

**BEFORE INDEPENDENT HEARING COMMISSIONERS
IN NGĀRUAWĀHIA**

IN THE MATTER of the Resource Management Act 1991 (**RMA**)

AND

IN THE MATTER of a submission by Ambury Properties Limited in respect of the proposed Waikato District Plan pursuant to Clause 6 of Schedule 1 of the Act seeking the rezoning of land at Ohinewai

BETWEEN **AMBURY PROPERTIES LIMITED (AMBURY)**
Submitter

AND **WAIKATO REGIONAL COUNCIL**
Further Submitter

OPENING LEGAL SUBMISSIONS OF COUNSEL FOR THE WAIKATO REGIONAL COUNCIL
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G C Lanning
Telephone: +64-9-358 2222
Facsimile: +64-9-307 0331
Email: gerald.lanning@simpsongrierson.com
DX CX10092
Private Bag 92518
Auckland

1. OVERVIEW

1.1 These legal submissions, on behalf of the Waikato Regional Council, concern a submission lodged by Ambury Properties Ltd (**Ambury**) on the Proposed Waikato District Plan – seeking the urban zoning of rural land at Ohinewai for:¹

- (a) 73.5² ha of industrial zoned land, including 37ha for the Sleepyhead Factory;
- (b) 7.5 ha of business / commercial zoned land for a service station, community facilities and a small amount of convenience retail;
- (c) 52ha of residential land for up to 1100 homes, with the majority for sale on the open market and a number for TCG employees; and
- (d) 55ha of public open space including stormwater management areas, recreational facilities, ecological enhancement areas and other community areas.

1.2 The Regional Council opposes the proposed rezoning because:

- (a) Ohinewai is a small, relatively isolated settlement on the western side of State Highway 1. It is located at least 6km³ north of Huntly⁴ and approximately 12km south of Te Kauwhata. Its primary access is via State Highway 1 with very limited public transport servicing. In addition, it has very limited servicing in terms of water and wastewater services. It is not surprising therefore, that the Future Proof Growth Strategy and the Waikato Regional Policy Statement (**WRPS**) do not identify Ohinewai as an area for urban growth. Rather they, consistent with good planning practice, promote urban growth occurring within, or adjacent to, existing urban areas.⁵

1 Evidence of John Olliver, paragraph 3.8.

2 There is some uncertainty as to the precise area. The 27 July memo from Mr Olliver says that the 5.5ha originally allocated to the DFO will be added to the 68ha originally allocated to industrial. But the memo (last paragraph) says that the industrial zone will be approximately 75ha.

3 It is 6km from the Ohinewai Interchange to the outskirts of Huntly (and further between the proposed development site to the centre of Huntly (approximately a further 3km)). It is further noted that the distance from the Ohinewai Interchange to the indicative urban limit as shown on Map 6C in the RPS is 3km. This means that there is '3km' of future urban growth land adjacent to Huntly.

4 In this regard, it not fair to describe the proposed development as being "adjacent" to Huntly, as expressed by Mr Olliver in his EIC (paragraph 8.10).

5 RPS Policy 6.1, Section 6A Development Principles (especially (a) – (i)).

- (b) The proposed rezoning will not give effect, and is contrary, to the WRPS because:
- (i) Ambury's proposed development (if implemented) will result in a relatively isolated urban 'enclave' comprising large industrial, commercial and residential activities – separated from the existing urban areas. Ambury has highlighted the prospect of people being able to "live, work and play" at Ohinewai. However, Ambury also indicates that most housing will be sold on the open market. And, of course, even when sold to Ohinewai workers, the proposed households will not comprise of only Ohinewai workers. While some of the *residents* may work at Ohinewai – many may not: they will work elsewhere or not be employed at all. Many may be engaged in secondary or tertiary education. All of these people will be reliant on private vehicles to access the vast majority of retail, healthcare, recreational etc services (outside of the site).
 - (ii) The limited opportunities for access is not just a 'transport issue'. The risk of creating of a 'dormitory town' and establishing a community that is physically and 'practically' (without private motor vehicle) separate from existing urban areas (and the services they provide) raises the prospect of adverse social effects.
 - (iii) It will potentially replicate the sub-optimal outcomes that are currently experienced at other Waikato townships, such as Te Kauwhata, Huntly, Taupiri and Ngaruawahia. This existing situation results from historic decisions. Just because these towns exist and that services (such as public transport) need to be provided to these communities, does not provide a reason for creating another similar community.⁶
 - (iv) The proposed development is reliant on water and wastewater services that are currently not adequate for the proposed development; and, while there are potential *options* to address this, there is a substantial degree of uncertainty as to the cost, fundability and consenting required to put them in place. This is the antithesis of integrated land use/infrastructure planning.

⁶ See for example, Mr Inder's Rebuttal at paragraph 11.19 where he points to the inefficiencies of providing public transport services to Ngaruawahia, Taupiri and Te Kauwhata.

- (v) There is a high degree of uncertainty as to whether the claimed benefits of the proposed rezoning will occur. Ambury's evidence in support of the rezoning (including the various assessments lodged early in the process) assumes a single outcome – implementation of the "Masterplan". The proposed district plan provisions do not refer to the Masterplan. More fundamentally, however, whether this (and the claimed benefits) occurs is contingent on a range of matters including development decisions made by Ambury (or other future owners), the amount and attractiveness (including affordability) of the 'affordable housing' and the nature and scale of other industrial and commercial activities that may choose Ohinewai. Ambury cannot have it 'both ways': promoting these matters as relevant when assessing the benefits and then saying that they cannot be guaranteed.⁷

- (c) The proposal results from a decision by Ambury to choose the site at Ohinewai, based on a limited⁸ assessment of options that considered criteria determined by Ambury to suit its commercial objectives. The criteria did not take into account any broad, strategic planning issues, nor allow for options that might, for example, have placed the residential component separate from the industrial component. For example, there is no evidence explaining what options of redeveloping residential land in Huntly were considered, even though such an option would have: (a) provided for the residential needs of Sleepyhead's employees; (b) better aligned with the Region's strategic planning documents (c) avoided a range of actual and potential adverse effects; and (d) potentially generated a range of benefits for Huntly. The lack of such an assessment is particularly concerning given that Ambury is asking for a significant departure from the WRPS and there is no evidence explaining why the residential element is "essential".⁹

1.3 These legal submissions address the following:

- (a) The evidence lodged on behalf of the Regional Council;
- (b) The statutory context;
- (c) What "giving effect to" the WRPS means;

⁷ For example, see John Olliver EIC, paragraphs 10.12, 11.7-11.8.

⁸ Ambury's evidence as to the assessment of alternatives is set out in Mr Gaze's EIC, paragraph 3.5-3.9. It is at best a brief description of the process. There is no detail of what sites were considered, how they were assessed against the "site selection criteria" (described in paragraphs 3.2-3.4) and why other sites were rejected.

