

**Before Independent Hearing Commissioners
In Ngāruawāhia**

Under the Resource Management Act 1991 (the Act)

In the matter of a submission by Ambury Properties Limited and others in respect of the proposed Waikato District Plan pursuant to Clause 6 of Schedule 1 of the Act seeking the re-zoning of land at Ohinewai

and Ambury Properties Limited and others
(Submitters)

and NZ Transport Agency (Waka Kotahi) and Waikato Regional Council
(Submitter and Further Submitter)

Summary of Evidence of Ian David Mayhew for Waka Kotahi NZ Transport Agency and Waikato Regional Council – Planning

9 September 2020

1 Introduction

- 1.1 My full name is Ian David Mayhew. I am a Principal Planning and Policy Consultant for 4Sight Consulting Limited. I have the qualifications and experience as set out in my Evidence in Chief (EIC). I also confirm that in preparing this summary statement I have complied with the Code of Conduct for Expert Witnesses in the current Environment Court Practice Note (2014).
- 1.2 The below comprises:
- a A summary of my EIC, including any changes from that evidence as a result of the evidence of other witnesses, including rebuttal evidence presented by Ambury Properties Limited (APL).
 - b My response to the evidence of witnesses for other further submitters:
 - i Mr Ken Tremaine (for the Future Proof Implementation Committee);
 - ii Mr Gavin Donald (for Waikato Tainui);
 - iii Dr Webby (for Mercury NZ Limited); and
 - iv Mr McLauchlan (for Ohinewai Lands Limited (OLL)).
 - c My response to the rebuttal evidence of Mr John Olliver (for APL).
 - d My response to the updated Section 42A report (Rebuttal Evidence - 7 September 2020) prepared for Waikato District Council (WDC) by Ms Chloe Trenouth.
 - e My overall conclusion.

2 Summary of evidence

- 2.1 APL and other parties have lodged submissions on the Proposed Waikato District Plan (PWDP) seeking re-zoning of land at Ohinewai. The areas of land in question are currently zoned rural in the operative and proposed plans and the submissions seek re-zoning to urban land uses (APL), rural-residential (Shand) and indicative future urban (OLL). APL's submission is the most significant given the large area at issue and that it has supported its request with technical assessments and evidence.
- 2.2 Waka Kotahi and the Waikato Regional Council (WRC or Council) lodged further submissions in opposition to the Ohinewai re-zoning requests. These were on

the basis that the requests were not consistent with the settlement pattern within the Future Proof Growth Strategy and the Regional Policy Statement (WRPS), and that re-zoning decisions on departures from this adopted pattern should not be made until appropriate strategic assessment and planning had been undertaken.

- 2.3 My evidence outlines a range of issues in respect of the APL proposal. These include:
- a The lack of consideration of the potential cumulative effects of the proposal and other potential development, and the potential requirements for upgrading of transport and other infrastructure.
 - b A limited assessment of alternatives in respect of s32AA of the Act. In my opinion the extent of the departure from the established and planned growth pattern, the potential public funding implications to support the proposal and the wider implications of the proposal are such that alternative options should be comprehensively assessed.
 - c The unsuitability of the site for development, particularly in respect of the residential component. This includes matters such as exacerbating the severance of Ohinewai across the Expressway, limited multi-modal transport links to and from the site, and public transport that is unlikely to be viable, development within a flood plain requiring substantial filling and a range of compromises in respect of managing transportation effects. Some of these matters require significant mitigation that may affect the 'affordable housing' aim of the OSP.
 - d Effects on the transportation network, in particular the Expressway which is a road of national significance designed to facilitate inter-regional travel and the movement of freight, and whether the proposal *'protects the value and long term benefits of regionally significant infrastructure'* as directed by the WRPS.
 - e Whether water and wastewater servicing is sufficiently certain that this matter can be addressed through staging requirements in the proposed plan provisions. In my view, the assessment has not progressed to a stage where this is the case, particularly given the objectives of the Vision and Strategy for the Waikato River, the water allocation status of the catchment, and substantial queue for resource consents.

- f The certainty of whether The Comfort Group's vision and benefits of the proposed Ohinewai Structure Plan (OSP) will occur, as a number of important aims of the proposal are not easily ensured through plan provisions.

