submit that it does not follow, as Ms Trenouth appeared to suggest at the hearing, that development outside of that planned built form contemplated by the WRPS, is not consistent with the NPSUD.

2.23 The NPSUD and the WRPS both provide for unanticipated development. In terms of the OSP, the evidence of APL's witnesses was that there is no planned opportunity that APL can take advantage of.

2.24 Further, the requirement to "have particular regard" to planned built form must be read alongside the other clauses in Policy 6, which require that particular regard to be had to:

(a) The benefits of urban development consistent with well-functioning urban environments[8] - as set out above, the contribution that the OSP would make to Huntly's prospects for becoming a "well-functioning urban environment" is substantial.

(b) The contribution to development capacity provided[9] - as set out at above, the OSP would contribute to meeting a shortfall in development capacity.

(c) The likely current and future effects of climate change[10] - issues relating to natural hazards, and in particular flooding have been comprehensively addressed to the satisfaction of all parties.

Policy 8 – responsiveness to opportunity

2.25 Policy 8 requires that local authority decisions affecting urban "environments" (plural) are "responsive" to changes to RMA plans that:

(a) Would add significantly to development capacity; and

(b) Contribute to well-functioning urban environments.

2.26 In terms of the first criterion, it is difficult to see how a proposal of the scale of the OSP could not "add significantly to development capacity". Indeed, Ms Trenouth's rebuttal report confirms that it would provide for significant development capacity.[11] Mr Mayhew also signified his agreement with this view; that the OSP does provide "significant development capacity" in terms of the NPSUD.

2.27 The question of whether the OSP would "contribute to a well-functioning urban environment" is addressed above.

2.28 In summary, it is submitted that the OSP would:

(a) Add significantly to development capacity.

(b) Give Huntly a much-needed economic boost, provide jobs and housing choice and thus "contribute" to transforming Huntly into a well-functioning urban environment. (And if that does not eventuate, what was there to lose?[12])

[8] Policy 6(c) of the NPSUD.
[9] Policy 6(d) of the NPSUD.
[10] Policy 6(e) of the NPSUD.
[11] Section 42A rebuttal report, paragraph 202.
[12] APL applauds Commissioner Cooney's 'Chicken Little' analogy.

2.29 In our submission, this policy is given effect by Implementation Method 3.8 which requires decision makers to "have particular regard" to the development capacity provided by the OSP. On that basis, it is submitted that the development capacity provided by the OSP is a matter to which you must have particular regard.

Policy 9 – take account of the principles of the Treaty of Waitangi

2.30 Policy 9 requires that iwi and hapu are involved in the preparation of RMA planning documents and that their values and aspirations are taken into account. In that regard, Mr Tupuhi's evidence makes abundantly clear the value that has been placed on iwi involvement in the development of the OSP, such that this policy is more than met.

2.31 Not only has the engagement been valuable, but the opportunity for capacity building is very significant. Mr Tupuhi said that "the people are as scarred as the land." They need opportunity.

Policy 10 – local authority and developer collaboration

2.32 Policy 10 directs local authorities to work together in the implementation of the NPSUD and to "engage with the development sector to identify significant opportunities for urban development." In the present case, it is unfortunate that WDC and WRC have been unable to work cooperatively, particularly given WDC's strong support and helpful attitude to the proposal.

2.33 Taken in the round, it is submitted that approving the OSP would enable the people and communities of Ohinewai, Huntly and further afield to provide for their social, economic, and cultural wellbeing in terms of the primary objective of the NPSUD, reflected in Objective 1.

2.34 As we said in Opening, the OSP epitomises the very kind of opportunity that the NPSUD was aimed at. If not the OSP, then what?

The three approaches available to the Panel

2.35 As submitted during our oral closing, APL's position is that, on a correct interpretation of the relevant planning instruments and related relevant documents, the proposed rezoning can, on its merits, be approved. In our submission, the Panel has three approaches available to it.

Approach #1 – WRPS covers the field

2.36 APL has no issue whatsoever with Future Proof or the RPS and stands by its submission that, properly applied, the WRPS is sufficiently enabling and "responsive" in the manner required by the NPSUD and enables this rezoning to proceed in accordance with the Alternative Land Release criteria in Policies 6.14(c) and (g) of the WRPS and the development principles in section 6A of that document.

2.37 Section 75(3) of the RMA states that a district plan must "give effect to" a regional policy statement. As noted above, the Supreme Court in *King Salmon* held that the term "give effect to" means "implement". This requirement is a strong directive but it:[13]

> *"…will be affected by what it relates to, that is, what must be given effect to. A requirement to give effect*

[13] *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] 1 NZLR 593 (SC) at [80].

> *to a policy which is framed in a specific and unqualified way may, in a practical sense, be more prescriptive than a requirement to give effect to a policy which is worded at a higher level of abstraction."*

2.38 While some objectives and policies are framed in a way that allows limited flexibility (that is, environmental bottom lines), others provide scope for choice. In that regard, the Supreme Court said:

> *"[91] We acknowledge that the scheme of the RMA does give subordinate decision-makers considerable flexibility and scope for choice..."*

2.39 Accordingly, as set out in opening legal submissions,[14] it is apparent from the *King Salmon* decision (and subsequent decisions[15]) that the manner in which a policy or rule is expressed is important. Policies expressed in directive terms will carry greater weight than those which are less directive.[16]

2.40 This is relevant to Commissioner Cooney's query in relation to the correct approach to assessing a proposal against a planning document where the proposal does not achieve an outcome required by the planning document, but in all other respects complies.

2.41 The key factor for consideration is the degree to which "flexibility and scope for choice" is provided by the relevant provisions. However, in the event that the planning document contains equally directive policies which pull in different directions, it may be necessary to conclude that there is "invalidity, incomplete coverage or uncertainty of meaning" in the RPS such that recourse to the higher order planning documents (and ultimately, Part 2 of the RMA) is required.

2.42 In terms of the most plausible (and purposive) interpretation of the WRPS (in light of APL's submission that, in 2020 the NPSUD is relevant in interpreting the WRPS), we rely on the evidence of Mr Olliver who, of all the planning witnesses, has the greatest depth of experience in the application of these provisions in the Waikato Region.

2.43 Mr Olliver says in his evidence:[17]

> *"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 this[18]. 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 depart from the land allocations. This flexibility is essential to ensure that the strategic planning*

[14] Opening legal submissions of counsel for Ambury Properties Limited, at paragraph 8.16.
[15] 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.
[16] *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] 1 NZLR 593 (SC) at [129].
[17] J Olliver, statement of evidence dated 9 July 2020, at paragraph 7.50.
[18] Planning Joint Witness Statement, at paragraph 9.19.

> *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."*

2.44 The Future Proof Strategy itself says:[19]

> *"Responding to Change*
>
> *Long-term growth management is susceptible to changing circumstances and Future Proof must be able to respond to change. This could include demographic change, a change in growth rates, shifts in the market, technological changes, the impact of climate change or natural disasters, fluctuating economic cycles and global economic instability. The challenge for the sub-region is to anticipate significant change as much as possible and maintain an approach that allows Future Proof to adapt and respond."*
>
> (Our emphasis.)

2.45 Consistent with that, the Future Proof summary statement says:[20]

> *"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."*
>
> (Our emphasis.)

2.46 In considering the Section 6A development principles, it is important to bear in mind that Section 6A of the WRPS lays down no less than 17 principles that "new development should" achieve. Some are relevant; some are not; some will be more relevant than others – they need to be assessed 'in the broad' with a view to assessing whether, viewed overall, the achievement of the principles is better served by allowing the development than declining it.

2.47 Mr Olliver has forensically assessed the OSP against the relevant provisions of the RPS including in particular the following provisions relating to land use patterns:

(a) Objective 3.12 Built Environment;

(b) Policy 6.1 Planned and co-ordinated infrastructure;

(c) Policy 6.3 Co-ordinating growth and infrastructure;

(d) Policy 6.14 Adopting Future Proof land use pattern;

2.48 The latter provision creates flexibility for land use to depart from the Future Proof pattern. Mr Olliver says in that regard:[21]

> *"The WRPS clearly envisages situations in which the land areas contained in the relevant tables can be varied by way*

[19] https://futureproof.org.nz/assets/FutureProof/Future-Proof-Strategy-Nov-2017-Summary-Final-211117.pdf
[20] https://www.futureproof.org.nz/assets/FutureProof/Future-Proof-Strategy-Nov-2017-Summary-Final-211117.pdf
[21] J Olliver, statement of evidence dated 9 July 2020, at paragraph 7.50.

of alternative land release or that new industrial development could locate outside the strategic industrial nodes. The Planning JWS confirmed this. The alternative land release criteria in Method 6.14.3 are specifically designed to address this issue and form a key evaluation tool for the OSP."

2.49 Implementation Method 6.14.3 provides for alternative residential or industrial land releases provided that certain criteria are met:

> *"District plans and structure plans can only consider an alternative residential or industrial land release, or an alternative timing of that land release, than that indicated in Tables 6-1 and 6-2 in section 6D provided that:*
>
> *a) To do so will maintain or enhance the safe and efficient function of existing or planned infrastructure, when compared to the release provided for within Tables 6-1 and 6-2;*
>
> *b) The total allocation identified in Table 6-2 for any one strategic industrial node should generally not be exceeded, or an alternative timing of industrial land release allowed, unless justified through robust and comprehensive evidence (including but not limited to, planning, economic and infrastructural/servicing evidence;*
>
> *c) Sufficient zoned and serviced land within the greenfield area or industrial node is available or could be made available in a timely and affordable manner, and making the land available will maintain the benefits of regionally significant committed infrastructure investments made to support other greenfield areas or industrial nodes.*
>
> *d) The effects of the change are consistent with the development principles set out in Section 6A."*

2.50 Section 10.2 of the December 2019 AEE and Mr Olliver's evidence provide a forensic assessment of the OSP against the provisions of the WRPS, including against the Development Principles in Section 6A, concluding that the proposal "demonstrate(s) a high level of consistency with them." Mr Olliver's evidence in chief said:[22]

> *"The alternative release criteria are addressed in detail in section 10.2 of the 2019 AEE, including an assessment against the Development Principles in Section 6A of the RPS, and demonstrate a high level of consistency with them. It is not surprising that the OSP does not fit within the industrial land allocations in the WRPS (and Future Proof) given the demand has arisen as a result of relocation of TCG out of Auckland, rather than normal subregional land uptake. The industrial demand component of 68ha (including 30ha for Sleepyhead and the rail siding) far exceeds the 16ha allocated in the RPS for Huntly for the period up to 2041.*
>
> *Given that the purpose of Policy 6.14 and Implementation Method 6.14.3 is to provide flexibility it is not surprising that the wording of the provisions are more enabling than other policies and methods. In that respect the words 'should predominantly' rather than 'shall' are used in 6.14 c) and 'consistent with' is used in 6.14 g) and 6.14.3 d). Section 6A*

[22] J Olliver, statement of evidence dated 9 July 2020, at paragraphs 7.53-7.54.