⁹ John Olliver EIC, paragraph 11.9.

- (d) Integration of land use and infrastructure planning;
- (e) Social effects;
- (f) National Policy Statement – Urban Development 2020;
- (g) Weight to be accorded to other plans and strategies;
- (h) The Section 42A report;
- (i) Other Issues raised in evidence; and
- (j) Concluding comments.

2. EVIDENCE

2.1 The following evidence has been lodged on behalf the Regional Council:

- (a) Mr Blair Keenan – economics;
- (b) Dr Melissa Hackell – social effects;
- (c) Mr Vincent Kuo – public transport;
- (d) Dr Tom Wilding – ecology;
- (e) Mr Ghassan Basheer – flooding; and
- (f) Mr Ian Mayhew – planning.

2.2 The witnesses have prepared brief summaries/updates of their evidence to assist the Commissioners.

2.3 The Regional Council also relies upon the evidence, and adopts the legal submissions, lodged on behalf of the NZ Transport Agency Waka Kotahi.

3. STATUTORY CONTEXT

3.1 The Commissioners will be familiar with the statutory context for their consideration of the Proposed Plan, and the submissions lodged. In that regard I adopt Appendix 1 of Ms Parham’s opening legal submissions on behalf of the District Council.¹⁰ However, the critical aspects of this statutory context, relating to the Regional Council’s concerns, are:

- (a) The District Plan, as part of the overall hierarchy of plans under the RMA, must “give effect to” the Regional Policy Statement (**RPS**):¹¹ The Supreme Court has said:

¹⁰ 23 September 2019.

¹¹ *Environmental Defence Society of New Zealand Inc v New Zealand King Salmon Co Ltd* [2014] NZSC 38.

“Give effect to” simply means “implement”. On the face of it, it is a **strong directive**, creating a firm obligation on the part of those subject to it. As the Environment Court said in *Clevedon Cares Inc v Manukau City Council*:

[51] The phrase “give effect to” is a **strong direction**. This is understandably so for two reasons:

[a] The hierarchy of plans makes it important that objectives and policies at the regional level are given effect to at the district level; and

[b] **The Regional Policy Statement, having passed through the [RMA] process, is deemed to give effect to Part 2 matters.**

- (b) More specifically, you must be satisfied that the proposed rezoning at Ohinewai “implements” the WRPS – in particular, the provisions of the RPS addressing urban growth. By enabling an isolated, car-dependent urban settlement at Ohinewai with few community services, the proposed rezoning would be contrary to the WRPS and therefore, unlawful. Below I address the argument that the WRPS is deserving of ‘less weight’ because it was prepared and notified before the *King Salmon* decision,¹² or is otherwise ‘out of date’ in terms of giving effect to the NPS-UDC. Any allegation that the WRPS does not achieve the purpose of the RMA or that it does not need to be given effect to is wrong in law and strongly rejected.

- (c) A district plan must be prepared and changed in accordance with the requirements of sections 32 and 32AA of the RMA. The proposed rezoning at Ohinewai was not included in the notified proposed district plan and was not, therefore, the subject of a section 32 assessment. However, in making a decision on the Ambury submission the Panel will need to undertake an assessment under section 32AA. I adopt the submissions of Ms Sheard in this regard. The Regional Council is particularly concerned that the assessment of alternatives undertaken by Ambury is inadequate. Put bluntly, while Ambury’s evidence says that alternative sites were looked at, they were considered through the lens of criteria focused on Ambury’s commercial imperatives. Moreover, there is no evidence explaining why the other sites were rejected.

- (d) Other strategies and plans can be taken into account – but this cannot override the legal requirement to give effect to the WRPS. As explained below, the Regional Council is particularly concerned with placing too much weight on the Waikato 2070 strategy that indicates significant growth at Ohinewai, without an appropriate evidence base¹³ or regional consensus.

¹² Ms Parham’s opening legal submissions of 23 September 2019, paragraphs 58-63.

¹³ Mr Mayhew’s EIC, paragraph 12-12(d); Ms Loynes’ EIC, paragraphs 11.4-11.5.

3.2 Other key aspects of the statutory context underpin the reason why the Regional Council is involved in this matter:

(a) Under section 30 of the RMA the Regional Council has a range of functions relating to, amongst other matters, the:¹⁴

- “**integrated management** of the natural and physical resources of the region”¹⁵;
- “establishment, implementation, and review of objectives, policies, and methods to ensure that there is **sufficient development capacity** in relation to housing and business land **to meet the expected demands** of the region”; and
- “**strategic integration** of **infrastructure** with **land use** through objectives, policies, and methods”.

(b) Section 61 of the RMA requires the Regional Council to prepare a RPS in accordance with, amongst other matters, its functions under section 30 and Part 2 of the RMA. Importantly, the purpose of the RPS is to:

... achieve the purpose of the Act by providing an overview of the resource management issues of the region and policies and methods to achieve **integrated management of the natural and physical resources of the whole region**.

(c) Moreover, section 84 of the RMA imposes a *duty* on the Regional Council to enforce observance of the WRPS.

(d) The Land Transport Management Act 2003 (**LTMA**) *requires* the Regional Council to prepare Regional Land Transport Plans (**RLTP**) and Passenger Transport Plans (**RPTP**) – to “contribute to an effective, efficient, and safe land transport system in the public interest”.¹⁶ Importantly, the LTMA requires these plans to be prepared having regard to RMA planning documents, including an RPS. These plans are an important component of the integrated management of land use and land transport across the Region. They must be had regard to under section 74(2)(b)(i) of the RMA.

¹⁴ See also section 30(1)(c)(iv) [avoidance or mitigation of natural hazards] and (1)(ga) [maintaining indigenous biodiversity].

¹⁵ Section 30(1)(a).

¹⁶ LTMA, section 3.

- (e) Under sections 10 and 11 of the Local Government Act 2002 (**LGA**) the Regional Council's role includes promoting the "social, economic, environmental and cultural well-being of [the Region's] communities in the present and for the future". And it is within context that the Regional Council and others developed the Future Proof Strategy (discussed below). But more generally this statutory role underpins the Regional Council's position in this hearing. It is concerned about the long-term adverse impacts of the rezoning.

4. THE RPS MUST BE "GIVEN EFFECT TO"

- 4.1 The legal requirement to give effect to the WRPS is at the core of the Regional Council's case. The relevant parts of the WRPS implement the Future Proof Strategy, the importance of which has been recognised by the Environment Court as follows:¹⁷

[49] The development of the... strategy preceded the RPS. It is a growth management strategy and implementation plan for the territorial areas of the Waikato District Council, the Waipa District Council and Hamilton City Council (... "**the future proof area**"). The strategy was developed within the broad context of the [LGA] with the regional council, tangata whenua and the Agency being directly involved in its development. **It takes a strategic, integrated approach to long-term planning and growth management in the future proof area.** The strategy's operational and implementation processes have been designed to be consistent with the RMA, the [LGA] and the [LTMA].