National Policy Statement for Urban Development

2.4 The NPS-UD was gazetted on 20 July 2020 and comes into force on 20 August 2020 and hence is relevant to these proceedings. It replaces the National Policy Statement on Urban Development Capacity 2016. I consider that the NPS-UD has limited relevance to the proposal on the basis that the OSP is not an 'urban environment' as defined in the NPS-UD. However, it is a new NPS supported by little guidance and I acknowledge that the definition is interpreted differently by the various planners. On the basis that it does apply to the OSP proposal, I consider that the proposal:

- a Does not give effect to the Objectives of the NPS-UD, particularly in relation to medium and long-term strategic planning, and supporting reductions in greenhouse gas emissions; and
- b Does not contribute to all, and detracts from some of, the minimum requirements for a well-functioning 'urban environment' (as defined in the NPS-UD).

2.5 Accordingly, to the extent that the NPS-UD is relevant to the proposal, I consider that the proposal does not give effect to its objectives and policies.

Te Ture Whaimana o Te Awa o Waikato / Vision and Strategy for the Waikato River (Vision and Strategy)

2.6 The Vision and Strategy has the Vision of:

'a future where a healthy Waikato River sustains abundant life and prosperous communities who, in turn, are all responsible for restoring and protecting the health and wellbeing of the Waikato River, and all it embraces, for generations'

2.7 It has 13 objectives that are to be pursued in seeking to achieve the Vision. There are aspects of the proposal that are likely to contribute to some of the objectives, provided that the proposal is implemented in accordance with the evidence that has been provided by APL.

2.8 While there is no stated hierarchy of objectives within the Vision and Strategy the primary outcome that is sought is the restoration and protection of the Waikato

River for future generations. Given the lack of certainty in water and wastewater servicing and the associated outcomes it will achieve, I remain unconvinced that it has been demonstrated that the central outcomes of the Vision and Strategy in respect of the restoration of the Waikato River can and will be met.

- 2.9 Hence, I consider that it is premature to conclude that the proposal will, as a whole, give effect to the key objectives of the Vision and Strategy in relation to the restoration and protection of the health and wellbeing of the Waikato River.

The National Policy Statement for Freshwater Management 2020 (NPS-FM) and the National Environmental Standards for Freshwater 2020 (NES-FM)

- 2.10 The NPS-FM was gazetted on 3 August 2020 and comes into effect on 7 September 2020. I consider that it has little relevance to the proposal at this stage, although it does support my position below in respect of protecting habitats of indigenous freshwater species (Policy 9 of the NPS-FM). It may be more relevant at the regional resource consent stage when the effects of specific activities will need to be assessed.
- 2.11 I did not address the NES-FM in my EIC, but note the assessment by Ms Trenouth in the updated s42A report¹ and the prohibited activity status for earthworks in/drainage of a natural wetland. In this regard, I am currently advising Tauranga City Council in respect of the development of a Strategic Growth Area in Tauranga where this same issue is pertinent in respect of pasture areas that may potentially be natural wetlands under the NPS-FM/NES-FM definition. In that project, it is intended to re-map wetlands in the development area in the context of the definition provided in the freshwater national directions to ensure that the extent of any wetlands, and implications of this, are fully understood.
- 2.12 I raise this in light of Ms Trenouth's assessment that a *'modified, degraded wetland in the south in the south western corner of the site ...does not appear to meet the definition of 'natural wetland' as set out in the NPS-FM'* and *'based on this, the prohibited activity status would not appear to affect APL's proposal'*. In my opinion, it would be prudent for APL to confirm this conclusion.

Waikato Regional Policy Statement (WRPS)

- 2.13 As the Panel will appreciate, the WRPS is an extensive document and contains a range of provisions – objectives, policies and implementation methods – of

¹ Updated s42A Report, paras 129 to 131.

relevance to this proposal. I have undertaken a detailed assessment of key provisions in my EIC that I do not reiterate here.