> *the Development Principles, also says 'New development should …'"*

2.51 The proper interpretation of the term "should" was addressed by the High Court in *Save Chamberlain Park Inc v Auckland Council*[23] which, referencing a decision of the Supreme Court of South Australia,[24] said:

> *"[68] Namely, the use of the word "should" in contrast to "must" conveys a discretionary, rather than a mandatory, fetter on the exercise of power. King CJ, in the Supreme Court of South Australia, had the following to say about the use of the word "should" in a comparable legislative setting:*
>
> *'I am unable to agree that the use of the word "should" indicates an intention that the principle be mandatory. The word "shall" is prima facie a word of mandatory import. The same can be said of the word "must" which is now fashionable with Parliamentary counsel as a synonym for "shall". I think that the use of "should" rather than "shall" or "must" indicates that the sense is not mandatory. The standards specified in the principle are the goal to be aimed at and the planning authority is to be guided by those standards in considering an application for consent.'"*

2.52 In terms of the requirement in 6.14.3(d) to be "consistent with" the development principles, Mr Olliver says:[25]

> *"In my opinion, the term 'consistent with' means 'compatible with' or 'the same nature as'. It must not be contrary to the principles, but it does not need to implement them word for word or in a formalistic manner."*

2.53 This analysis reflects that reached by the Environment Court in *Manukau City Council v Mangere Lawn Cemetery Trustees*. In determining whether a crematorium was a "consistent use" for the cemetery in issue the High Court said:[26]

> *"I do not see any great difficulty surrounding the definitions of "consistent" or "inconsistent". The Concise Oxford Dictionary defines "consistent" as "compatible, not contradictory".*

2.54 Further assistance is provided by the Supreme Court in *King Salmon*, in which the Court contrasted the term "give effect to" (meaning "implement") with the previous requirement that planning instruments be "not inconsistent with" superior planning instruments. The Supreme Court considered the direction to "give effect to" to be more directive than a requirement to be "not inconsistent with."[27]

2.55 Mr Olliver's conclusion as to the appropriate interpretation of Policy 6.14.3 is that:[28]

[23] [2018] NZHC 1462 at [68].
[24] *South Australian Housing Trust v Development Assessment Commission* (1994) 63 SASR 35 at 38.
[25] J Olliver, statement of evidence dated 9 July 2020, at paragraph 7.55.
[26] (1991) 15 NZTPA 58 page 8.
[27] At [80].
[28] J Olliver, statement of evidence dated 9 July 2020, at paragraph 7.56.

> *"When [the term consistent with] is interpreted alongside the word 'should', I conclude that 6.14.3 means that, viewed 'in the round', the OSP should be compatible with the Development Principles when they are read as a whole. While analysis of each principle is necessary, and particular attention should be paid to the principles that are most relevant in the circumstances, it is not necessary for the development to be consistent with every one of the twenty principles."*

2.56 It is submitted that, having regard to the proper interpretation of these terms and Mr Olliver's careful analysis, it is appropriate for the Panel to accept Mr Olliver's evidence and to make a finding that the relevant objectives and policies, including the Alternative Land Release Criteria and the Section 6A development principles are met by the OSP.

Approach #2 – need to refer back to the NPSUD

2.57 APL's submission is that if the Alternative Land Release criteria and 6A Development Principles do not enable this rezoning to be approved notwithstanding the direction in the NPSUD that development in the nature of the OSP should be enabled, it demonstrates that the WRPS is not sufficiently agile to 'cover the field', in a *King Salmon* sense, and does not "give effect to" the NPSUD – at that point the NPSUD, as the superior planning instrument, needs to take centre stage.

2.58 For the reasons set out above, it is submitted that the OSP gives effect to the NPSUD and that, accordingly, it is appropriate to approve the relief sought by APL.

Approach #3 – revert to Part 2 of the RMA

2.59 The third approach available to the Panel is to revert to Part 2 of the RMA.

2.60 That might arise if the Panel considered, for example, that it is not possible to reconcile Policy 6 which requires "particular regard" to be had to the planned urban form anticipated by the RMA planning documents and the direction in Policy 8 to be responsive to unanticipated development capacity, such that there is uncertainty in terms of how the NPSUD should be interpreted.

2.61 In terms of the direction in *King Salmon* and subsequent case law, a "*thoroughgoing attempt to find a way to reconcile*" provisions that are in tension is required.[29] In that regard, it is submitted that reconciliation is possible in light of the analysis set out in paragraphs 2.2-2.34 above.

2.62 Further, Objective 1 of the NPSUD is essentially a mirror image of the first part of section 5(2) of the RMA in any event and should be given significant weight given the issues at stake and the opportunity presented.

[29] *Royal Forest and Bird Protection Society of New Zealand Inc v Bay of Plenty Regional Council* [2017] NZHC 3080.

Consideration of Part 2 factors

2.63 To the extent that Part 2 is considered relevant, we submit that the only provisions that might be considered relevant (other than section 5) are as follows.

Sections 6(e), 7(a) and 8 – dealing with Maori cultural and spiritual considerations, kaitiakitanga and the principles of the Treaty

2.64 We have heard that the work undertaken by APL in relation to consultation, culminating in the formation of the Tangata Whenua Governance Group ("TWGG") is the epitome of good communication and delivery of Treaty principles.

2.65 Mr Tupuhi, Chairman of the TWGG, gave passionate evidence in support of the rezoning, noting that there is "housing is a huge attraction" – "there is a homelessness crisis and a housing affordability crisis … the people are as scarred as the land." He said, "come and see for yourselves before you write your report."

2.66 We submit that his evidence deserves to be given a great deal of weight, as does the existence of the TWGG itself.

2.67 We heard from Mr Donald that 'Waikato Tainui Inc' has narrowed its position to one that is really a concern about the best approach to management of effects on the Waikato River which no one would shrink from. The extent to which this may be a cause for concern is addressed elsewhere.

Section 6(h) - the management of risk from natural hazards

2.68 Mr Basheer confirmed on behalf of WRC that flooding issues have all been addressed to the satisfaction of the Council. In terms of liquefaction risk, Mr Speight's evidence confirmed that though some parts of the site are challenging, those challenges can be readily managed.

Sections 7(b) and (f) - maintenance and enhancement of amenity values and quality of the environment

2.69 There is a direct difference of expert opinion in relation to the level of amenity and what those environmental effects might be particularly in relation to social impacts. I reiterate that we prefer the evidence of our own witnesses.

Other relevant strategies and documents - Future Proof 2017 and Waikato 2070

2.70 Section 74(2) of the RMA states that:

> *"when preparing or changing a district plan, a territorial authority shall have regard to –*
>
> *(a)…*
>
> *(b) any-*
>
> *management plans and strategies prepared under other Acts;"*

2.71 Under section 74(2)(b)(i) of the Act, when preparing a district plan a decision maker is required to have regard to any management plans and strategies prepared under other Acts. The relevant case law is to the effect that any

document prepared under another Act which is relevant to the resource management issues at hand may be considered.[30]

2.72 In the present case, we submit that it is appropriate for the Panel also to have regard to the following documents prepared under the Local Government Act 2002 ("LGA"):

(a) The Future Proof Strategy – in particular, the statement about agility in the Future Proof summary statement set out above.

(b) Waikato 2070 – Waikato District Council Growth & Economic Development Strategy.

2.73 This raises the issue of the weight that should be accorded to these documents and how the requirement to "have regard to" them should be approached.

2.74 The term "have regard to" was considered by the High Court in *Unison Networks Ltd v Hastings District Council as follows:*[31]

> *[70] … The phrase is not synonymous with "shall take into account"; all or any of the appropriate matters may be rejected or given such weight as the case suggests is suitable: R v CD [1976] 1 NZLR 436 (SC). Nor is the phrase synonymous with "give effect to", so that such matters for consideration may be rejected or accepted only in part, provided they are not rebuffed at outset by a closed mind so as to make the statutory process some idle exercise: New Zealand Fishing Industry Association Inc v Minister of Agriculture and Fisheries [1988] 1 NZLR 544 (CA). The matters must be given genuine attention and thought, and such weight as is considered to be appropriate but the decision maker is entitled to conclude that the matter is not of sufficient significance either alone or together with other matters to outweigh other contrary considerations which it must take into account in accordance with its statutory function: New Zealand Co-operative Dairy Co Ltd v Commerce Commission [1992] 1 NZLR 601 (HC) …"*
>
> (Our emphasis.)

2.75 The weight to be attributed to such documents is therefore a matter for the discretion of the decision maker, depending on all of the facts. Factors which may be relevant to the exercise of discretion include:

(a) The content of the document and the analysis that has informed it;[32]

(b) The consultation process that was undertaken in in the preparation of the document;[33]

(c) The date that the document was prepared.[34]

[30] *Kiwi Property Holdings Ltd v Christchurch CC* [2012] NZEnvC 92.
[31] [2011] NZRMA 394.
[32] *AMP Society v Waitemata Harbour Maritime Planning Authority* [1982] 2 NZLR 448 at [12]; *Mapara Valley Preservation Society Inc v Taupo District Council* EnvC Auckland A83/07, 1 October 2007, at [49].
[33] *Longview Estuary Estate Limited v Whangarei District Council* [2012] NZEnvC 172 at [112]; *Mapara Valley Preservation Society Inc v Taupo District Council* EnvC Auckland A83/07, 1 October 2007, at [49].
[34] *South Epsom Planning Group Inc v Auckland Council* [2016] NZEnvC 140 at [44].

Future Proof

2.76 Future Proof was held up as a highly relevant document when it was published in 2009, before it became enshrined in the WRPS which was notified in 2010.

2.77 It is highly relevant that the Future Proof update in 2017 specifically recognised that "the Future Proof settlement pattern needs to be sufficiently agile to respond to change" and that there needs to be "the ability to capitalise on new opportunities that have potential to contribute significant economic, social or cultural benefits to our communities."

Waikato 2070

2.78 Waikato 2070 is an LGA growth document which was developed using the special consultative procedure in section 83 of the LGA and adopted by the WDC on 19 May 2020 following nine weeks of consultation and the hearing of evidence and submissions by WDC councillors. For the first time, Waikato 2070 has combined WDC's District Growth Strategy with its Economic Growth Strategy.

2.79 The significance of Waikato 2070 is readily apparent. The introduction to the strategy states: [35]

> *"Waikato 2070 is unique, it takes an integrated approach to future growth in the Waikato district, combining economic and community development with future land use and infrastructure planning. This document will inform rural and urban communities, businesses, investors, iwi, governments, neighbouring local authorities and the Council itself, to help deliver and achieve the communities' vision. Whilst enabling growth, Waikato 2070 aims to do this in a way that protects the environment which is essential for the health and wellbeing of the people."*
>
> (Emphasis ours.)