[50] Having identified the future proof area as one with on-going population growth and significant levels of development, the strategy identifies 50-year land supply needs in the future proof area and sequences its release and development according to its ability to be serviced by appropriate infrastructure and equitable funding. **The strategic approach underpinning it is described as a "blend of compact settlement and concentrated growth". The rationale for this approach was to allow the costs of growth to be identified early so that a more cost-effective form of infrastructure could be delivered, and also because land use certainty would thereby be provided to the community, developers, local and central government.**

...

[174] ... **This strategic framework has not been something that has been simply developed by the Council in a vacuum.** The genesis for the approach was developed some years ago with **input from other significant regional players**, who it would seem for a variety of very good reasons recognised the **need to collaborate** to try and address concerns about the **lack of integrated land use and infrastructure planning, ad hoc commercial and industrial development, and the difficulties that are caused as a result.** This collaborative approach was led politically, but also included the Regional Council, the Agency and tangata whenua. **The strategic approach was publicly consulted upon and was implemented through the RPS. The RPS was also a publicly consulted document.**

[175] The reason we have felt the need to mention this is because **the strategic direction implemented through the district plan (as directed by the RPS) has been one which has been developed over a lengthy period of time with considerable involvement from others.**

(Emphasis added)

17 *A & A King Family Trust v Hamilton City Council* [2016] NZEnvC 229. See also Final Report and Decision of the Board of Inquiry into the Proposed Ruakura Development Plan Change, 9 September 2014 (Volume 1) paras [42] and [86]–[87].

4.2 The Court's findings in relation to Future Proof and the WRPS are consistent with the Regional Council's position in this case. And, the Court's emphasis on *pan-regional* collaboration, public input and the importance of integrated land use and infrastructure planning is notable in my submission.

4.3 As noted above, the legal requirement for the district plan to give effect to the WRPS is a "strong direction". Despite that:

- (a) Counsel for the District Council appears to raise the prospect that the WRPS does not give effect to Part 2 of the RMA; and
- (b) Ambury appears to argue that the WRPS should, in effect, be diminished in importance because the Ambury proposal is 'unanticipated'.

The RPS Does 'Cover the Field'

4.4 Counsel for the District Council submits that:¹⁸

60. Planning instruments prepared after the release of the *King Salmon* decision are more likely to give effect to Part 2 and, adopting the language of the Court of Appeal in *RJ Davidson Family Trust v Marlborough District Council*, be "competently prepared" having regard to Part 2 and with a "coherent set of policies designed to achieve clear environmental outcomes." This is because up until the *King Salmon* decision, planning instruments were prepared, in reliance on case law at the time, that Part 2 would automatically apply to all plan change and resource consent assessments under the "overall broad judgment" approach. This provided an extra lens through which plan changes and resource consents would be assessed.

61. Since the *King Salmon* decision, greater care has been applied across the board by authors of planning instruments to ensure plan provisions are expressed in the way they are intended to be implemented and with the knowledge that the final "safeguard of Part 2" would only be available, in the case of plan changes and proposed plans, in very limited circumstances. The result is that plans prepared in the post *King Salmon* era arguably incorporate a greater focus on Part 2 considerations during the drafting of the plan than was previously the case.

62. Given the then proposed WRPS was prepared and notified well before the *King Salmon* decision, it cannot be said with any certainty that it gives substance to Part 2 in all respects ("incomplete coverage").

4.5 With respect, this submission cannot be accepted by the Panel. Not only is it not supported by any case law, it is:

- (a) contrary to the clear statutory requirement for a regional policy statement to "achieve the purpose of the Act"¹⁹ – which, of course applied when the WRPS was prepared, notified and made operative;

18 Opening legal submissions, paragraph 60.

19 Section 30 RMA.

- (b) contrary to case law, such as *Clevedon Cares*, cited favourably in *King Salmon* (quoted above) that emphasises the role of an RPS as achieving the purpose of the RMA. It is notable that the *Clevedon Cares* case involved an RPS made operative in 1999 - and at paragraph [58] the Court reiterated that the proposed plan change “must give effect to” the objectives, policies and methods that provide a “strategic framework for management of the region’s growth” that was prescribed in the RPS.²⁰ Moreover, the High Court said²¹ recently:

For example, it does not matter that the RPS at issue in this case is recent and settled. That is irrelevant, both in terms of the statutory scheme and the Supreme Court’s observations in *King Salmon*.

- (c) based on unsupported assertions about what previous planning practice may have been, and what may have been assumed during the preparation of planning documents prior to *King Salmon*;²² and
- (d) not supported by any evidence that the WRPS was prepared based on an assumption that it does not achieve the purpose of the RMA, or that its provisions did not need to be given effect to.

4.6 Accordingly, the Regional Council strongly rejects any assertion that the WRPS does not meet all of the requirements of the RMA – including achieving the purpose of the RMA.

4.7 But, more specifically, in relation to the issues raised by the proposed rezoning at Ohinewai the WRPS clearly ‘covers the field’. As in the *A & A King* case noted above, the WRPS is directly ‘on point’ in terms of the core (urban growth) issues to be considered by the Panel. The relevant WRPS provisions are addressed in Mr Mayhew’s evidence. Importantly, these provisions directly address the location, nature and scale of urban development in the Region. In this regard:

- (a) The starting point is that, within the Future Proof area (which includes Ohinewai) new urban development “shall occur within the Urban Limits indicated on Map 6.2”²³ (which Ohinewai is not).

20 The failure to give effect to the Auckland Regional Policy Statement was one of the reasons for declining the proposed plan change in that case. See paragraph [198](c) and (d). It is also notable that in *King Salmon* the NZCPS (the ‘higher order planning document’ in that case) was made operative prior to the proposed changes to the proposed plan change at issue - and therefore prior to the Supreme Court’s decision.

21 *Royal Forest and Bird Society of New Zealand Inc. v Bay of Plenty Regional Council* [2019] NZRMA 1, paragraph [79]. It is not immediately clear what the argument was that the Court was responding to here. However, the Regional Council (and other parties) was endeavouring to distinguish *King Salmon* to support an argument that, because the RPS gave effect to the NZCPS, there was no requirement to assess a proposed regional plan against the NZCPS.

22 And, for the record is not the experience of counsel.

23 Policy 6.14(a).

- (b) The WRPS allows for the potential of “alternative industrial and residential land release patterns... promoted through district plan and structure plan processes” (which the rezoning request is).²⁴
- (c) However, the WRPS requires such a proposal to be justified in terms of “consistency with the principles of the Future Proof land use pattern”;²⁵ and “the effects of the change [must be] consistent with the principles set out in Section 6A” of the WRPS. “Consistent” is defined in the Pocket Oxford Dictionary as being “compatible” or in “harmony”.
- (d) The Future Proof and Section 6A principles comprehensively address issues raised by urban development generally, and outside of the Urban Limits shown on Map 6.2 specifically. It is notable in my submission that these principles demonstrate a strong preference for locating new urban developments within or adjacent to existing urban areas.