- 2.14 In summary, it is my opinion that overall, the proposal does not give effect to the WRPS and is not consistent with the Development Principles in 6A and the Future Proof Guiding Principles. The primary reasons for this are:
- a The OSP proposal does not support existing urban areas in preference to creating new ones. While there are some elements of a compact urban form within the site itself, the reliance on Huntly and wider areas for health and social services, education and retail will not promote a compact urban form.
 - b Key stated benefits of the proposal, including affordable housing for workers, the rail siding and the sustainable provision of public transport are not easily ensured through plan provisions or other mechanisms, reducing the certainty that they will occur.
 - c Economic and social experts on behalf of Council raise concerns as to whether the benefits will materialise, and what happens if they do not, including social isolation and disconnection from the existing urban fabric. They highlight a reasonable risk that the OSP would become (at least in part) a 'dormitory' town, with resulting car dependence and increased greenhouse gas emissions associated with travel to access services and employment — further risking social isolation and other adverse effects, as identified in Dr Hackell's evidence².
 - d Development of the site creates a number of fundamental issues (for example severance and transportation) that may be able to be mitigated to some extent, but which still result in a sub-optimal outcome from a transport and accessibility perspective. Mr Swears advises that the proposal may also result in safety effects (in relation to the Ohinewai interchange), describing it as '*a situation with identified safety issues will be made less safe as a result of the Proposal*'.
 - e The location of the site is not conducive to effective and efficient public transport and active transport modes, and will result in a reliance on the private car to meet the reasonable daily needs of residents to access employment, food, education and wider community services.

² Dr Hackell's EIC, para 6.6.

- f The necessity to utilise the Expressway for local trips by private vehicles, has the potential to undermine the long-term strategic function and benefits of the Expressway.
- g I consider that the OSP does not connect well with existing water and wastewater networks, given its location. While this can be mitigated by the provision of reticulated water and wastewater, I remain concerned that the mid-Waikato Water and Wastewater Servicing Strategy (MWWS) is high level and identifies a range of important feasibility, consenting and cost issues that still need to be addressed.

Flood Risk

- 2.15 Flooding is a natural hazard of concern across the Ohinewai area. The OSP area, the Shand property and the indicative OLL areas are located in a residual flood hazard area, protected in part by the extensive Lower Waikato-Waipā Flood Control Scheme (LWWFCS), as described in the evidence of Mr Desai and Mr Basheer.
- 2.16 Council staff and experts have worked with APL's advisors to ensure that the risks are appropriately understood, modelled and mitigated to ensure that people and development are not in areas subject to unacceptable flood risk.
- 2.17 In his EIC Mr Basheer confirmed that, in his opinion, flood risk in the Ohinewai area could be mitigated through the setting of appropriate ground and building platform levels. However, the modelling supporting the proposed ground and platform levels had not been shared with Council and he was unable to confirm whether the ground heights in the proposed plan provisions attached to Mr Olliver's EIC were appropriate.
- 2.18 This information has been subsequently provided to Council. As a result, Mr Basheer confirms that flood risk, both in terms of flooding during an extreme rainfall event and a breach of the LWWFCS stop-banks, will be mitigated by:
 - a Adopting a design flood level of 8.0mRL; and
 - b Utilising a minimum freeboard above this flood height for building platform/floor levels of 0.5 m for residential dwellings, 0.3 m for industrial/commercial and 0.2 m for other non-habitable buildings.

- 2.19 These revised levels have been included in the updated plan provisions appended to Mr Olliver's rebuttal evidence³ based on Mr Desai's evidence. However, there appears to be some difference between how Mr Desai interprets the New Zealand Standard 4404:2010 in respect of freeboard (finished floor levels)⁴ and Mr Basheer's interpretation of the standard (building platform level). On the basis of Mr Basheer's confirmation that the design flood level of 8.0RL and the freeboards above are appropriate to protect development within the proposed OSP area from flooding, I am confident that should the re-zoning request be accepted, the appropriate provisions can be incorporated into the plan.
- 2.20 The conclusions from the APL assessment cannot be applied to the other proposed re-zoning sites, particularly the Shand property which lies substantially closer to the Waikato River. As Mr Basheer advises in his evidence, the Shand property is subject to several flood risks, including a significant risk from a stop-bank breach or over topping – noting that the stop-bank and other elements of the scheme are designed and constructed to a rural land use level of service.
- 2.21 Mr Basheer advises that, in his opinion, it is not appropriate for the Shand property to be re-zoned for a more intensive land use in the absence of more specific information on how flood risk can be adequately managed in this location. I concur with this opinion.