2.80 It goes on to explain how Waikato 2070 is intended to fit into the planning and policy context in a passage that is worth citing *in extenso*:

> *"Waikato 2070 draws on the initiatives and ambitions that are identified in the Waikato District Blueprint to inform future planning, investment and decision-making by the Council for the district. Waikato 2070 is a broader longer view of growth within the district for future planning and investment. The Blueprints have helped to inform the Waikato 2070 process by identifying what is important to you as a community and what you want to have happen.*
>
> *This strategy provides the indicative extent and timing for future growth cells (subject to further investigation and feasibility) identified on each of the development plans.*
>
> *At a sub-regional level, this strategy helps deliver on the Future Proof Strategy (Phase 1 Review) and some of the emerging thinking in the Hamilton to Auckland Corridor Initiative spatial plans. The intention is to update Waikato 2070 after these spatial plans are adopted by the Hamilton to Auckland Corridor Initiative partners and a Future Development Strategy (Phase 2 Review of Future Proof) is developed.*

[35] Waikato 2070, para 01.1.

> *Regionally, this strategy is informed by documents such as the Regional Policy Statement and the Regional Land Transport Strategy.*
>
> *At a national level, this strategy sits under the Local Government Act (2002) and is in accordance with the Resource Management Act (1991) and relevant national policy statements."*

2.81 Waikato 2070 is an impressive and clearly carefully thought through document, prepared according to appropriate LGA processes and with a clear vision as to where it sits in the policy / planning context. Counsel for WRC attempted to downplay its significance on the basis that it has not been tested via RMA processes and because it is "very recent".

2.82 First, such growth strategies, like Future Proof, are very commonly developed under the LGA before they see any kind of implementation under the RMA.

2.83 Second, the recency of Waikato 2070 is not a weakness; in the present context of the review of the PWDP, it represents a significant benefit for decision-makers insofar as it represents the latest word on the aspirations of WDC and its ratepayers for economic and strategic growth after consulting fully with the Waikato District community and other key stakeholders.

2.84 Given the careful analysis and consultative process that resulted in Waikato 2070, the high quality of the document and the fact it that reflects the latest word from WDC on growth and development for the district, and the fact that it specifically recognises the OSP, we submit that it is entitled to be accorded significant weight – approaching that to be accorded the 2010 WRPS and Future Proof 2017 in relation to the matters at hand.

2.85 A key method of implementation used in Waikato 2070 is a series of development plans or centre plans for the towns with the District. One of these is the "Huntly & Ohinewai Development Plan" which identifies:

(a) An Ohinewai South Industrial Cluster for "Commercial & Industrial" which is to be developed in 1 – 10 years, and the northern part of which is to be developed in 10 – 30 years.

(b) To the south of that area an area earmarked for Residential to be developed in 1 – 10 years.

(c) An Ohinewai North Industrial Cluster for "Commercial & Industrial" which is to be developed in 10 – 30 years.

2.86 It is notable that Waikato 2070 grouped Huntly and Ohinewai together as one growth area. This provides for a pattern of development that closely aligns with the OSP.

2.87 To the extent that counsel for WRC submitted that Waikato 2070 has not been tested via RMA processes and therefore should be accorded little weight, what better place to undertake that testing than via a review of the relevant district plan? The Panel is required by the RMA to consider it. It is no coincidence that Waikato 2070 was released ahead of the hearings on the PWDP.

2.88 In short, we submit that Waikato 2070 and the specific recognition of the pattern of development provided for by the "Huntly & Ohinewai Development Plan" should weigh heavily in your deliberations on the APL submission.

Submission

2.89 APL's submission is that:

(a) The WRPS is sufficiently agile and responsive, in terms of the direction in the NPSUD, to enable the APL OSP rezoning to occur. You have before you evidence from Mr Olliver that, after having assessed the OSP against the alternative land release criteria, the OSP demonstrates a high level of consistency with those criteria and the Development Principles in Section 6A of the RPS.

(b) To the extent that it may not, it reflects that the WRPS has fallen behind the NPSUD in not providing the agility that the Future Proof Strategy 2017 recognised as being necessary. In that regard, the OSP is exactly the type of development facilitated by the NPSUD.

(c) If the Panel it considers necessary to look at Part 2, for example, due to tension between Policies 6 and 8 of the NPSUD, then this rezoning has the first part of section 5(2) "written all over it." The potential benefits of approving this rezoning far, far outweigh any potential adverse effects such that, in terms of section 32 of the RMA, the APL submission represents the most appropriate way to achieve the purpose of the RMA and the objectives of the PWDP.

(d) The Future Proof Growth Strategy is relevant to your consideration, particularly the 2017 update that signalled that greater agility is required to take account of unanticipated opportunities, as is Waikato 2070 which represents the latest word on terms of economic and spatial growth from WDC, and specifically identifies Ohinewai South as an area for residential, industrial and commercial development in a one-to-ten year time frame.

3. OTHER LEGAL ISSUES

3.1 The purpose of this section is to address other legal issues that arose during the course of the hearing.

Assessing the benefits of the OSP

3.2 During the hearing, Commissioner Cooney raised a query about how the social and economic benefits of the OSP should be treated, and in particular whether there is a legal barrier to weighing the economic benefits of a proposal against any potential adverse effects.

3.3 In terms of the relevance of economic effects to RMA decision making generally, in *Carter Holt Harvey Limited v Waikato Regional Council*, the Environment Court said:[36]

> *"[178] Clearly, the Act is concerned with economic effects. The term "environment' is defined in Section 2 of the Act as including:*
>
> ***environment** includes-*
>
> *(a) ecosystems and their constituent parts. including people and communities; and*

[36] [2011] NZEnvC 380.

(b) all natural and physical resources; and

(c) amenity values; and

(d) the social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters.

(highlighting in italics added)

[179] It follows from this definition that the social, economic, aesthetic, and cultural conditions which affect people and communities are relevant for the purposes of Section 5(2)(c) and Section I04(l)(a) of the Act. In addition, Section 5(2) of the Act refers to the management of;

(2) ... resources in a way... which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety ...

while meeting the three constraints set out in (a), (b) and (c).

[180] Economic considerations are also relevant to some of the statutory directions set out in the Act and, with respect to policy statements and plans, in the First Schedule. For example, the efficient use of natural and physical resources has an economic component.

Economic efficiency may in appropriate cases be a factor in Sections 29, 32, and 108 of the Act.

[181] Thus, there can be no doubt that the Act includes economic considerations. But the manner in which such considerations are to be taken into account is sometimes complex and depends on the nature of each individual case. Economics is just one of the various threads discernible in the Act which contributes to the attainment of sustainable management."

3.4 In the plan making context, section 74(1)(b) requires that a district plan is prepared in accordance with the provisions of Part 2 (though as set out above, absent uncertainty, illegality or incomplete coverage in the relevant planning documents, the decision maker need not refer back to Part 2).

3.5 Section 76(3) requires that:

> *(3) In making a rule, the territorial authority shall have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect.*

3.6 As a general principle, Commissioner Cooney is correct that in undertaking an assessment of effects, economic benefits are not strictly to be "weighed" against

environmental effects. This was addressed by the (then) Planning Tribunal in *Campbell v Southland District Council*[37], in which the Tribunal stated:[38]

> *"There are dangers in assuming that sustainable management is about a trade-off between perceived benefits against adverse effects. Sustainable management is not necessarily a balancing exercise. Section 5(2)(a)(b)(c) provisions have to be met before the purpose of sustainable management is achieved…"*

3.7 In terms of how the economic benefits of a proposal should be treated in the context of assessing effects, the following key principles apply:

(a) Economic considerations arise directly from the purpose of the RMA and are a directly relevant consideration.[39]

(b) However, that does not mean that one benefit is to be enjoyed at the cost of adverse effects. Adverse effects must be avoided, remedied, or mitigated irrespective of the benefits that may accrue from the activity.[40]

3.8 It follows from the above that the economic benefits of the proposal are positive effects that should be taken into account in an assessment of effects. You must also be satisfied that any potential adverse effects of the proposal are appropriately avoided, remedied or mitigated.

Section 32 and 32AA RMA

3.9 Economic considerations are also of course relevant to the section 32 and section 32AA Assessment to which the decision maker on a proposed plan must have particular regard in terms of section 74(1)(e).

3.10 The section 32/32AA assessment 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; …"*

3.11 The tests in section 32 are to be read in the context of Part 2 and require consideration of economic costs and benefits alongside other costs and benefits. In *Port Otago Limited v Dunedin City Council,* the Environment Court said:[41]

> *"A significant number of non-monetary benefits and costs are involved in most resource management matters. A [solely] financial approach would suggest that other matters recognised in section 5(2) relating to social, cultural*

[37] W114/94, 14 December 1994.
[38] At 46. This case was cited by the Supreme Court in *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd38* as authority for the "environmental bottom line" approach as opposed to the "overall broad judgment" approach to weighing factors in section 5.
[39] *Morris v Christchurch City Council* (1993) 2 NZRMA 401 (PT).
[40] *NZ Rail Ltd v Marlborough District Council* [1994] NZRMA 70 (HC); *Campbell v Southland District Council* W114/94 (PT).
[41] EC, Christchurch, 22/1/2002, RMA902/99, RMA904/99, RMA907/99, RMA908/99, C004/02, at [26].

> *wellbeing, health and safety, have less relevance in comparison to the economic matters under section 5.*
>
> *…*
>
> *[27] In the end we conclude that the tests in section 32 should be read in the context of Part II of the Act and in particular the enabling provisions of section 5(2).*

3.12 In *Port Otago Ltd v Otago Regional Council,*[42] the Environment Court considered in detail whether the conventional approach to section 32 analysis remained correct following substantive amendment to section 32 and 32AA in 2013. The Court concluded that those amendments did not change the fundamental analysis required, but that *"[t]hey simply mean that the analysis of economic growth and employment prospects should be given in more detail (and wherever possible expressly rather than implicitly)".*

3.13 It follows that economic considerations are an important element of a section 32 or 32AA assessment but not the only element. The assessment should take into account all of the matters relevant to the purpose of the Act.

Consideration of alternatives

3.14 To conclude this section, we wish to make clear that APL does not agree that a forensic consideration of alternative sites and development proposals needed to have been undertaken.

3.15 We acknowledge that there is case law to the effect that there will be some limited circumstances in which consideration of alternative sites might be necessary as part of a section 32 assessment but for the reasons outlined in the lengthy commentary in our Opening Submissions[43], we submit that this is not one of them. I also adopt Ms Parham's submissions on that point.