4.8 In his evidence in chief, Mr Olliver expresses an opinion that there are two aspects of the RPS that he considers “are categorised as ‘incomplete coverage’ and therefore justify some recourse to Part 2”:²⁶

- (a) the fact that the WRPS has not been updated in response to the NPS-UDC;²⁷ and
- (b) “the settlement pattern in the [WRPS] is somewhat dated”.²⁸

4.9 By way of a response, in my submission:

- (a) The fact that the WRPS may not have been fully updated in light of the NPS-UDC does not translate to the WRPS not ‘covering the field’, in terms of addressing Part 2 matters. The NPS-UDC has now been replaced by the National Policy Statement – Urban Development 2020 in any event. But the Panel will need to consider all NPSs (including the new NPS-UD, discussed below) and ensure that the proposed rezoning gives effect to them.

24 Policy 4.14(g).

25 Policy 4.14(g) and Method 6.14.3(d).

26 Paragraph 5.32.

27 Paragraphs 5.33 - 5.44.

28 Paragraph 5.35.

- (b) To some extent any settlement pattern *specified* in a planning document will be potentially 'dated' from the date it is first promulgated. However, the WRPS expressly provides for deviations from the specified pattern (generally consistent with the NPS-UD) – so, again, this is not a case of the WRPS not 'covering the field'. Moreover, as explained in Mr Mayhew's evidence²⁹ Future Proof's settlement pattern and guiding principles were not altered substantially following a review in 2017.

The RPS expressly provides for 'unanticipated' proposals

4.10 In his evidence, Mr Olliver emphasises the “unanticipated nature of the OSP development” as “[challenging] the responsiveness of the relevant planning documents”,³⁰ and appears to diminish the importance of the RPS, because it sets out an “ideal” that cannot deal with cases such as this ie investment decisions by private individuals.

4.11 With respect, such an argument is contrary to the statutory requirement for district plans to implement the RPS and the case law that reinforces the importance of this requirement. The RPS provisions at issue (relating to managing urban growth) do not represent a ‘nice to have’. Rather, they are necessary to achieve integrated management of the natural and physical resources of the whole region and is reasonable to expect the community to be able to rely on them. Moreover, as explained above, the provisions expressly enable the potential for “unanticipated” urban development – but subject to a merits-based assessment against the Future Proof and Section 6A principles. As noted above, the objectives, policies, methods and principles all demonstrate a strong preference for locating new urban development within existing urban areas. And this is not a procedural or bureaucratic matter. There are sound and generally accepted resource management reasons for this policy position, discussed next.

5. INTEGRATED LAND USE AND INFRASTRUCTURE PLANNING

5.1 The Regional Council is concerned that the proposed rezoning at Ohinewai is the antithesis of integrated land use and infrastructure planning. The need for such integration is recognised in section 30(1)(gb) of the RMA, Future Proof, the WRPS and the Proposed District Plan³¹ – and is well accepted as a core principle of resource

²⁹ Paragraph 12.6.

³⁰ EIC, para 7.18.

³¹ For example: Objective 4.1.1, Policies 4.1.3, 4.1.4 and 4.1.8.

management. As the Environment Court said in *Norsho Bulc Ltd v Auckland City Council*:³²

[92]... It is a relevant resource management consideration to seek to manage the effects of activities on such resources in a way or at a rate that enables people and communities to provide for the various aspects of their well-being while sustaining their potential to meet the reasonably foreseeable needs of future generations. As the Court has said [in *Foreworld Developments*]:

It is bad resource management practice and contrary to the purpose of the [Act] ... to zone land for an activity when the infrastructure necessary to allow that activity to occur without adverse effects on the environment does not exist, and there is no commitment to provide it.

[93] It is accordingly open to a Council to refuse a plan change on the grounds that it would cause unnecessary expense to the ratepayers. It is also a lawful basis on which to refuse an application for resource consent.

5.2 The integration of land use and infrastructure planning is an express requirement of the RPS:

(a) Policy 6.3:

Management of the built environment ensures:

- a) The nature, timing and sequencing of new development is co-ordinated with the development, funding, implementation and operation of transport and other infrastructure, in order to:
 - i) Optimize the efficient and affordable provision of both the development and the infrastructure;
 - ii) Maintain or enhance the operational effectiveness, viability and safety of existing and planned infrastructure;
 - iii) Protect investment in existing infrastructure; and
 - iv) Ensure new development does not occur until provision for appropriate infrastructure necessary to service the development is in place;

(b) Implementation Method 6.3.2:

Territorial authorities should, in association with Waikato Regional Council, the NZ Transport Agency and other infrastructure providers, ensure infrastructure planning and land use planning initiatives are aligned, and should co-ordinate the provision of appropriate infrastructure and services for new development prior to development occurring.

(c) Development Principles (Part 6A):

- (d) not compromise the safe, efficient and effective operation and use of existing and planned infrastructure, including transport infrastructure, and should allow for future infrastructure needs, including maintenance and upgrading, where these can be anticipated;
- (e) connect well with existing and planned development and infrastructure;
- (f) identify water requirements necessary to support development and ensure the availability of the volumes required;
- ...
- (i) promote compact urban form, design and location to:

32 [2017] NZEnvC 109.

- (i) minimise energy and carbon use;
- (ii) minimise the need for private motor vehicle use;
- (iii) maximise opportunities to support and take advantage of public transport in particular by encouraging employment activities in locations that are or can in the future be served efficiently by public transport;
- (iv) encourage walking, cycling and multi-modal transport connections; and
- (v) maximise opportunities for people to live, work and play within their local area;

5.3 The key issues in this regard are:

- (a) The lack of cost-effective public transport services to/from the proposed development; and
- (b) Significant uncertainties as to whether the development can be adequately serviced with water and wastewater services.

Public Transport

5.4 Ohinewai, with a current population of around 159, is currently serviced by two bus services per day that run along State Highway 1, and stop at the Ohinewai Hall: morning and evening peak service from Te Kauwhata to Hamilton, and a once a day off-peak service between Hamilton and Pukekohe via Huntly and towns along State Highway 1.³³

5.5 The proposed rezoning will potentially enable a community of approximately 3,100 residents and 2,400 employees.³⁴ As currently proposed, access to and from this area will be primarily by private vehicle via State Highway 1, with the only alternative option being the limited bus services, (while a cycling connection to Huntly is proposed this is unlikely to be a feasible option for most given the length and exposed nature of the connection).³⁵ This is a particularly significant issue because of the very limited provision of services proposed. Just in relation to retail, for example, Dr Fairgray observes that:³⁶

... a quite limited provision of household goods and services is indicated within Ohinewai. Only a small retail-service node proposed (approximately 2,500m² of shops and services space) which on the sales estimates provided by Mr Heath would service less than one-fifth of Ohinewai households' demand. A limited range of goods and services would be available locally. Ohinewai households would likely access the majority of their goods and services (80%+) from Huntly or Hamilton. Retail sales figures indicate that Huntly households currently access over 30% of their shopping needs from outlets in Hamilton, suggesting limitations to the range of goods and services available in Huntly.