Ecological Effects – Black Mudfish

- 2.22 The OSP area is located in close proximity to known locations of black mudfish and has areas of potential habitat (including modified watercourses, farm drains and wetland areas) for mudfish. Black mudfish are classified as 'at risk - declining' in the Department of Conservation Threat Classification System. Under this classification, their habitat would qualify as significant habitat of indigenous fauna in accordance with the criteria in 11A of the WRPS. While mudfish have not been found at the site to date, the experts agree that the presence of black mudfish cannot be ruled out.
- 2.23 In his EIC, Dr Wilding advised that the Indigenous Fish Management Plan detailed in Attachments a3 to a5 of Mr Olliver's EIC was deficient in that:

³ Attachment a3: Rule 16.6.4 and 16.6.5; a4: Rule 17.6.4 and 17.6.5; a4: 20.6.3 and 20.6.4.

⁴ Mr Desai's rebuttal evidence, para 3.5.

- a the Management Plan only applied where there are ‘watercourses’ in the areas where earthworks are undertaken (and not wetlands or drains that may provide mudfish habitat);
 - b it does not provide for the protection of existing habitat where it is possible to do so; and
 - c Monitoring of mitigation and translocation should be undertaken.
- 2.24 In his summary statement, Mr Wilding advises that (a) and (c) above have been addressed to meet his concerns, but (b) has not. I have reviewed the provisions attached to Mr Olliver’s rebuttal evidence and concur with this.
- 2.25 As outlined in my evidence, Policy 11.2 of the WRPS seeks to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna (significant biodiversity), and the characteristics that contribute to its significance. Method 11.2.2 of the WRPS provides a hierarchy for the management of effects on significant biodiversity. I consider this hierarchy provides a clear directive that the habitat of significant biodiversity, in this case the black mudfish, should be protected if it is found to be present on the site and it is possible to do so. More-so, this is particularly the case given the low likelihood of successful translocation and mitigation.
- 2.26 Accordingly, I consider that should the re-zoning request be accepted, the requirements of the Indigenous Fish Management Plan as proposed⁵ should be amended 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. With this addition, I consider that the potential effects on significant biodiversity would be managed in a manner consistent with Policy 11.2 and Method 11.2.2.

Weight Given to Other Documents

- 2.27 In respect of the weight given to management plans and strategies prepared under other Acts, I consider that:
- a Substantial weight should be given to Future Proof as it was developed through a collaborative process and has been embedded into the WRPS via a Schedule 1 process under the Act;
 - b Waikato 2070 should not be afforded substantial weight. While it has been developed through the same special consultative procedure as Future Proof,

⁵ For example 16.6.3 RD5 in Attachment a3 to Mr Olliver’s evidence.

it has not gone through an RMA process as Future Proof has through the WRPS Schedule 1 process. It is also indicative in nature, with identified future growth areas and timings being subject to further investigation and feasibility.

S32AA Evaluation

- 2.28 In my opinion the re-zoning request should be subject to an evaluation under s32AA that includes other locations and growth forms. I consider that the circumstances warrant this as:
- a It represents a substantial departure from the settlement pattern that is embedded in the WRPS and has implications that go well beyond the OSP area;
 - b It will require substantial public investment in infrastructure development and maintenance;
 - c There is a real risk that the 'vision' in the masterplan will not be delivered, including the risk of the settlement becoming a dormitory town; and
 - d It will affect the long-term function and benefits of the Expressway.

3 Response to Other Further Submitter Evidence

Mr Kenneth Tremaine (Future Proof Implementation Committee)

3.1 Mr Tremaine addresses the alignment of the re-zoning request with the WRPS and Future Proof. He advises that the industrial component of the Ohinewai development aligns with Future Proof Strategy principles and the responsiveness approach, given that it provides an opportunity to contribute significant economic benefit. Accordingly, he concludes that *'depending on the evidence provided, any further work undertaken and the Proposed District Plan provisions, I am of the view that the industrial component can satisfy the RPS alternative land release criteria'*.