4. OTHER PLANNING ISSUES

4.1 This section addresses some planning issues, beyond the proposed rezoning, that arose during the hearing.

Self-contained Ohinewai provisions

4.2 Early in the hearing, the Panel sought clarification as to how the plan provisions applying to the OSP could be drafted so that they are effectively self-contained and avoid unintended consequences for the balance of the PWDP given the request that a decision on the OSP be issued ahead of other decisions.

4.3 Mr Olliver explained how he would address that issue and has since provided Counsel with further notes to assist the Panel with that issue.

4.4 The current set of plan provisions comprise:

(a) The insertion of one objective and ten policies in Chapter 4, Urban Environment, to specifically recognise Ohinewai.

(b) Identifying the OSP as a 'Specific Area' and adding a specific set of rules applying to the OSP at the end of the Residential, Industrial and Business

[42] [2018] NZEnvC 183. Subsequently appealed to the High Court on a different question.
[43] Opening legal submissions of counsel for Ambury Properties Limited, at paragraphs 21.8 – 21.27.

Zone Chapters. This approach is broadly modelled on the Lakeside Te Kauwhata Precinct.

(c) Addition of three typical road cross-sections specific to the OSP as Figure 14.12.5.23. These cross-sections are referred to in Table 14.12.5.14 which includes other road cross-sections that are specific to structure plan areas.

4.5 These provisions have been drafted to be relatively self-contained and to avoid consequential amendments to other sections of the PDP. However, in the interests of conciseness, they do adopt a number of the rules for the relevant zones elsewhere in the PWDP. For example, the OSP Residential Zone adopts permitted activities P1, P4, P5 – P7 and P9 – P12. However, they include specific rules for activities covered by rules 16.1.2 P2 (marae complexes, papakainga), P3 (retirement villages) and P8 (neighbourhood parks), making them restricted discretionary activities.

4.6 This means that if some of the permitted activities referred to above are amended by other decisions on PDP submissions, that would create an inconsistency with the OSP provisions. However, if the permitted activities are not the subject of any submissions then they will not be changed and could be adopted in the OSP provisions.

4.7 If that is to be avoided (and to enable the Panel to make a decision on a single suite of provisions), it is necessary to develop provisions for the OSP area that can stand-alone and be "ring-fenced" so that there are no unintended consequences of an early decision.

4.8 The following approach would be required to ensure the OSP is fully "ring-fenced" and there are no unintended consequences of an early decision:

(a) Review the submissions to confirm which provisions in the Residential, Industrial and Business zones are not challenged by submissions and therefore could be adopted in the OSP, or are not relevant to the OSP.

(b) Prepare a set of OSP provisions that repeat the other PDP provisions that the OSP relies on in a separate section, together with the amendments that were attached to Mr Olliver's rebuttal evidence.

4.9 This exercise will effectively involve 'copying and pasting' the relevant Residential, Industrial and Business zone provisions that have been challenged into the separate OSP sections. It will mean the OSP sections of the PDP are much longer than they currently are.

4.10 Plan-wide rules are only included in the Infrastructure and Energy chapter (Chapter 14). For completeness, the relevant provisions in this chapter should be replicated in the OSP precinct.

4.11 Mr Olliver acknowledges the comments in the section 42A Rebuttal that raise concerns that the current drafting results in some uncertainty about the relationship between the OSP rules and the standard zone rules. The approach referred to above would resolve that problem as all of the relevant rules would be in one place.

4.12 In addition, the section 42A Rebuttal Report recommends that the OSP provisions for the Residential, Industrial and Business zones be combined to form a single precinct.[44] Given the exercise of ring-fencing the provisions, I agree it would be logical to place them all in a single precinct. This also aligns it

[44] Section 42A Rebuttal Report, paragraph 210.

more closely with the National Planning Standards which propose that "precincts" be identified for geographically-defined sub-areas.

4.13 This approach means that there are still likely to be some 'mismatches' between the approved OSP provisions and the balance of the PDP once approved. As a result, a variation is likely to be required to tidy up those mismatches. That variation should not have any significant implications; the OSP is a 10 year development and if decisions on all the other PDP submissions are issued in 2021, then any variation will be in place early enough to guide the majority of the development.

Potential cumulative effects

4.14 Through questioning of Ms Loynes, it became apparent that NZTA's key concern is not that the OSP itself will have adverse effects on the Waikato Expressway but that approving APL's rezoning request would set a precedent for future development along the Expressway. In that regard, Ms Loynes said "if we allow it here then where is it not OK."

4.15 Counsel for NZTA submitted that in reaching its decision, the Panel is required to consider the cumulative effects of "other potential rezoning" around the Ohinewai proposal site and that "an assessment of a range of growth scenarios in the area" should have been undertaken to assess potential cumulative effects.[45] With respect, this assertion goes further than is required by the case law.

4.16 Counsel for NZTA cited *Auckland Council v Cabra Rural Developments Limited*[46] in support of this proposition. In that case, the High Court confirmed that assessment of cumulative effects is a relevant consideration at the plan stage under section 76(3) of the RMA which states:

> *In making a rule, the territorial authority shall have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect.*

4.17 The High Court noted that this provision uses the term "actual or potential effects" in the same way as section 104(1)(a) and therefore concluded that the case law relating to resource consents - which has established that "actual or potential effects" include "cumulative" effects - was equally relevant to plan making.

4.18 The High Court referenced the decision of the Court of Appeal in *Dye v Auckland Regional Council*[47] in which cumulative effects were described as follows:

> *"[38] … The first thing which should be noted is that a cumulative effect is not the same as a potential effect. This is self-evident from the inclusion of potential effect separately within the definition. A cumulative effect is concerned with things that will occur rather than with something which may occur, that being the connotation of a potential effect. This meaning is reinforced by the use of the qualifying words "which arises over time or in combination with other effects". The concept of cumulative effect arising over time is one of a gradual build-up of consequences. The concept of combination with other effects is one of effect A combining with effects B and C to create an overall composite effect D. All of these are effects which are going to happen as a result of the activity which is under consideration. The*

[45] Legal submissions of counsel for NZTA, 9 September 2020, paragraph 5.5.
[46] [2019] HNZHC 1892 at [134].
[47] *Dye v Auckland Regional Council* [2001] NZRMA 513, [2002] 1 NZLR 337 (CA).

> *same connotation derives from the words "regardless of the scale, intensity, duration, or frequency of the effect".*

4.19 Accordingly, cumulative effects are things that will occur, rather than things that may occur. In that regard, The Court of Appeal went on to say:

> *"[39] Potential effects by contrast are effects which may happen or they may not. Their definition incorporates levels of probability of occurrence. A high probability of occurrence is enough to qualify the potential effect as an effect, whereas a potential effect which has a low probability of occurrence qualifies as an effect only if its occurrence would have a high potential impact. The definition is such that any 'precedent' effect which may result from the granting of a resource consent is not within the concept of a cumulative effect. That concept is confined to the effect of the activity itself on the environment. If the precedent effect of granting a resource consent is to fit within the definition at all, it must do so by dint of its potential effect and it would then have to satisfy the probability and, if applicable, the potential impact criteria."*
>
> (Our emphasis.)

4.20 In *Cabra*, the High Court was considering the appropriateness of the rural subdivision provisions of the Proposed Auckland Unitary Plan and the potential that those provisions would lead to the proliferation of rural subdivisions – so the potential cumulative effect arose in quite a different way to the present – i.e. from the plan provisions themselves rather than from a potential precedent effect on adjacent land.[48]

4.21 The only case cited by NZTA which addresses a scenario similar to the present is *Kennedys Bush Developments Limited v Christchurch City Council*[49] in which the High Court considered whether the Environment Court had been correct to conclude that the "domino effect" that might be triggered by a proposed rezoning was a "cumulative effect" in terms of the dictum in *Dye*.

4.22 The potential "domino effect" at issue was the likelihood that a plan change or resource consent would be sought for a specific area of land adjacent to the appellant's land if the rezoning were approved.

4.23 The High Court observed that there was clear evidence (in the form of an easement agreement to facilitate stormwater management for the adjacent land and a right of way to enable access) that this was highly likely to occur. It said:

> *[21] At paragraph [59] of its decision the Environment Court reached this conclusion:*
>
> ***...** rezoning the KBDL land will almost inevitably mean that sooner or later there will be an application for a resource consent or for a plan change for some or all of the land below the KBDL land and the Old Tai Tapu Road." (Underlining added).*

[48] Similarly, *Golden Bay Marine Farmers v Tasman District Council* W19/2003, EnvC, Wellington, 27 March 2003 (which was also cited by NZTA) concerned a proposed coastal plan rule relating to mussel farming activities. The Environment Court considered that the cumulative effects of a number of resource consent applications made in reliance of the rule was a relevant consideration.

[49] *Kennedys Bush Developments Limited v Christchurch City Council* CIV-2004-485-1189, High Court, Christchurch, 2 September 2004.

> *This finding was, of course, supported by evidence: see, for example, the Environment Court's discussion about the easement agreement with Lansdowne Heights Limited."*

4.24 A "domino effect" may therefore be a cumulative effect where there is, in terms of the dictum in *Dye*, evidence that there is a high probability that this effect will arise.

4.25 There is therefore an important distinction between "cumulative" effects and "precedent" effects. This distinction was not clearly expressed in the case for NZTA. While a "domino effect" may be considered in terms of cumulative effects, the need to consider such an effect does not extend to a broad obligation to consider "a range of growth scenarios" simply because it may be claimed that the OSP sets a precedent - which proposition is not accepted on the basis that any further rezoning will need to be considered on its merits.

Discretionary activity status for departures from staging plan

4.26 An issue was raised during the hearing as to whether discretionary activity status was an appropriate activity status for departures from the staging provided for by the planning provisions designed to deliver the OSP. Mr Olliver explained that staging is notoriously difficult and it may be necessary to obtain a resource consent to advance one stage ahead of another.

4.27 We submit that:

(a) The importance of staging does not justify a more stringent activity status and that little or no planning purpose would be served from introducing the gateway tests that come with non-complying activity status; and

(b) If it is desired to make the tests for altering staging more stringent, that is better achieved via the criteria for discretionary activities rather than requiring assessment as a non-complying activity.

4.28 APL welcomes the conversation around the relevant rules that will address this issue to the satisfaction of the Panel, Ms Trenouth, and relevant parties.

5. ECONOMIC ISSUES

5.1 The potential economic benefits of the implementation of the OSP have been a central feature of the hearing. This section deals with the issues arising.

Extent of economic benefits

5.2 Dr Fairgray acknowledged that the employment associated with the OSP would be 'very positive – 1,000 to 2,500 jobs would be a very significant boost for the local and regional economy.'