³³ Vincent Kuo EIC, paragraph 8.1.

³⁴ Ohinewai Rezoning Proposal - Economic and Residential Matters: Update, 4 September 2020 (Appendix 2 to update section 42A report) pages 10, 15 and 20).

³⁵ See Mr Swears' summary statement for the joint witness conferencing, paragraphs 5.63 - 5.64, dated 17 June 2020, and paragraph 6.17 of his evidence in chief.

³⁶ Appendix 2 to the section 42A report update, page 13.

5.6 Public transport planning and funding is undertaken on a regional basis to enable a more effective and efficient network to be established. Modifications to the public transport servicing of Ohinewai is subject to statutory decision-making processes under the LTMA, and related funding decisions under the LGA.

5.7 As explained in Mr Kuo's evidence it is not cost effective to provide increased public transport services to the proposed development area. Put simply, this is because, what is proposed is an isolated urban area that is disconnected from existing urban areas, combined with the relatively low likely demand.³⁷ Mr Kuo's opinions are entirely consistent with well-understood and accepted principles of good urban planning that facilitates the provision and use of public transport. These principles are reflected in the NPS-UD, the RPS and the LTMA.

5.8 Mr Inder has nevertheless responded to Mr Kuo's evidence, and reached different conclusions with specific reference to the RPS section 6A Development Principles. In response, I submit as follows:

(a) Mr Inder states that the "master planned integration of the proposed land-use activities absolutely enables and promotes the minimization of private car use".³⁸ However, this ignores the fact that:

- Even if the development is implemented in accordance with the structure plan there is no guarantee that the houses will be acquired or occupied by Ohinewai workers;
- Even if the houses are occupied by Ohinewai workers, there will be other members of the households who will not work at Ohinewai; and
- For all Ohinewai residents the vast majority of education, health, retail, recreational and social services will be located elsewhere.³⁹

Therefore, the location and nature of the proposed development will not "minimise the need for private vehicle use" (Principle II). It will do the opposite.⁴⁰ Similarly, the proposed development will not "maximise opportunities for people to live, work and play within their local area" (Principle V). Importantly, these principles address more than the environmental impacts

37 See, for example, paragraph 7.10.

38 Rebuttal, paragraph 11.11.

39 See paragraph 9.35 of Ms Loyne's evidence: "The Household Travel Survey indicates that 15% of vehicle trips are related to travel to work - with the majority of trips related to a range of other activities (including shopping, leisure, volunteering, visiting friends and family, and education".

40 See, for example: Section 42A update, paragraphs 100, 127, 140, 170 and 200; Ms Loyne's EIC, paragraphs 6.5 and 9.17; Mr Swears' EIC paragraphs 3.3, 6.52 and 7.1-7.3.

of private vehicle use, as they reflect the multiple social and economic benefits of giving people options to access a range of activities and services.

- (b) It is correct that public transport "can in the future" be served by public transport. It is difficult, in fact, to think of anywhere where this would not be possible. However, Mr Inder ignores the reference to this being done "efficiently" - as required by Principle III. Creating yet another community separate from existing urban areas does not facilitate the efficient provision of public transport services.

5.9 Notably, Mr Inder refers to the current situation facing the Regional Council needing to service dispersed communities:⁴¹

WRC has clearly made the decision to provide PT services to Te Kauwhata from Hamilton, which includes stops at Ngaruawahia, Taupiri and Huntly. If this is not cost effective and efficient then WRC has not had regard to its own objectives and policies. Ngaruawahia, Taupiri and Te Kauwhata each contain very little employment to support the residential population that exists. Without the bus service those townships truly are reliance on private vehicle trips for the significant majority of work related trips, if not other essential trips. The OSP has significantly better land-use integration and contrasts quite clearly to these townships, in my opinion, yet Mr Kuo has suggested it would not be cost effective or efficient to service a stop at Ohinewai.

5.10 The situation with these disparate communities needing public transport (and other) services exists now as a result of historic decisions – that the Council is endeavouring to avoid being repeated, in accordance with the RPS, the RLTP and the RPTP. As the section 42A report writer concludes:⁴²

The evidence of Mr Kuo for WRC outlines that the policy framework of the RLTP and the RPTP seeks to 'enable a supportive land use pattern or urban form that can maximise the usage and uptake of public transport to encourage modal shift.' I agree with Mr Kuo's assessment that the APL proposal is contrary to this policy framework because it does not support the concept of compact urban form and will result in high-dependency on private vehicles with a lack of alternative transport options.

Water and Wastewater Servicing

5.11 Ambury appears to be relying on the Mid-Waikato Water & Wastewater Servicing Strategy (**MWSS**), produced very recently in June 2020. As explained in Mr Olliver's rebuttal evidence the preferred options are as follows:⁴³

- (a) Water supply – a centralised scheme for Mid Waikato, with a new water intake and treatment plant at Te Kauwhata, and Ohinewai being serviced initially from Huntly and then

41 Rebuttal, paragraph 11.19.

42 Paragraph 189.

43 Rebuttal, paragraph 4.1.

from Te Kauwhata. It is proposed to continue to source water from the Waikato River and for Huntly to continue to be supplied from the Huntly WTP.

- (b) Wastewater – a centralized WWTP for the Huntly and Ohinewai catchments located in Huntly, and a stand-alone WWTP in Te Kauwhata for that catchment. Both WWTPs are proposed to discharge to the Waikato River.

5.12 In his evidence, Mr Gavin Donald accurately describes the MWSS as a "high level assessment of potential options for the district".⁴⁴ This is consistent with Mr Ian Mayhew's evidence.⁴⁵

5.13 Mr Gaze's rebuttal evidence attaches a memorandum of understanding signed by the Discharge Council and Ambury (**MOU**). Presumably, this is to provide some comfort that the water/wastewater and other infrastructure issues will be addressed. In my respectful submission the MOU can provide very little comfort because:

- (a) "it is non-binding in so far as it does not give rise to legally enforceable obligations";⁴⁶ and
- (b) the MWSS servicing solutions have not been adopted by the Waters Governance Board or the District Council, and have therefore not been reflected in the District Council's long term plan.⁴⁷ And the LTP will be subject to the LGA decision-making process, which includes public consultation.