3.2 However, he is of a different view in respect of the residential component, stating:

'In terms of the development principles set out in 6A of the RPS, in my opinion the residential component of the development does not meet these. It is not consistent with principles to support existing urban areas in preference to creating new ones, provide a clear delineation between urban and rural areas, connect

well with existing and planned development and infrastructure and promote a compact urban form.

Given both the RPS provisions and the Future Proof principles and settlement pattern, the residential component of the Ohinewai development does not align with these documents.'

- 3.3 While I have not assessed the industrial and residential components independently, on the basis that the APL re-zoning request was a 'total package', I generally concur with his view.
- 3.4 Mr Tremaine addresses the MWWS and highlights the very significant cost of water and wastewater upgrades that this strategy signals. As I have identified in paragraph 13.8 of my EIC, the potential for substantial public investment in infrastructure – both capital and operational – and a range of other matters justify a robust consideration of alternatives.

Mr Gavin Donald (Waikato-Tainui)

- 3.5 Mr Donald's planning evidence focusses on water supply and wastewater disposal from the proposed OSP area. In respect of wastewater servicing he advises that:

'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....

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.'

- 3.6 Similarly, in respect of water supply, Mr Donald advises that:

'an additional water take required to service the requested rezoning would not appear to be giving effect to this document [Te Ture Whaimana] that is weighted equivalent to, or in areas of inconsistency elevated higher, than a National Policy Statement.' and *'Waikato-Tainui anticipate or would have hope to be able to assess water supply options that have progressed beyond speculative alternate supply. The current situation does not allow for clarity and concern that the awa is going to be expected to give more'.*

- 3.7 This opinion is consistent with mine – that the MWSS has not progressed to a stage that it provides the necessary certainty that water and wastewater servicing can be undertaken in a way that gives confidence that the Vision and Strategy will

be given effect to, such that this issue can be appropriately managed through staging and plan provisions.

Dr Murray Webby (Mercury NZ Limited)

3.8 Dr Webby has provided evidence on flood management and mitigation. While he considers that the loss of flood storage and resulting increase in flood level associated with the APL proposal are 'insignificant', he advises:

*'... it is the cumulative effect of the APL development and other potential developments within the area covered by the Ohinewai Structure Plan (through encroachment into the flood storage zone for the lake) which is of the greatest concern from a flood management perspective. Loss of flood storage capacity within the storage zone for the lake would result in increased flood levels and a reduced capacity to absorb floodwaters diverted from the Waikato River in a significant flood event.'*⁶

3.9 I agree with his concern, which supports my opinion that prior to approving proposals to establish urban land uses in this area, a broader assessment of potential development should be undertaken to identify the potential cumulative effects on flood risk (and other matters including effects on the roading network). This would assist in decisions about the suitability of the site, the potential scale and type of development that is sustainable, associated cumulative effects and mitigation requirements, and necessary infrastructure upgrades.

3.10 It also supports Mr Basheer's opinion that intensification of other areas, for example the Shand property, should not be accepted until a comprehensive assessment of flood risk has been undertaken.

Mr Tony McLauchlan (Ohinewai Lands Limited (OLL))

3.11 I had previously interpreted the relief sought in the OLL submission as being to signal a growth area in Ohinewai east (although the size of the area differs substantially between the submission and the s32AA Planning Report (5 December 2019) and maps). While the submission was not explicit as to what 'signal' was being sought, I had assumed that OLL may be seeking an 'Urban Expansion Area' re-zoning.

3.12 However, Mr McLauchlan advises that '*OLL seeks that the provisions of the pWDP do not preclude the growth options identified for Ohinewai in Waikato*

⁶ Para 4.6, Evidence of Mr Grant Webby for Mercury NZ Limited.

2070, including future rezoning of the Site for residential purposes.’ That is, OLL do not appear to be seeking a zoning change.

- 3.13 While this may be the case, Mr McLauchlan’s evidence demonstrates the potential for wider development in the area should the APL re-zoning request be approved. This supports my view on the desirability of a broader assessment to be undertaken to fully understand the potential cumulative impacts of development in the wider area and the requirements for necessary supporting infrastructure.

4 Rebuttal Evidence of Mr Olliver

- 4.1 I briefly respond to matters raised by Mr Olliver in his rebuttal evidence below.