5.3 His key concern seemed to be the interdependency of the housing and industrial jobs and the "lack of certainty" about who will ultimately end up living or working in the OSP.

5.4 We have addressed the need for certainty above – even in the context of a murder charge, the test is "beyond reasonable doubt". Here (where no crime has been committed), what level of proof does WRC need?

5.5 Mr Keenan and Dr Fairgray attempted to cast doubt on the extent of the potential benefits of the project – right down to the number of billions of dollars they would be prepared to forego if the rezoning development might not proceed. They said that Dr Wheeler had incorrectly used output multipliers. Dr

Wheeler's response to that and other criticisms, particularly from Dr Fairgray, are set out in the following email Counsel received from Dr Wheeler:

> *"It is factually incorrect to state that I used output multipliers. I did not. This is explained in my EIC and in my Rebuttal. There is therefore no double counting as suggested. I used value added multipliers as advocated by Dr Fairgray.*
>
> *Dr Fairgray states in the Section 42 report appendix he prepared, that the estimates provided in my analysis "suggest" that I have incorrectly used output rather than value added multipliers in arriving at the estimates. This is simply not the case. Value added multipliers were used as explained in para 6.3 of my EIC and in my rebuttal resulting in the data set of in the appendices to my EIC.*
>
> *If estimates seem to Dr Fairgray to be large it should be noted that some cover impacts expected over more than a decade, that the numbers cover factory, retail, light industrial and residential and are not restricted to a limited class of value add. that GDP estimates frequently fall within broad ranges and that there is very significant scope for variation which does not affect the basic conclusion of the analysis.*
>
> *The most powerful concept and statement advanced came in my view from the Tangata Whenua Governance Group who said quite simply that what is foregone here if the opportunity is lost, what is given up, what is sacrificed "is invisible".*
>
> *None will ever know what was lost. Opportunity cost is almost always hard to see and can be invisible. Its impacts are not. To decline this consent is to forego opportunity and impose the invisible cost on communities who badly need jobs, investment, growth and opportunity in economic and social recovery. We should not succumb to foregone opportunity simply because it's difficult to see.*
>
> *The onset of Covid 19 and the need for comprehensive recovery now underscores the end of the era of paternalism in dealing with valuable opportunity. The need for a different approach is signalled in the call for responsive planning now granted the highest mandate in Central Government's recognition of this in the National Policy Statement. No level of linguistic excursion or inventive interpretation allows decisionmakers to walk from the need to face benefits for what they are and the high price imposed by forgoing opportunity for what it is.*
>
> *The significance of the economic perspective in this case involve two very simple propositions. First, net benefits do indeed out demonstrably outweigh costs, and, second, the opportunity cost of ignoring those benefits would impose a high opportunity cost on the communities affected."*

5.6 Dr Fairgray and Mr Keenan sought to split hairs about whether the long term benefit of implementing the OSP was $8 billion or something less. If it was $6 billion, would they be any happier?

Potential opportunity cost (cost of "not acting")

5.7 So, let's identify and compare / contrast the potential economic benefits that we are dealing with here:

(a) Benefits that would flow from the rezoning of Ohinewai as requested:

(i) At least 2,600 operational jobs;[50]

(ii) $650m of unique economic activity to the region during construction;

(iii) $200m of ongoing unique regional economic activity per annum[51];

(iv) $100m of economic activity to the local area through construction; and

(v) Up to $8 billion in total economic activity over the 10 year period of development and operation.

(b) Declining the rezoning - $0.00. Nothing. No benefits at all and a major lost opportunity.

5.8 APL submits that these factors are highly relevant in assessing the benefits of the rezoning in terms of section 32 and Part 2 of the RMA.

6. STRATEGIC INFRASTRUCTURE PROVISION, SERVICING AND FUNDING

6.1 Much was made by APL's opponents of the lack of 'certainty' that water and wastewater infrastructure will be:

(a) Delivered at all; or

(b) Delivered in a manner that meets the Vision and Strategy for the Waikato River and PC 1.

6.2 The first matter to consider is the extent to which "certainty", as opposed to a reasonable degree of confidence, is necessary in the context of district plan provisions that have been developed to enable the implementation of a very large development over several years.

6.3 We submit that the need for certainty sets far too high a bar that has no basis in terms of relevant legal principles. Indeed, the RMA is not a 'no risk' statute[52] and these issues do not lend themselves to the 'black and white' quality that WRC and NZTA are making it out to be.[53]

Water and wastewater provision

6.4 The first thing to note is that, from a water and wastewater perspective, Stage 1 is easy and can be covered by existing consented infrastructure.

6.5 Beyond that, the manner in which the OSP would be serviced in the medium term has not been definitively determined because the answer to that question is part of a much bigger picture about addressing water and wastewater issue

[50] That number was calculated prior to the deletion of the Discount Factory Outlet from the OSP. With the additional land, as Mr Heath notes in his rebuttal evidence, the total number of jobs created may be higher.

[51] Table 5 of P Osborne's statement of evidence dated 9 July 2020 shows the direct economic contribution to the region by sector ($126m), with the total figure representing these direct impacts applying 'multipliers' for total impact ($222m).

[52] *McIntyre v Christchurch City Council* [1996] NZRMA 289; *Shirley Primary School v Telecom Mobile* [1999] NZRMA 66 at 97.

[53] Chicken Little again.

for the entire mid-Waikato, as reflected in Watercare-Waikato's Mid-Waikato Servicing Strategy ("MWSS"). However, we know that from the evidence of Mr White that:[54]

(a) For the medium term (Years 3-6), Mr White's evidence is that 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.

(b) 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.

(c) There is sufficient capacity at the Huntly WTP to supply the development, with additional water take required from years 3 (approx. 2023), but that APL has other options available.

6.6 We know from the evidence (particularly the helpful evidence from Mr Bradley) that there are ways forward.

6.7 Mr Tupuhi's evidence of his close involvement in recent projects puts these theoretical concerns into context. We heard from Mr Tupuhi that he has been closely involved in recent developments at Te Kauwhata and that Huntly is next. He is confident that as stages proceed, the investment in the Huntly plant will occur.

6.8 Mr Bradley was very clear that the non-compliance issues at the Huntly wastewater treatment plant are "routine" in terms of wastewater engineering and that a number of best practice/conventional methods are available to address these issues. The likelihood is that in the long term the MBRE technology used at Pukekohe WWTP and proposed for Te Kauwhata will be implemented.

Consentability - meeting the Vision and Strategy

6.9 Regarding uncertainty about whether the Huntly WWTP consent will be granted, let's take a real-world view on whether consent will be granted; the reality is that the Huntly WWTP has compliance issues that will need to be addressed. Once final decisions are made about the MWSS options that are to be implemented, that issue will be addressed.

6.10 We all know about WWTPs - the question is never <u>whether</u> the consents will be renewed, but on what terms. At the end of the day, it simply becomes an issue of how much you bolt on, how much you replace and how much you spend but the resource consents are always granted.

6.11 The same goes for water supply – as a municipal supply authority, WDC has the most favourable status under the Water Module of the WRP. If there is a demand for municipal water, then municipal supply authorities have the most favourable activity status provided that they have a prepared a water conservation plan. If there is a demand for municipal water, it is inconceivable that they would not receive it.

6.12 And, with all due respect, questions about 'uncertainty' as to whether the Vision and Strategy will be met are illusory because if resource consents are required in the Waikato in 2020-2021, the likelihood of a resource consent being granted

[54] R White, statement of evidence dated 9 July 2020, at paragraph 9.1(f)-(h).

that does NOT meet the Vision and Strategy is nil. WDC will simply not be granted resource consents by WRC, for an increased water take or for wastewater discharges, unless it has proven that element of betterment[55] and so we can be confident that this will occur.

Funding

6.13 Under questioning from the Chairman, Mr Mayhew acknowledged that as regards the water and wastewater provision, a solution will be found and implemented; his issue is now around funding.

6.14 An MOU has been entered into between APL and WDC - it is too early for a private developer agreement. Highly relevant in relation to funding is the letter from Mayor Sanson indicating 'WDC Inc's' total support for the OSP / TSE and the provision that is made for it in Waikato 2070. This immediately distinguishes this situation from the case law cited by Mr Lanning, such as *Foreworld Developments*[56] and *Norsho Bulc*[57], where infrastructure did not exist or was inadequate and the relevant council was not prepared to address the issue.

6.15 Here, APL has clearly signalled that it is prepared to pay its fair share of costs.

6.16 None of this justifies a conclusion (or finding) that these issues will not be funded. At the end of the day, the issues raised by WRC are more imagined (or manufactured) than real.

7. TRAFFIC AND TRANSPORTATION ISSUES

7.1 Despite the large amount of evidence on traffic and transportation matters, it became apparent that the large majority of the issues raised by the transportation witnesses on behalf of WRC, NZTA and WDC are matters of detail that can appropriately be addressed at resource consent stage. (Indeed, this was acknowledged by the witnesses themselves).

7.2 Only few matters attracted attention at the hearing, which we address below.

Safety effects on the overbridge

7.3 This issue received a lot of "air time" in the context of a zoning hearing. That is because Mr Swears approached the matter as if we were dealing with a development proposal down to the last jot and tittle.

7.4 Our submission is that this issue is a "nuts and bolts" engineering issue that is an amendable to solution – as are any number of other minor issues and concerns that Mr Swears raised.

7.5 Mr Inder's evidence and questioning from the Commissioners demonstrated that there are a number of options which can be investigated further. Mr Inder also explained that there are some benefits to the substandard width, including in terms of reducing vehicle speeds (together with other speed management measures) and discouraging cycling in favour of the much safer and more attractive dedicated cycle and pedestrian bridge.

7.6 Mr Swears suggested that the solutions presented by Mr Inder would not be practicable, but did not go into detail as to why. In any event, if in the unlikely

[55] *Puke Coal Limited v Waikato Regional Council* [2014] NZEnvC 223.
[56] *Foreworld Developments Limited v Napier City Council* W008/2005.
[57] *Norsho Bulc v Auckland Council* (2017) 19 ELRNZ 774.

event that the bridge did in fact need to be replaced, that is a matter that would be dealt with at that time.

7.7 The short point is that, adopting Commissioner Cooney's terminology – it is difficult to see this issue as a "show stopper" that would justify withholding approval to the entire rezoning.

The proposed pedestrian bridge

7.8 Mr Whyte provided evidence on behalf of the Ohinewai Area Committee to the effect that the Ohinewai community is particularly excited about the proposed pedestrian overbridge that would link homes on the eastern side of the Expressway with the school and other facilities on the western side, and that community members were impressed that APL had proactively approached the community with this proposal rather than it being something that APL is forced to provide.

7.9 Mr Whyte also provided further corroboration for Mr Inder's conclusion that the bridge would be well used by the community and that Mr Swears' conclusion was entirely incorrect that a walking and cycling distance of 2km between the school and the residential area would be too far.