5.14 Accordingly, with reference to *Foreworld Developments* "there is no commitment to provide" the MWSS servicing options.

5.15 More fundamentally, however, the MWSS provides no certainty that the proposed solutions will obtain resource consent. In this regard, it is notable that the MWSS itself states that its recommendations have been made without any assessment of consenting and affordability, impacts on Māori cultural values or public consultation.⁴⁸ In his evidence Mr Donald says:⁴⁹

I consider that a proposed rezoning of this scale should have an integrated and long-term approach to infrastructure servicing. The Mid-Waikato Water and Wastewater Serving Strategy has been developed in part because of the significant challenges that Waikato District Council

44 Paragraph 4.7.

45 Paragraphs 7.28 - 7.32.

46 Clause 1.1.

47 Clause 4.2.

48 Evidence of Ian Mayhew, paragraph 7.30.

49 Paragraphs 6.14 and 6.15.

face in the coming decade. Whilst identifying a preferred option through a multi criteria assessment, this is essentially the identification of a location and no quality targets are established.

The Mid-Waikato Water and Wastewater Strategy provides Waikato-Tainui with no confidence that a long-term option for wastewater will give effect to Te Ture Whaimana or have regard to Tai Tumu, Tai Pari, Tai Ao. Waikato-Tainui seek improvements with all re consenting processes and, as yet no scale of investment has been provided by council. It is likely that if a significant improvement and standard of discharge is not provided, Waikato-Tainui are likely to object strongly to any future wastewater discharge re consenting application. Relying upon a high-level strategy, which is not integrated with the district plan, to provide certainty for approving a rezoning of this scale is unwise.

- 5.16** In his evidence Mr Mayhew highlights the central importance of the Vision & Strategy (Te Ture Whaimana) and correctly concludes that "the primary outcome...is the restoration and protection of the Waikato River for future generations".⁵⁰ This is consistent with the overarching purpose of the legislation that established the Vision & Strategy⁵¹. The legislation states that:⁵²

The vision and strategy is intended by Parliament to be the primary direction-setting document for the Waikato River and activities within its catchments affecting the Waikato River.

- 5.17** Accordingly, in my submission, Mr Mayhew is correct to say that the MWSS "has not progressed to a stage that it provides sufficient certainty for the [rezoning] proposal, particularly the residential component to progress".⁵³ Similarly, Mr Donald is of the opinion that the MWSS "is targeted at such a high level that it does not serve any purpose for this proposed development".⁵⁴ If so, it would be "bad resource management and contrary to the purpose of the [RMA]" to allow the proposed rezoning as:⁵⁵

... the infrastructure necessary to allow [the] activity to occur without adverse effects on the environment does not exist, and there is no commitment to provide it.

- 5.18** Finally, in my submission, given the importance of the Vision & Strategy and the considerable uncertainty as to the viability of the servicing options, it is not appropriate to address this issue through staging rules as suggested in the section 42A update.⁵⁶ As the report writer herself states:⁵⁷

50 Paragraph 9.6.

51 Waikato-Tainui Raupatu Claims (Waikato River) Act 2010, section 3.

52 Section 5(a).

53 Evidence of Ian Mayhew, paragraph 7.32.

54 Paragraph 6.3.

55 *Foreworld Developments*, quoted above by the Environment Court in *Norsho Bulc*.

56 Paragraphs 93-94.

57 Paragraph 138.

In my view, until the water and wastewater effects are clarified it is not possible to determine whether the Vision and Strategy for the Waikato River will be met. The RPS takes a holistic and precautionary approach to decisions that may result in significant adverse effects on the Waikato River. The issue of three waters should be considered comprehensively in terms of potential impacts on the Waikato River.

6. SOCIAL EFFECTS

6.1 Ambury proposes to establish a discrete and separate urban area comprising industrial and residential activities, several kilometres from Huntly.⁵⁸ In her evidence, Dr Hackell raises a number of concerns as to the potential adverse social effects of the proposed development, which "seeks to establish a community that does not yet exist, populated by households who mostly have no previous association with each other".⁵⁹ Dr Hackell sets out a range of reasonably foreseeable outcomes from the proposed rezoning, including that it becomes a "dormitory town". Dr Hackell's concerns are generally shared by the section 42A report writers:⁶⁰

[Dr Hackell] for WRC provides evidence on social impacts raising concerns that the APL evidence does not consider alternative scenarios, focusing on the Masterplan as the most likely outcome of proposed zoning. Ms Hacknell [sic] sets out some reasonably foreseeable outcomes where the full Masterplan is not implemented, which are consistent with those also identified by Ms Healy. Therefore both Ms Hacknell [sic] and Ms Healy consider to be potential adverse effects that have not been adequately identified and assessed.

6.2 As explained in Dr Hackell's evidence, Ambury's social effects assessment is based solely on a single outcome – full implementation of the "Masterplan". In his rebuttal evidence Mr Quigley says that this is appropriate, as to consider other potential scenarios would require "speculation".⁶¹ Mr Quigley states that his "role is to assess the Masterplan". In response, it is submitted that:

(a) The Panel must consider the *effects* of the *proposed rezoning*. In this regard:

(i) "Effects" is broadly defined in the RMA as follows:

- (a) any positive **or adverse** effect; and
- (b) any temporary or permanent effect; and
- (c) any past, present, or future effect; and
- (d) any cumulative effect which arises over time or in combination with other effects—
regardless of the scale, intensity, duration, or frequency of the effect, and also includes—
- (e) any **potential effect of high probability**; and
- (f) any potential effect of **low probability which has a high potential impact**.

58 See note 3 above.

59 EIC, paragraph 5.5.

60 See, for example, paragraph 108 of the section 42A report update.

61 Mr Quigley, Rebuttal, paragraph 2.4.

- (ii) Ambury is seeking a rezoning of land – not a specific activity such as that which would be the subject of a resource consent. The proposed district plan provisions do *not mention* the "Masterplan", let alone require its implementation. Instead, the provisions refer to the "structure plan", which is a very simple spatial outline of the development area.⁶² Accordingly, Mr Quigley's evidence, which assesses the "Masterplan" is not the correct assessment.
 - (iii) At most the proposed district plan provisions expect, as a starting point, that development will be in accordance with the structure plan. Activities that are not in accordance with the structure plan are discretionary activities (not non-complying). Moreover, there are no provisions requiring the proposed housing to be affordable etc.
- (b) It is not sufficient, therefore, to simply dismiss the potential effects of the proposed rezoning because outcomes other than full implementation of the Masterplan might be "speculative". Rather, the assessment should consider the potential for critical aspects of the Masterplan (or the structure plan) to not proceed as currently anticipated by Ambury – such as the housing not being "affordable", or being owned/occupied by people not working at Ohinewai or the predicted employment numbers not being created. These are realistic scenarios that could materially alter the social effects of the proposed rezoning. At the very least such effects should be assessed so that any necessary measures can be put in place to avoid or manage them.