Strategic Approach

- 4.2 Mr Olliver disagrees with my concern in respect of the need for a broader assessment of options for the proposal – including alternative locations and forms of development – and a consideration of potential cumulative effects. My concern arises due to the scale of the proposal – essentially the establishment of a new town in a location several kilometres away from existing urban areas – and the matters I have identified above in relation to a section 32 AA evaluation. Additionally, I consider that such an approach is directed by Policy 6.1 of the WRPS, which requires that the potential cumulative effects of subdivision, use and development are recognised and addressed, and that subdivision, use and development is based on sufficient information to allow assessment of the potential long-term effects.
- 4.3 Mr Olliver advises that this approach is to ‘not act’. With respect I do not agree – it is choosing to act in the context of information that is commensurate to the scale of the matter at issue. In my opinion this is a substantial decision with potential implications that go well beyond the subject site and justifies consideration of alternatives, the cumulative effects of development and long-term implications for essential infrastructure. Accordingly, I consider that the risk of ‘not acting’ is outweighed by the benefits of ensuring that a decision to develop an urban area in this location is undertaken in the context of a broader assessment.

NPS-UD Definition of an Urban Environment

- 4.4 Mr Olliver disagrees with the interpretation of Mr Keenan and myself as to whether the OSP proposal should be considered an ‘Urban Environment’ as

defined in the NPS-UD. In his summary statement, Mr Keenan indicates that a strict interpretation of the definition of 'urban environment' means that the combined OSP/Huntly area does not meet this definition as it does not meet both of the criteria (being a housing and labour market of more than 10000 people. However, Mr Keenan agrees with Mr Olliver that the definition is internally inconsistent, as the labour market will always be less than the housing market and that an alternative interpretation is not unreasonable.

- 4.5 Part of Mr Olliver's rationale is that both the OSP and Huntly are urban in character and that:

'While there is an undeveloped gap between them of approximately 2.5km, that distance is not significant in the context of Huntly township which extends along the Waikato River for a distance of some 8km.'

- 4.6 I note that this is a potential 'future' undeveloped gap; the distance between the Ohinewai Interchange to the current Huntly urban area is approximately 5.3 km. However, I agree that both the Future Proof maps (6C in the WRPS) and Waikato 2070 include indicative urban limits/development that may extend the Huntly urban area to approximately 3 km from the Ohinewai Interchange – with the intervening and surrounding land being rural.
- 4.7 However, I accept that this is a new definition with little supporting guidance at this time. Accordingly, in my evidence I also assessed the alternative of whether the OSP proposal contributes to a well-functioning urban environment.

Objective 1 and Policy 1

- 4.8 Mr Olliver advises that he considers *'that the OSP will create a 'well-functioning urban environment' as it will enable a variety of homes'*. He also advises that he considers the OSP has good accessibility and will enable a different approach to home-work trips. He acknowledges 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'*.
- 4.9 I agree that, should the re-zoning request be accepted, the OSP would provide typology and locational choices for both residential and business development. However in terms of accessibility, transportation experts for both Council and Waka Kotahi and experts for WDC (Ms McMinn (transportation)⁷ and Mr Jones

⁷ Ohinewai Structure Plan: Proposed District Plan Submission: Ambury Properties Limited Update, Naomi McMinn, page 2.

(urban design)⁸), all consider that access to and from the site will be highly dependent on private motor vehicles.

4.10 Ministry for the Environment guidance on the issue of accessibility indicates that:

‘to enable all people and communities to provide for their wellbeing, councils should ensure that activities such as housing jobs and services are readily accessible within urban environments. This means there should be places where, for example, disabled people, older people and the very young are able to fully participate, interact and move about with ease and dignity.’

4.11 Mr Kuo advises that the OSP area can be serviced by public transport if sufficient funding is available – as would be the case for any area. However, the site’s location does not facilitate an efficient and effective service and it is unlikely to meet Council’s criteria for public transport funding, or that of Waka Kotahi. In my opinion this substantially restricts accessibility to Huntly (and beyond) from the proposed OSP area, other than by private motor vehicle.

4.12 The guidance also states that:

‘The outcomes referenced in the well-functioning urban environments policy are interrelated and need to be considered together. For example, housing and transport choices that relate to Policies 1(a) and 1(c) have an impact on greenhouse gas emissions, policy 1(e).’