7.10 To the contrary, like the other residents interviewed by Mr Inder[58], Mr Whyte confirmed that it is entirely normal for children in the area to walk or cycle 2km or more, including to school, including and occasionally even over the narrow rail bridge because there is no safer alternative. Mr Whyte highlighted the child he observes riding an e-scooter to Ohinewai school from Huntly on a regular basis as an example that even this distance is not a total barrier for older children, and will be even less so in future with a dedicated walking and cycling path connection.

7.11 With the rapidly increasing popularity of e-bikes (annual sales could soon pass new car sales in New Zealand[59]) and declining cost as technology advances, it is our view that cycling the 9 km between Huntly and Ohinewai has great potential to be an attractive and a popular transport mode for future employees of the APL site that choose to live in Huntly, and also for recreation by Huntly and Ohinewai residents. This is also supported by other research by the University of Auckland, which found that e-bikes enable people to make more "car-like trips"… and that it is common for people to ride 15 km there and back on e-bikes[60].

7.12 We therefore submit that this further underscores that NZTA and WRC's concern that the development will be "car-centric" is overstated (and increasingly so).

Effects on the Waikato Expressway

7.13 It was made very clear by Mr Swears that the Waikato Expressway has plenty of capacity both during peak and off-peak hours. Mr Inder's conclusion is that off-peak trips are very unlikely to put pressure on the capacity and function of the Expressway and similarly, the analysis undertaken demonstrates that peak period trips associated with the development are also unlikely to cause adverse capacity effects on the Expressway.

[58] C Inder, statement of rebuttal evidence dated 24 August 2020, at paragraphs 4.6-4.18.
[59] https://www.stuff.co.nz/dominion-post/wellington/121625298/number-of-ebike-imports-hits-record-high-could-soon-overtake-new-cars
[60] https://www.nzherald.co.nz/sponsored-stories/news/article.cfm?c_id=1503708&objectid=12240080#:~:text=Kiwis%20are%20turning%20on%20to,in%20the%20last%20three%20years.&text=According%20to%20Stats%20NZ%20data,the%20year%20to%20June%202018

7.14 On behalf of NZTA, Ms Loynes acknowledged that the industrial component of the development is consistent with the strategic function of the Expressway. In terms of the OSP as a whole, she confirmed that the number of additional Expressway trips would not have any notable effect on that function, but that for NZTA, opposition to its use for local trips is a "point of principle."

7.15 Notwithstanding that position, it was apparent at the hearing that the Expressway is already heavily used by residents of Te Kauwhata and Huntly, a very large proportion of whom travel to Auckland or Hamilton for work and school. Therefore, the proposal to bring 2000+ jobs to a location between these two towns is likely to reduce the total "local" and "home to work" vehicle km travelled on the Expressway.

7.16 A review of 2013 Census information about where people commuted to and from by area unit shows that Te Kauwhata and Huntly combined produced approximately 34,000 vehicle km per day for home to work and return, using the Expressway. If 70% of the jobs at Ohinewai were by people living in these two towns then the vehicle kilometres saved per day equates to approximately 12,500. In one year, that is over 3,000,000 vehicle kilometres removed from the Expressway and wider transport network.

7.17 Mr Inder's evidence is that at the very least, 30 per cent of total daily trips are home to work and work to home related, and possibly as many as 50-60 per cent of the daily trips are related to employment of some sort (for example, a plumber visiting a house to fix a pipe is a work trip for that plumber yet is typically captured in off-peak traffic count data that contributes to the average number of trips per day per household).

7.18 Some of the remainder of those trips will be trips to Huntly for goods and services not available in the OSP. While those trips might not be desirable in terms of safeguarding future capacity for fast moving freight, they will be of significant benefit to the Huntly economy.

7.19 The Future Proof Strategy, being a 30-year growth management plan for the Future Proof sub region, anticipates and provides for substantial growth in the sub-region over the next 30 years. Huntly is identified specifically as an anticipated location for this growth. Within the Waikato District specifically, the Future Proof settlement pattern aims to achieve around 80% of growth in that region into specific identified towns, of which Huntly is repeatedly identified.[61]

7.20 In respect of Huntly, Mr Tremaine, on behalf of Future Proof, noted that:[62]

> *"It is envisaged that economic development interventions aimed at stimulating positive economic and social incomes are needed."*

7.21 This is precisely what the APL proposal delivers: it will provide significant economic benefits and growth not only to the Ohinewai site and settlement but for Huntly. APL's experts have identified and confirmed that the OSP will have "stimulating positive economic effects" on jobs and employment, on income, and economic activity of significant dollar value that will have a hugely positive economic impact for the region. Flowing from that, the social benefits to be gained from implementation of the OSP have been assessed as being significant.[63]

[61] Future Proof Strategy, pages 26, 27, 31.
[62] Statement of Ken Tremaine in respect of strategic planning in preparation for expert conferencing, dated 17 June 2020, at paragraph 3.4.
[63] As noted in Section 9.

7.22 It is submitted that the APL proposal not only delivers that "economic development intervention" that is so sorely needed in Huntly and the Waikato District as identified by Mr Tremaine, but offers economic and social benefits so significant that to ignore it would deny Ohinewai, Huntly, and the Waikato District an opportunity to turn around years of decline. In doing so, it is APL's submission that the OSP delivers on and aligns very closely with the anticipated growth of Huntly as identified in the Future Proof settlement pattern.

7.23 Further, as Commissioner Mitchell noted, it is difficult to understand exactly why development at Ohinewai would be so much worse than the outcomes provided for it by Future Proof, which anticipates that Huntly will grow substantially to the north in the future. NZTA did not provide any evidence in that regard.

7.24 NZTA noted that the New Zealand government built much of the Waikato Expressway as part of the Roads of National Significance, for the economic growth and development of "NZ Inc". It is somewhat ironic that the very point appears to be lost on NZTA that this proposal is right within the Golden Triangle, with rare access to rail and expressway transport, and it is all about economic development on a large scale. If the OSP does not contribute to the economic growth and development of "NZ Inc", what will?

7.25 The Comfort Group is a significant local manufacturer and exporter contributing to New Zealand's economy – and they want to build an industrial hub (not just one factory to serve their needs) in an impoverished area within the "Golden Triangle". It is difficult to think of another location within the triangle that has the prime transport opportunities such as at Ohinewai and is in desperate need for hundreds of jobs to bring wealth to the area.

7.26 Notwithstanding NZTA's vigorous opposition to the proposal, under questioning from the Panel, Ms Loynes conceded that the issues are "very finely balanced." Ultimately, it is for the Panel to decide whether NZTA's "point of principle" is a sufficiently good reason for foregoing the economic benefits that all of the economists acknowledged.

Public transport

7.27 Mr Kuo suggested that it would be uneconomical for WRC to provide public transport to the OSP, despite the fact that, as Mr Whyte noted, there is already a service to Te Kauwhata (the Northern Connector) which is the most heavily used service in the district.

7.28 Mr Kuo provided a range of reasons why that service could not be extended to Ohinewai, including that it would require changes to the timetable and more buses, and ultimately more funding. As Commissioner Cooney noted, these issues are "small beer" given the $200 million per annum boost to the region offered by the OSP.

7.29 Mr Kuo's only response to that observation was that (once again) it is a matter of "principle" to oppose unanticipated development that could potentially require public transport services to have to "catch up", as was necessary in respect of Pokeno. In that regard, it is submitted that while it might be desirable (and certainly more straightforward for transport planners) for public transport services to be provided in accordance with a rigid land release strategy, that is not always going to be feasible and therefore a degree of flexibility should be expected.

7.30 To suggest that development should not occur because public transport is not planned is the "tail wagging the dog". We have seen the need to "play catch up" in Pokeno – all APL and WDC are seeking to do here is have WRC learn from the mistakes of the past (no doubt driven by similar, short term thinking). Should

the rezoning be declined because WRC cannot see itself providing some buses? If they do not (in the short term to medium term), APL will.

7.31 In that regard, APL has indicated that it is willing to pay for initial public transport services, and indeed sought details from WRC as to likely costs for additional services some time ago. – a fact not addressed in Mr Kuo's evidence. APL supports the principle of early establishment of public transport to ensure it becomes part of people's travel choice. While there is agreement in principle, there has been no detailed information received as to actual costs and options for public transport servicing from WRC.

7.32 In terms of the assertion that the OSP will incentivise car use, APL acknowledges that the development of the OSP will generate some additional trips by car (which can readily be accommodated on the transport network). That is unavoidable. Even in places with a very comprehensive public transport system, such as Auckland or Hamilton, private car use is still, by far, the predominant preferred mode of transport.

7.33 In terms of the contribution made by cars to carbon emissions, as Commissioner Mitchell suggested, this is a short term problem that will be resolved by electric vehicles in the coming decades. Current estimates based on sales rates are that the NZ light vehicle fleet will be over 90% electric 30 years from now.

8. RESIDENTIAL COMPONENT

8.1 The primary concern of WRC, NZTA and WDC's reporting planner was the residential component which they say will result in a car-centric, potentially dormitory town. Issues were raised about whether affordable housing would be provided.

Rationale for the housing component

8.2 It is readily apparent from his evidence and the manner in which he dealt with questions that Craig Turner is a visionary. He wants to create something unique and to create a community that will not only meet TCG/APL's commercial requirements but will spearhead a shift in relation to the manner in which the whole issue of manufacturing, job creation and care for staff is approached in New Zealand.

8.3 TCG makes beds. It is not a developer. The housing component is about realising a dream by which Sleepyhead's staff can "eat, sleep, work and play" at one location – to improve their lifestyles by reducing commuting time and having a shot at buying a house. That concept will also be available to other occupants of the industrial part of the development.

8.4 In this key respect, the OSP is nothing like Te Kauwhata which all agree is a "dormitory town." The OSP offers employment. Indeed, there is the potential for residents of Te Kauwhata (and indeed Huntly) to substantially reduce their commuting by taking up employment at the Sleepyhead Estate.

8.5 Mr Gaze gave evidence that APL looked for alternative sites to locate its development, including considering redeveloping existing residential land in Huntly and developing a new area on the outskirts of Huntly. None of those options proved suitable for a range of reasons, including the size of the sites available and the presence of historic mines across much of the area. The Ohinewai site was the only location identified which will enable APL to deliver for its staff the lifestyle and community that it seeks to achieve.

8.6 WRC, NZTA and the reporting officer signalled at the hearing that they could support the industrial component of the development because of the massive benefits offered but not the residential component. It is submitted that this

position does not stand up to scrutiny, because most of the effects associated with the industrial component (including Expressway trips, visual and amenity effects) would arise even if the residential component is not developed.