6.3 Dr Hackell is concerned that the SIA has not been informed by the views of current Sleepyhead employees – leaving "the likely uptake of the live, work and play community concept a matter of conjecture".⁶³ In his rebuttal evidence, Mr Quigley explains that current Sleepyhead employees have not been interviewed because:⁶⁴

... the potential effects on employees was not a focus of the assessment. SIA assesses potential effects on the communities 'outside the fence', not on communities 'inside the fence.' Also, as set out in David Gaze's statement of rebuttal evidence, because the development is not confirmed, it would be difficult for an employer to have a social researcher asking staff if the staff would move their life south, without any certainty of that ever occurring. Not causing untoward stress on the business and staff was also a consideration in my decision to not interview staff.

62 Jonathan Brockhuysen EUC, Attachment B.

63 Paragraph 5.4(a).

64 Paragraph 3.2.

6.4 The concerns about “asking staff if the staff would move life south” is curious. For one thing, the proposal to re-establish the Sleepyhead operations at Ohinewai is public,⁶⁵ as is the notion that there will be opportunities for employees to live in Ohinewai. In fact this latter point is part of the Sleepyhead “vision”.⁶⁶ In his rebuttal evidence Mr Turner says:⁶⁷

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

6.5 Notably, Mr Turner acknowledges that “the provision of housing (and services) alongside the jobs is fundamentally important – otherwise, Ohinewai would just become another industrial area with people having to travel there by car to work.”⁶⁸ And this “vision” is being promoted by Ambury as a benefit of the rezoning proposal. For example, Mr Olliver says:⁶⁹

...TCG's owners, Craig and Graeme Turner, have become increasingly concerned at the inability of its employees and their families to afford housing in Auckland. A major driver of the desire to move out of Auckland is to enhance the ability of their employees to achieve home ownership and the company is considering means to assist selected employees into home ownership, such as shared equity and rent to buy arrangements...

The OSP requires a compact urban form through medium density residential development. As it is an integrated employment, residential and commercial development with recreational facilities, it reduces the need for private car use within the development and maximizes opportunities for live, work, play.

6.6 Therefore, there is no evidence to support the claims that Sleepyhead employees will purchase a house and live in Ohinewai. In fact in his evidence, Mr Quigley accepts that “the market will decide whether people will wish to live and work at Sleepyhead Estate”⁷⁰ and seems to imply that Te Kauwhata is likely to be a more attractive location.⁷¹ Moreover, there is no certainty that the proposed houses will be “affordable” for such employees.⁷² It follows, therefore, that there is a reasonable prospect that the proposed houses will not be owned by people who will work in Ohinewai. This is materially different from the way in which Ambury’s witnesses have made their assessments. For example,

65 It is, for example, displayed on the Comfort Group website.

66 Mr Turner EIC para 2.11-2.12; Mr Gaze EIC para 3.12.

67 Paragraph 3.2. Moreover, Mr Berry in his memorandum of counsel (9 July 2020) describes one of two rationale for relocating to Ohinewai as “providing an opportunity for [TCG’s] workers to live near work, and an opportunity for home ownership that is more affordable than the Auckland housing market and ability to purchase a reasonably priced dwelling” (para 2.6(b)).

68 Rebuttal, para 3.4.

69 Paragraphs 3.4 and 7.72.

70 EIC, paragraph 16.1(c).

71 See, paragraphs 2.7 - 2.8 and 8.9.

72 In his Economic Peer Review Update (Appendix 2 to the updated section 42A Report) Dr Fairgray concludes that “there is no clear evidence...that shows the proposed development would contribute materially to housing affordability” (section 3.5, page 19).

Mr Heath dismisses Dr Hackell's concern about Ohinewai becoming another "dormitory town" because of:⁷³

... the significant local employment opportunities generated by the employment hub within the development, higher population densities compared to surrounding townships and high levels of amenity in retail and recreational spaces.

7. NATIONAL POLICY STATEMENT – URBAN DEVELOPMENT 2020

7.1 The proposed rezoning, if it is to progress, must give effect to the recent NPS-UD. In this regard the following comments are made:

(a) The NPS-UD provisions generally apply to an "urban environment" which is defined in two parts. It is clear that the proposed rezoning would meet the first part ("intended to be predominantly urban in character"). However, the application of the second part is unclear ("intended to be part of a housing and labour market of at least 10,000 people"). Our research has not found any guidance on what this term means, and as explained in Mr Mayhew's evidence it unclear whether or not the NPS-UD applies to the proposed development at Ohinewai. From a 'common sense' point of view the proposed development at Ohinewai will be physically distinct and separate from Huntly.

(b) However, nothing substantive turns on this point. Because assuming that the Ambury proposal is an "urban environment", then it must be a "well-functioning urban environment" in accordance with Policy 1 ie "an urban environment that, as a *minimum* provides all of the following:

- (a) have or enable a variety of homes that:
 - (i) meet the needs, in terms of type, price, and location, of different households; and
 - (ii) enable Māori to express their cultural traditions and norms; and
- (b) have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and
- (c) have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and

73 Rebuttal, paragraph 3.2. And then at paragraph 3.4 refers to the "underlying industrial and employment base, it is difficult to see how the OSP development could realistically become solely a bedroom community".

- (d) support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and
 - (e) support reductions in greenhouse gas emissions; and
 - (f) are resilient to the likely current and future effects of climate change.

- (c) Based on the Regional Council's evidence the proposal will not meet the requirements of clauses (c) or (e) – because the only feasible access will be via private vehicle. In his rebuttal evidence, Mr Olliver says that "accessibility to and from Huntly will be good, with provision of an off-road cycle connection and public transport".⁷⁴ Mr Olliver relies on the fact that "APL proposes to fund public transport initially and its on-going operation is the subject of a MOU with the Waikato District Council". With respect, the "off road cycle connection" will only be a feasible option for a few people and there is no certainty about what (if any) public transport services are to be provided. As noted above the MOU provides no certainty as to any particular outcome. And in relation to public transport the MOU states that "APL agrees to negotiate with Council on a constructive basis to provide a reasonable monetary contribution to support the funding and provision of proposed public transport services to and from the site".⁷⁵

- (d) For the reasons discussed above, the proposed development will not represent an urban environment that is "integrated with infrastructure planning and funding decisions" as required by objective 6(a).

- (e) Policy 8 requires decision-making to be responsive to plan changes that add significantly to development capacity (which the Ambury proposal will do) – but in a way that will "contribute to well-functioning urban environments" (which the Ambury proposal will not do).

- (f) Clause 3.8 deals with "unanticipated or out-of-sequence developments". The RPS already provides criteria for addressing such developments and, again such developments must "contribute to a well-functioning urban environment".