4.13 In my opinion the location of the OSP area, the reliance on Huntly (and wider towns and cities) to provide social and community services, and the limited multi-modal transport options does not support a reduction in greenhouse gas emissions, as required by Policy 1(e).

4.14 In summary, I acknowledge that there may be different interpretations as to whether the OSP combined with Huntly constitutes an ‘urban environment’ under the NPS-UD. However, (to the extent that the NPS-UD applies) my opinion that the proposed OSP does not give effect to the NPS-UD has not changed.

Water and Wastewater

4.15 Mr Olliver addresses my concerns regarding the consentability of additional water takes in the lower Waikato Catchment (for which there is a substantial queue),

⁸ Landscape, Visual and Urban Design Assessment Peer Review – Review and response to the expert evidence of Ambury Properties Ltd (APL). Mathew Jones, Isthmus Group, para 4.1 (c).

advising that *'new consents for allocations are not needed, the allocation 'queue' can be avoided and in my opinion renewals are feasible and consentable'*.

- 4.16 While I agree with Mr Olliver that resource consents for renewals are generally more secure than new resource consents in a catchment with excess application demand, I remain concerned as to what the proposal for water supply is and hence the consenting requirements. In this regard, I note that:
- a Mr White⁹ anticipates *'that as part of the MWSS Watercare would seek an increase take from the Te Kauwhata source to provide security of supply into Huntly and Ngaruawahia'*.
 - b Mr Bradley¹⁰ advises *'The medium term proposal for water supply is dependent on the Te Kauwhata Water Association obtaining a new consent for its water take for at least the volume required for the Ohinewai development'* and *'The long term proposal for water supply is dependent on WDC securing a water take consent for the required volume for the new Te Kauwhata Water Plant'*.
 - c The MWWS advises¹¹ that while the current Te Kauwhata water take is sufficient to meet the predicted demand for all schemes its consent expires in 2024 and is currently limited to a community water supply of 486 properties. Furthermore, Watercare Waikato advise that it is likely that the next water take consent allocation will be lower as the peak abstraction is substantially lower than the consented allocation.
- 4.17 While I accept that the issue of water supply may ultimately be resolved with further consideration and investigation (as the study itself recommends), the MWWS is very recent and raises a number of questions that require further consideration before a viable water supply option is confirmed.

Reverse Sensitivity

- 4.18 Mr Olliver has provided additional assessment on the issue of reverse sensitivity – a matter I raised as I was concerned that the introduction of residential land uses in a rural environment and in relatively close proximity to industrial land use, including a Major Hazard Facility, could result in sensitivity effects.

⁹ EIC of Mr White, para 2.16.

¹⁰ Updated s42A report, Appendix 4: Summary and Conclusions.

¹¹ Appendix B, page 13 (page 106 of the pdf document).

- 4.19 Mr Olliver has outlined a range of measures to manage reverse sensitivity, including specific noise mitigation, setbacks and landscape buffers. I also note that the updated s42A report¹² identifies that controls have now been added to the plan provisions to address these matters and that a 'no-complaints' covenant is also proposed on residential sites in relation to shooting.
- 4.20 Mr Olliver also advises that, as the Panel had indicated during expert conferencing, directions have been made in respect of provisions for Major Hazard Facilities. I am not familiar with this aspect of the PWDP but accept that provisions can be drafted to manage the potential for off-site effects from such facilities.
- 4.21 As such, I accept that the issues of reverse sensitivity I have raised have been, or can be, addressed by appropriate plan provisions and urban design.

5 Updated WDC S42A Report

- 5.1 I have reviewed the updated s42A report prepared by Ms Chloe Trenouth and largely agree with her conclusions, and ultimately her recommendation. However, I briefly address several issues below.