8.7 If only the industrial component of the development is to be enabled, employees at the site will have no choice but to travel from elsewhere to work. That would be a poor outcome for a range of reasons, including that it would require reliance on the Waikato Expressway for all home to work trips, would mean that none of APL's aspirations in terms of creating a community can be realised and would significantly limit housing options for employees.

8.8 Further, as Mr Turner explained, that outcome would make it much less likely that APL would move its entire business to the site – that would occur but at a much lower scale over a longer timeframe. It would be a huge missed opportunity and in Mr Turner's words, "an absolute tragedy".

Housing typology and affordability

8.9 Some concern was expressed by WRC and WDC's reporting planner about the density of the housing provided for. Concerns were also raised about whether the houses would be affordable to Sleepyhead workers. In that regard, to put it simply, they cannot have it both ways. Smaller than typical lots are required to reduce the cost of land associated with each home and subsequently promote affordability.

8.10 The detail of the housing typologies will of course be developed at a later stage, but a fundamental premise of the Sleepyhead Estate is to provide a range of housing choices at the medium end of the density scale. The OSP provisions specifically include a rule requiring a minimum density of 25 units per hectare in order to encourage affordability.

8.11 The Masterplan (and the associated structure plan and proposed plan provisions) provides for extensive open space, community facilities to ensure that smaller lot sizes do not equate to a loss of amenity. A residents' association is also proposed.

8.12 In terms of whether Sleepyhead workers will be able to afford the homes, Mr Turner and Mr Gaze provided evidence about the home ownership schemes which TCG wishes to implement in order to assist its staff into homes. Furthermore, it is important to keep in mind that the total Sleepyhead operation of course includes employees at a range of salary levels - including IT specialists, finance people, specialist engineers, and other professionals. The assumption that everyone will be poorly paid blue collar workers is simply not correct.

9. POTENTIAL SOCIAL EFFECTS

9.1 A key issue is the contention by WRC and WDC's reporting planner that the OSP would result in poor integration of land use and transport, resulting in a car centric development and dormitory town. For the reasons outlined in the evidence of Mr Olliver and others and addressed elsewhere in these submissions, APL submits that those concerns are overstated and do not represent a sufficient reason to decline the APL submission.

9.2 Only two other issues relating to social effects remain outstanding:

(a) The appropriateness of the social impact assessment ("SIA") methodology; and

(b) Social benefits identified, particularly on employment, income, and education providers.

Partial completion scenarios – SIA methodology

9.3 Mr Quigley provided careful and compelling evidence about the benefits of the Masterplan. His analysis was criticised on the basis that he did not assess "reasonably foreseeable alternative scenarios" other than the complete implementation of the Masterplan.[64]

9.4 Mr Quigley, who is the author of the relevant guides to Social Impact Assessment methodology, explained that his methodology correctly assesses the most likely and largest potential "delta of change" which is the purpose of the SIA assessment within an RMA context. His role is not and was not to assess and compare potential impacts of a "series of undefined hypothetical alternatives which might occur".

9.5 Mr Quigley explained that assessing partial completion scenarios does not represent best practice, saying "If you broke it down, you could rig the system"

9.6 The complete answer to Ms Hackell's position is found in Mr Quigley's rebuttal evidence:[65]

> *"With respect, Ms Hackell confuses what SIA practice is. SIA assesses a proposal to identify potential outcomes. SIA does not assess potential outcomes such as 'Ohinewai becomes a dormitory town' (5.2b) or 'an increase in proportion of properties being sold on the open market' (5.2c). Such outcomes would be potential findings. The type of approach suggested by Ms Hackell is strongly open to potential bias/producing a pre-determined outcome. In contrast, my SIA assessed the masterplan, via a thorough and complete collection of evidence and analysis.*

9.7 In terms of the prospect that only the industrial component is enabled, Mr Quigley said that it would be "pretty disappointing from a social perspective". In terms of desirable social outcomes, the objective is a "live, learn, work and play" scenario. This is exactly what the OSP has proposed and is at the core of the proposal: a community, premised around the industrial and manufacturing needs of TCG, where the employees and their families can live, learn, work and play in the same place.

9.8 The OSP site has never been intended to provide all social requirements. Only cities have that ability in New Zealand (e.g. frequent public transport, extensive social infrastructure, hospitals, etc.) Having said that, the OSP site will provide greater access to high quality social infrastructure compared with other areas of a similar size. It will be possible for many people on the site to live, learn, work and play on site, for most days of the week. The occasional trip by car e.g. to the supermarket, matches vehicle use patterns of most New Zealanders. Also, people naturally group trips together to reduce their time spent in cars and this is also likely to occur at the OSP site.

Benefits

9.9 It is abundantly clear that there are major social benefits to be gained from the implementation of the OSP.[66]

9.10 One focal point of Mr Quigley's evidence was on educational outcomes; the positive reception the OSP has received from education services in the area - from all the early childhood education, primary and secondary school providers,

[64] M Hackell, summary statement dated 8 September 2020, at paragraph 2.1.
[65] R Quigley, statement of rebuttal evidence dated 24 August 2020, at paragraph 2.7.
[66] R Quigley, summary statement dated 9 September 2020, at paragraphs 6-13.

as well as Ministry of Social Development is testament to that. [67] On top of this is the commitment from TCG to develop a Secondary School of Tertiary Studies, further embedding educational benefits, particularly for disaffected secondary school students.

9.11 In response to a question posed by Commissioner Mitchell regarding the benefits of acting and the disbenefits of not acting in social terms, Mr Quigley responded that the context of the receiving environment was crucial to understanding this. The impact of the creation of 2,600 jobs in a low income area where stable employment is difficult to come by, is enormous – and such opportunities are few and far between.

9.12 Conversely, if the OSP is not approved the status quo remains, which is literally and figuratively "going backwards".

Submission

9.13 During the hearing there was an impression that there was considerable dissension between the social impact experts. However, as Mr Quigley noted, the points of contention largely reflected the experts "talking past each other".

9.14 In terms of social impact assessment, it is APL's submission that the resounding benefits from a social impact perspective are too great to ignore or discount.

9.15 This is supported by the enthusiastic evidence of Mr Quigley and his excitement at the prospect of the opportunity and benefit that the OSP will bring to the area. APL is fully committed to seeing these benefits realised.

10. URBAN DESIGN

10.1 In regards to urban design, Matthew Jones for WDC confirmed that, from an urban design perspective, the OSP is "a unique opportunity" within this part of the Waikato District and does provide "a number of appropriate and sound design moves", in agreement with Mr Broekhuysen's position.[68]

10.2 Mr Jones' summary statement set out a range of urban design-related issues[69]. Importantly, though, in response to a question as to whether his concerns represented fundamental flaws that render the OSP unworkable, Mr Jones, confirmed that from an urban design perspective there are "no fundamental flaws". Instead, his concerns are around design refinement and additional detail needed to give some certainty that the intended outcome is what eventuates.

10.3 APL therefore submits there are no fundamental urban design issues that would require that the rezoning not be approved.

11. ECOLOGY

11.1 In relation to ecology, evidence was presented by Mr Klee for Auckland Waikato Fish and Game, and Dr Thomas Wilding for WRC. It was apparent that there is very little that now separates the experts on the relevant issues and certainly nothing that is a "showstopper."

11.2 There were two outstanding ecological issues which the experts considered to be unresolved, being:

[67] R Quigley, summary statement dated 9 September 2020 at paragraphs 7 and 9.
[68] M Jones, summary statement, dated 9 September 2020.
[69] M Jones, summary statement, dated 9 September 2020.

(a) Black mudfish; and

(b) Predator control.

Black mudfish

11.3 The primary ecological issue raised was the potential presence of black mudfish. Mr Croft confirmed that undertaken to date to locate and identify the presence of black mudfish on the site have not identified a single specimen, nor is there any historical evidence of black mudfish on the site.

11.4 It was confirmed by Dr Wilding that no black mudfish had been found within the site, who noted only that it was a possibility due to identified black mudfish location records proximate to the OSP area.

11.5 To take account of the possibility that black mudfish may be found on the site in future, a detailed plan provision has been proposed requiring the preparation of a "Ecological Rehabilitation and Management Plan" that will sure an appropriate response if black mudfish are found. Dr Wilding's view is that this provision is an appropriate means of addressing the issue, notwithstanding some disagreement about the exact details of the requirements. In any event, it is submitted that to the extent that any amendment is required to the plan provisions, that could occur during the process of developing further the OSP provisions and this is certainly not an issue that should preclude the rezoning.

Predator control

11.6 The ERMP also requires the development of a predator control programme to ensure that effects on indigenous species and habitat are appropriately managed.

11.7 On behalf of Fish and Game, Mr Klee set out his view that the details of the Predator Control Programme should be enshrined in the plan provisions to ensure that it is sufficiently robust. As Mr Croft explained in his rebuttal evidence, there are good reasons why those details have not been included – they run the risk of being out of date before they are even implemented.

Submission

11.8 It is APL's submission that the outstanding ecological issues are not fundamental flaws that would render the OSP unworkable from an ecological perspective and therefore are not matters that suggest that the rezoning of the OSP area cannot be granted.

12. THE RALPH ESTATES

12.1 The Ralph Estates' further submission is to the effect that a rezoning of the Ohinewai land to facilitate implementation of the OSP needs to be foregone because it may compromise access to the mineral reserves in the (it seems unlikely) event that someone may wish to mine them in the future.

12.2 Counsel for the Ralph Estates appeared to assume that, given the existence of the coal, it was a self-evident proposition that the "most appropriate" planning framework in terms of section 32 is maintenance of the existing Rural zoning so that the existing dairy farming activity can continue in the unlikely event the Ralph Estates (which does not undertake coal mining) can interest some theoretical third party into mining that coal. However, it is submitted that that assumption is far from sustainable when that proposition is tested in light of all the issues that need to be considered, including the most basic analysis under section 32.

12.3 Dr Wheeler's evidence includes a cost benefit analysis of the OSP against the status quo – his conclusion is that the dairy farming activity has an output of approximately $931,000 per annum (NPV over 18 years of $13.86 million)[70] That is compared to the benefits offered to the community by the OSP of approximately $200 million per year.[71]

12.4 What are the equivalent figures for the benefits associated with the winning of the coal? What is the likelihood that it will ever occur?

12.5 We do not know because neither the legal submissions nor the evidence presented by the Ralph Estates contained the information or analysis that the Panel needs to make a proper assessment in terms of section 32 and Part 2 of the RMA. In particular, they did not provide any evidence to demonstrate:

(a) The economic consequences of coal mining versus rezoning for urban development – see above.

(b) Any likelihood that the coal would be mined.

(c) The environmental effects of mining could be appropriately avoided, remedied or mitigated and that resource consent to do so could be obtained.