74 Paragraph 3.14.

75 Clause 5.3.

8. WEIGHT TO BE ACCORDED 'OTHER PLANS AND STRATEGIES'

- 8.1 As discussed above, the Future Proof Strategy has been recognised by the Environment Court and, to the extent it has not been incorporated into the RPS, must be had regard to under section 74(2)(b)(i) of the RMA.
- 8.2 The RLTP and RPTP are statutory documents required under the LTMA. The LTMA requires these documents to be prepared having regard to the RPS and subject to statutory processes including public consultation. Accordingly, in my submission they should be given substantial weight by the Panel under section 74(2)(b)(i) of the RMA.⁷⁶
- 8.3 Ambury seeks to place considerable weight on the Waikato 2070 document, even though it is not consistent with the RPS, insofar as it purports to designate Ohinewai as an 'indicative' area for urban growth. In my submission, based on the relevant case law:
- (a) Waikato 2070 is a document that should be "had regard to" under section 74(2)(b)(i) of the RMA as it is a strategy prepared under another Act.
 - (b) However, Waikato 2070 should be given little weight in relation to the proposed rezoning at Ohinewai, especially in so far as it relates to Ohinewai, because:
 - (i) It is not required by a statutory obligation (as for the LTMA documents, discussed above);
 - (ii) While it has been prepared in accordance with the Special Consultative Process under the LGA, there is little detail as to the scope of the public consultation, and it has not been tested through any judicial process;⁷⁷
 - (iii) There is no clear evidence base to justify the deviation from the Future Proof settlement pattern;⁷⁸
 - (iv) It is not supported by the Regional Council or Te Waka Kotahi; and
 - (v) There is an inappropriate 'circularity' to relying on it to support the proposed rezoning. As Mr Olliver states, Waikato 2070 "has been developed in knowledge of the OSP, and subsequently recognised it".⁷⁹

⁷⁶ See for example *St Lukes Group Ltd v North Shore City Council* A41/2001, paragraph 61.

⁷⁷ In *Johns Road Horticulture Ltd v Christchurch City Council* [2011] NZEnvC 185, the Environment Court mentioned factors such as these when discussing the weight to be placed on an "Area Plan" that had been prepared under the LGA: see paragraphs 22-24.

⁷⁸ Mr Mayhew's EIC, paragraph 12.12(d).

⁷⁹ EIC, paragraph 9.5.

- (c) To the extent Waikato 2070 does not give effect to the RPS it should be given little (or no) weight.

9. OTHER ISSUES RAISED IN EVIDENCE

9.1 In terms of other issues raised in the evidence I note the following:

- (a) In his evidence Dr Wilding recommended changes to the proposed rules to better address potential effects on black mudfish. It is assumed, based on Mr Croft's and Mr Olliver's rebuttal evidence, that these changes are accepted. However, as explained in Dr Wilding and Mr Mayhew's summary statements, further amendments to the proposed rules are required to "explicitly require an assessment of whether significant habitats of indigenous fauna are able to be protected and to do so if this is practicable".⁸⁰
- (b) The proposed development site is within a flood hazard area. Regional Council staff and advisors have worked with Ambury to determine the level of risk and appropriate methods to manage the risk. Following the provision of further information Mr Basheer, on behalf of the Regional Council has confirmed that agreement has been reached as to the appropriate standard (for the Ambury site only).
- (c) In his evidence Mr Keenan raised a number of queries in relation to Ambury's economic evidence. Ambury's rebuttal evidence has largely answered these questions to the point that the Regional Council doesn't dispute Ambury's evidence. However, this evidence still appears to rely on an assumption that Sleepyhead's 'vision' *will* be implemented by the proposed rezoning. For example, in his rebuttal evidence, Mr Heath assumes that the "residential product offered by the Sleepyhead Estate *would* be placed "within the below \$580,000 market";⁸¹ and refers to "the estimated price point of a dwelling in the OSP development".⁸² These outcomes are not a requirement of the proposed rules (they make no mention of 'affordability') and may not be the vision of future owners of the land and/or the houses. And, as explained in Dr Fairgray's updated peer review, there is significant doubt as to whether the proposed development will contribute to housing affordability.

⁸⁰ Mr Mayhew's summary statement, paragraph 2.27.

⁸¹ Paragraph 2.5.

⁸² Paragraph 2.6.

10. SECTION 42A STAFF REPORT

10.1 The section 42A staff report (including the recent update) has been carefully prepared by an experienced planning consultant (Ms Trenouth) and a team of very experienced specialists. Overall, except for some discrete matters explained in their summary statements, the Regional Council witnesses agree with the section 42A report. It is notable, that the section 42A report team generally support the Regional Council's position.

10.2 In particular, the Regional Council agrees that the proposed rezoning cannot be supported (and should not proceed) because:⁸³

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

11. CONCLUDING COMMENTS

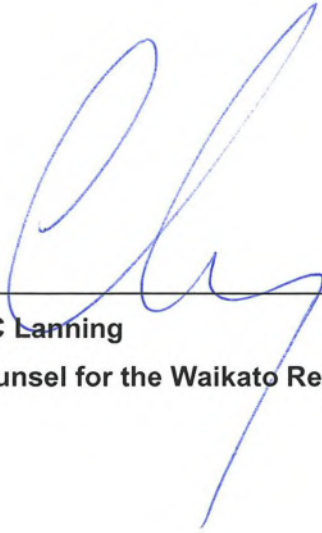
11.1 The Regional Council is under a duty to enforce observance of the RPS – which, in this case, reflects the regional strategic consensus reflected in the Future Proof Strategy. The district plan must give effect to the RPS. A proposal to establish a new discrete community, physically separated from existing urban areas that will be car-dependent for the vast majority of trips and reliant on infrastructure and services that are speculative at best, is the antithesis of what the RPS requires. As such the proposed rezoning will not implement or give effect to the RPS. And, for the same reasons, it will not be enabling a “well-functioning urban area” as required by the NPS-UD.

11.2 The Regional Council accepts that the industrial component would generate employment and the consequential social and economic benefits. However, apart from the initial construction of houses, the residential component will not. Ambury has not explained why the residential component is necessary – apart from it being part of its ‘vision’. And, moreover, the options of providing the housing within the existing Te Kauwhata or Huntly townships has not been explored. Such options would avoid the potential social, transportation and flood hazard related issues raised by the Regional Council.

11.3 However, without prejudice to the above submissions, should the Panel reach a different conclusion it is respectfully suggested that the most appropriate way forward would be to

83 Paragraph 200.

issue an interim decision and allow the parties to further develop the proposed district plan provisions. As explained in Mr Mayhew's evidence there are a number of aspects of the currently proposed provisions that are unclear or otherwise need amending to ensure that the appropriate resource management outcomes are achieved.



G C Lanning

Counsel for the Waikato Regional Council