Urban Environment

- 5.2 Ms Trenouth disagrees with my interpretation of the definition of an 'urban environment' that I discuss above and whether the OSP is part of an urban environment under the NPS-UD. I reiterate that the NPS-UD is new, with limited supporting guidance, and we are trying to assess its application to a slightly unusual situation. It is therefore no surprise to me that the various planning witnesses have different opinions.
- 5.3 However, I question Ms Trenouth's conclusion that the '*Waikato District is specifically identified as comprising part of the Hamilton urban environment, which is identified as a Tier 1 urban environment*'. This appears to be based on the inclusion of Waikato District Council as a Tier 1 local authority in respect of the Hamilton Tier 1 urban environment¹³. In my opinion this interpretation is too broad as the inclusion of all of the Waikato District, together with the Waipa District, does not meet the urban environment definition of being predominantly urban in nature. In my opinion, the classification in the NPS-UD relates to the Hamilton urban area, which the Waikato District abuts, and this does not logically

¹² Para 61.

¹³ NPS-UD, Appendix, Table 1 (page 31).

translate to all townships within the Waikato and Waipa Districts being identified as 'urban environments' under the NPS-UD.

- 5.4 However, it is a moot point as Ms Trenouth ultimately draws the same conclusion as I do. That is, that the proposed OSP does not meet the minimum requirements of a "well-functioning urban environment" nor give effect to the objectives and policies of the NPS-UD, in particular objectives 6 and 8 and policies 1 and 8.

Water and Wastewater Servicing

- 5.5 I have outlined my concerns regarding water and wastewater servicing above. Ms Trenouth shares those concerns but considers that these issues can be addressed by staging provisions that trigger resource consent if the necessary infrastructure upgrading has not been complied with. However, I consider that a higher level of certainty is necessary before substantial re-zoning of land to an urban land use that is fundamentally reliant on this servicing – noting that this is primarily associated with the residential component of the proposal.
- 5.6 Ms Trenouth expresses reservations as to whether discretionary activity status is adequately stringent to address her '*concern that a development could proceed on an incremental basis without the wider catchment-based infrastructure in place*'¹⁴ and recommends a non-complying activity.
- 5.7 Should the re-zoning request be accepted, then I agree that consent should be required as a non-complying activity for development in advance of infrastructure servicing. However, in my opinion, this does not entirely resolve the concerns regarding the ability to obtain consent for incremental development in advance of identified infrastructure upgrades.
- 5.8 Under Section 104D(1)(a) of the RMA, consent can be approved where the adverse effects are minor. In my experience it is difficult to address the adverse effects of incremental development, as adverse effects will be assessed against the baseline of the existing environment – such that consent may be granted on the basis that additional effects are minor.
- 5.9 Should the re-zoning request be accepted, proposed Policy 4.1.20 (a)(ix) could be made more directive to further guard against development occurring in advance of infrastructure upgrading. A possible wording is:

¹⁴ Updated s42A evaluation, para 94.

Development shall not occur in advance of the staged availability and upgrading of water supply, wastewater and transport infrastructure as indicated in Tables 16.X.

- 5.10 However, in respect of water and wastewater servicing, I remain of the opinion that further assessment is required to confirm that the identified options are feasible, affordable and consentable before approving the re-zoning request.

6 Conclusion

- 6.1 In my opinion, the submission by APL seeking a re-zoning request should be rejected. The primary basis for this is that the proposal:
- a Does not give effect to the NPS-UD; and
 - b Does not give effect to key objectives and policies of the WRPS, including:
 - i Objective 3.12, Policy 6.1, Policy 6.3 and associated method;
 - ii Policy 6.14 and the criteria for alternative land release;
 - iii The Development Principles in Section 6A; and
 - iv The Future Proof Guiding Principles.
- 6.2 I consider that recourse to Part 2 of the Act is not required. Notwithstanding this, while there are aspects of the proposal that are consistent with Part 2, I concur with Ms Trenouth's conclusion in the updated s42A report that the proposal as a whole does not achieve the sustainable management purpose of the RMA.
- 6.3 Should the Panel accept the APL submission and approve the re-zoning request, then I consider that the Panel should direct further consideration and engagement in respect of the provisions to ensure that they are 'fit for purpose' in line with the Panel's decision. I have identified some matters relating to the proposed provisions in my EIC and concur with Ms Trenouth that the provisions relating to Ohinewai are best structured as a separate precinct section in the PWDP rather than making modifications to standard zones.
- 6.4 I consider that the submission by Shand seeking re-zoning requests should also be rejected.

6.5 Lastly, I understand that OLL are no longer seeking a re-zoning of their land.

Ian Mayhew

9 September 2020