Intention to mine the coal

12.6 Mr Fergusson and Mr Lines disagree as to whether there will be sufficient demand for coal in the future such that mining the site will be economically viable. Regardless of that disagreement, the short point is that the Ralph Estates has held mining interests over the land since the 19th century and in that time has not exercised them.

12.7 The Ralph Estates did not provide any evidence that indicates any real plan to mine the site. That is not surprising given that (as noted by Mr Lines and Mr Fergusson) coal mining is clearly becoming less economically feasible.

12.8 Neither has the Ralph Estates sought through the PWDP submissions process plan provisions that would facilitate mining activities on the site. In this regard the minerals mining overlays in the PWDP do not apply to the site and Ralph has not lodged a submission or further submission seeking that they should.

Environmental effects - consentability

12.9 The Ralph Estates did not provide any evidence in respect of the likely environmental effects of mining activity on the site. Given the lack of any current plan to mine the site, that is not surprising.

12.10 As set out in Mr Stafford and Mr Lines' evidence, the establishment and operation of a mine on the site would have the potential to generate very significant adverse environmental effects. These include widespread settlement and effects on groundwater on a site which, as Mr Speight explained, has somewhat complex geotechnical characteristics and is adjacent to areas of significant ecological importance.

12.11 Mr Lines evidence addresses the likely effects of mining as follows:[72]

[70] B Wheeler, statement of evidence dated 9 July 2020, paragraph 10.3.
[71] P Osborne, statement of evidence dated 9 July 2020, paragraph 10.2.
[72] C Lines, statement of evidence dated 9 July 2020, paragraph 7.25.

> *"In addition to the economic considerations, if an open cast mine were to be developed to win the coal underlying the APL site at Ohinewai, the following environmental effects related to the development could be expected:*
>
> *(a) The open cast excavation would need to be large, necessitating the removal of Lake Rotokawau and possibly Lake Ohinewai….*
>
> *(b) Early stage overburden removal is expected to require a similar footprint to the final footprint of any opencast mine developed at Ohinewai.*
>
> *(c) Widespread drawdown of groundwater is to be expected in the compressible Tauranga Group soils, resulting in associated widespread ground surface settlement beyond the pit walls. This has the potential to affect SH1 and the North Island Main Trunk rail line.*
>
> *(d) There is the potential for hydraulic connection into the pit from Lake Waikare or the Waikato River through the higher permeability sand rich Karapiro Formation. Depending on the eventual position of the pit walls, effects could range between the slow dewatering of Lake Waikare, through to the risk of internal erosion (piping) style failure of the pit walls and flooding of the pit from either water source.*
>
> *(e) Potential instability of the pit walls due to uncertainty in material characteristics and hydrogeology. I note that large scale slope failures have occurred historically in opencasts in the North Waikato coal fields, such as Maramarua and Smiths Pit near Rotowaro.*
>
> *(f) A shortfall of overburden to backfill the site is expected, due to out of pit placement in early mine development. Over time, depending on rehabilitation requirements and consent conditions, a lake could be expected to form in any residual void, eventually achieving a similar level to the present Lake Rotokawau. Remnant cut slopes retained above this level would present a risk of large-scale lateral spread type failures during seismic events, if not allowed for in rehabilitation design.*

12.12 Mr Fergusson's summary statement acknowledges that drawdown effects would be "expected."[73] Figure 8 of evidence is a plan showing a theoretical 19mt pit that could be constructed at Ohinewai. This plan shows the pit encroaching into Lakes Rotokawau and Ohinewai and the wetlands (identified in the PWDP as Significant Natural Areas) surrounding them.

12.13 APL's experts have observed that:

(a) The efficacy of methods suggested by Mr Fergusson to prevent lake depletion (i.e. flow barriers / grout curtains) are reliant on favourable geology.

(b) The installation of shallow flow barriers (with the aim of disconnecting groundwater dependant lakes from dewatered shallow peat) would only be effective if under-drainage is also precluded by either lakebed mud or extensive clay underlying both lakes and adjacent peat.

(c) This cannot be demonstrated without significant investigation and would be a major hurdle for consenting. Given that opencast mining would

[73] D Fergusson, summary statement, dated 9 September 2020, paragraph 3.3.

completely dewater the underlying Tauranga Group over an extensive area, a degree of under-drainage is inevitable.

(d) Neither Mr Fergusson nor Mr Gray made any attempt to address the issue of major, widespread settlement. The evidence of APL's witnesses is that that would be significant and largely unavoidable.

12.14 The Resource Management (National Environmental Standards for Freshwater) Regulations 2020 ("Freshwater NES") came into force on 3 September 2020. It provides that works within wetlands are a prohibited activity, as follows:

> ***53 Prohibited activities***
>
> *(1) Earthworks within a natural wetland is a prohibited activity if it—*
>
> *(a) results, or is likely to result, in the complete or partial drainage of all or part of a natural wetland; and*
>
> *(b) does not have another status under any of regulations 38 to 51.*
>
> *(2) The taking, use, damming, diversion, or discharge of water within a natural wetland is a prohibited activity if it—*
>
> *(a) results, or is likely to result, in the complete or partial drainage of all or part of a natural wetland; and*
>
> *(b) does not have another status under any of regulations 38 to 51.*

12.15 Mining activity would be unlikely to fall within the classes of activities identified in regulations 38-51 and therefore would be likely to be caught by this provision. The Ralph Estates has not explained how consent could be obtained for mining activity on the site notwithstanding the Freshwater NES.

12.16 In terms of section 74(1)(f) of the RMA, the PWDP must be prepared "in accordance with" any regulations, including the Freshwater NES. It is therefore submitted that the relief sought by the Ralph Estates is unlikely to be "in accordance with" the Freshwater NES insofar as it is predicated on the future use of the site in a manner which contravenes Regulation 53.

Section 85 RMA

12.17 In terms of the Ralph Estates' suggestion that it would "have no choice but to" appeal a decision to grant the rezoning under section 85 of the RMA, as set out in opening legal submissions, it would have to demonstrate that the rezoning prevents the "reasonable use" of its interest. 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."*

12.18 It is submitted that the Ralph Estates has not demonstrated 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.

12.19 On appeal to the Environment Court, the 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.[74] There is therefore a high bar to success which it is submitted the Ralph Estates is highly unlikely to meet.

12.20 We invite the Panel to see the Ralph Estates further submission for what it is, the Trojan Horse that will enable the Ralph Estates to negotiate a settlement for the inability to use a coal resource that is unlikely ever to be extracted in any event.

13. THE GRAND PRIZE - THE SLEEPYHEAD ESTATE

13.1 To conclude, and lest we be drawn into the minutiae and the concerns about dormitory towns and car-centric development, let us come back to the fundamental facts.

13.2 TCG is a major manufacturer. It has run out of room in Auckland and needs to relocate to somewhere it can be free of Auckland's traffic congestion, overpriced housing, and have access to State Highway 1 and North Island Main Trunk rail line.

13.3 Craig and Graeme Turner have a vision – this is about more than money for them. If they were a property developer, they would not even look at this site. But for them, there is more at stake – Craig Turner wants to lead a new way of thinking about working and providing employment in New Zealand.

13.4 The OSP is a novel and bold proposal that brings with it $1 billion expenditure which will eventually generate $200 million a year and at least 2,600 jobs to an economically challenged and socially deprived part of the Waikato, along with opportunities for capacity building and recreational opportunities.

13.5 <u>The opportunity is massive. Ergo, the opportunity cost of not allowing the rezoning is massive</u>.

13.6 The WRC and NZTA decided to go head-to-head with one of its Future Proof partners to stymie a rezoning that would enable a development that would be the beginning of the rejuvenation of this part of the Waikato. That is on the basis of a risk that it may become a dormitory town like Te Kauwhata or Huntly, and because people who live Ohinewai may wish to use their car to drive to Huntly once or twice a week. It is not as if all the planning and wishing that WRC and NZTA has done in this part of the Waikato has been a huge success. Given NZTA's narrow remit we can understand why it is unable to adopt a big picture view.

13.7 The negative factors and risks were thoroughly canvassed and tested at the hearing. It is submitted that none of the reasons identified by the opponents of the OSP for opposing the rezoning justify, individually or collectively, declining this rezoning.

13.8 Having demonstrated compliance with the NPSUD and the alternative land release criteria and a high degree of alignment with the 6A development principles, we submit that whatever risk that the rezoning may pose in terms of social impacts, it is worth bearing in mind:

(a) That the RMA is not a no-risk statute;

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

(b) The massive benefits that are likely to accrue; and

(c) The enthusiastic support of WDC, local iwi and hapu and the Huntly community.

13.9 There are three ways the Panel can get to "yes" in relation to this rezoning:

(a) Make a finding that the Alternative Land Release criteria of the WRPS are satisfied and alignment with relevant development principles are achieved. If the WRPS needs to be interpreted in light of the NPSUD, so be it.

(b) Make a finding that the rezoning gives effect to the NPSUD because it will add significantly to development capacity and contribute to transforming Huntly and the Huntly / Ohinewai area into a well-functioning urban environment and, in a broader sense, directly achieves Objective 1 of the NPSUD.

(c) Revert to Part 2 and make a finding that the rezoning will enable the people and communities of this part of the Waikato to provide for their social, economic, and cultural well-being, while ensuring that any potential adverse effects can be avoided remedied or mitigated by plan provisions and subsequent planning process.

13.10 To put the starkness of the choice before the Panel into perspective, and the difference between acting and not acting in terms of section 32 of the RMA, the benefits of acting in terms of rezoning the OSP site are:

(a) At least 2,600 operational jobs;

(b) $650m of unique economic activity to the region during construction;

(c) $200m of ongoing unique regional economic activity per annum;

(d) $100m of economic activity to the local area through construction; and

(e) Up to $8 billion in total economic activity over the 10 year period of development and operation.

13.11 The consequences of not acting by declining the rezoning are:

(a) The loss of a major opportunity the likes of which are rarely seen in this part of the district (and are even more unlikely given Covid);

(b) No investment;

(c) No new jobs;

(d) No capacity building; and

(e) Maintenance of the status quo in terms of planning instruments, which have been highly ineffective in incentivising growth in this part of the Waikato to date.

13.12 We therefore respectfully submit that the merits weigh heavily in favour of rezoning the SOP land as requested.

13.13 As indicated above, APL would welcome the opportunity to continue the conversation around the appropriate rules for the OSP to ensure the satisfaction of the Panel, Ms Trenouth, and relevant parties and note Mr Mayhew's helpful

indication that he would be happy to participate in such discussions on behalf of WRC and NZTA.

13.14 We wish once again to express our gratitude to the Panel for the excellent manner in which this process has been conducted. We wish you well for your deliberations.

DATED this 23rd day of September 2020

_____

S J Berry

_____

K A Storer

Counsel for Ambury Properties Limited