SECTION 42A REPORT

Closing Statement

Hearing 18: Rural Zone – Landuse

Report prepared by: Jonathan Clease

Date: 23/10/20

TABLE OF CONTENTS

1 Introduction

1. This closing statement is provided as a response to both the evidence raised by submitters, and questions from the Panel, at the Rural Hearing held between 28th September – 1st October. In this statement I have focussed on areas where my recommendations have changed as a result of submitter presentations at the hearing. As such it represents an evolution of my original s42A report and subsequent rebuttal statement. Where my recommendations have not changed, these earlier reports are relied on and I have not simply repeated the same arguments over again.

2. In addition to matters raised by submitters, the Hearings Panel suggested that I consider the wording of the policy framework, particularly around the consistent use of terminology, and to improve the useability of the policies and remove 'planner speak' where possible. These changes are not so much in response to specific submissions but rather are to improve the functionality of the policy direction, without necessarily changing that direction.

3. This statement has a focus on the policy framework and land use provisions, with Ms Overwater providing a separate closing statement on subdivision matters.

4. While I have looked at the objective and policy framework with fresh eyes, I am very aware of the scope afforded by submissions. There are a number of policies (as an example) that I would recommend amending significantly but am unable to due to that particular provision only receiving supporting submissions. Often these policies also reflect the Regional Policy Statement.

2 Policy framework

2.1 Objective 5.1.1

5. Overall there was remarkably little evidence presented on the proposed policy framework, with remaining concerns focussed primarily on Objective 5.1.1 and the new Policy 5.3.2 recommended in the s42A report regarding rural character and amenity.

6. The Panel raised concerns regarding the clarity of direction provided through Objective 5.5.1, and sought in particular more specific emphasis on farming and productive rural activities as the core focus of the Rural Zone.

7. This objective is preceded by an advice note that "*Objective 5.1.1 is the strategic objective for the rural environment and has primacy over all other objectives in Chapter 5*". As noted in the s42A report, this structuring is somewhat unusual insofar as the balance of the strategic objectives are located in Chapter 1 (although I note that those "strategic objectives" in Chapter 1 are not framed as strategic objectives which makes their role somewhat unclear).

8. I am aware that Council Officers are in the process of drafting s42A 'framework' report which will set the scene for submissions seeking rezoning, with the vast majority of such requests seeking a change from Rural Zone to some form of urban zone. Clause (c) of the Objective 5.1.1 seeks that "*urban subdivision, use and development in the rural environment is avoided*". It is my understanding that Clause (c) was primarily intended to manage future activities seeking to locate within the Rural Zone and to provide clear direction to decision makers assessing resource consent applications. The rezoning framework report authors have identified that this clause may however be potentially problematic for rezoning proposals, especially if it is interpreted as having the same status as other objectives in *Chapter 1* insofar as no rezoning proposal will ever be able to be consistent with a strategic objective seeking to expressly avoid urban development in the rural environment. The advice note is explicit that the objective's primacy is only 'over all other objectives in Chapter 5', however the reference to it being a 'strategic objective' does imply that it is also of equal status to the whole-of-plan direction provided in Chapter 1.

9. As identified by Ms Chibnall in her s42A report on the Country Living Zone, Chapter 5 applies to the "Rural Environment" and there are objectives and policies in this chapter which expressly apply to the Rural Zone and/or the Country Living Zone. The ambiguity created by the advice note is that the Country Living objectives and policies are currently located in Chapter 5, implying that the Country Living Zone is a form of rural rather than urban zoning. If Objective 5.1.1 applies across the Country Living provisions, then in order to be internally consistent it must be inferred that Country Living outcomes are not 'urban' and therefore do not need to be avoided in either the Country Living Zone or indeed in the Rural Zone more generally. It is my understanding that the rationale behind the 'avoid' direction is in part to avoid small lot residential development, especially at densities and in lot numbers that are analogous with the outcomes anticipated in urban (or Country Living) zones.

10. Whilst the Country Living Zone comprises of large lots, the primary activity occurring within the zone is residential i.e. the majority of lots in the zone have their primary purpose as a house and garden, rather than being used for any productive farming activity as their primary role. As such it may make more sense for the Country Living Zone policies and rules to be separated out from the Rural Chapter so that it sits as a stand-alone policy framework and zone. The National Planning Standards structure will also facilitate such a separation of zones.

11. It appears to me that there are three potential options to resolve the ambiguity in direction. The first option is to either delete or amend the advice note and first part of the Objective to make it clear that the objective only applies to proposals within the Rural Zone, and conversely has limited application to submissions or future plan changes seeking rezoning which will be assessed primarily against the Chapter 1 strategic objectives regarding the management of urban growth. This would have the effect of ring fencing the objective to apply to just the Rural Zone, making it no longer applicable to the Country Living Zone.

12. The second option is to relocate the objective so that it is located in Chapter 1, and to amend Clause (c) to better integrate with urban growth objectives.

13. The third option is to retain the advice note and objective location and instead add a fourth clause that provides explicit direction regarding rezoning proposals.

14. Ultimately, the decision on the final wording of the advice note, the objective, and its structural location within the District Plan chapters will need to be carefully integrated with the decisions on both the Country Living provisions and Chapter 1 and how that strategic direction is expressed or implemented through the various rezoning requests. My recommended wording below is on the basis that Objective 5.1.1 applies solely to the Rural Zone, and as such sets the direction for activities in the Rural Zone, rather than being used as an outcome against which rezoning proposals are considered or indeed have the objective applied more widely to the "rural environment" (whatever that may be).

15. Given the content and breadth of the objectives relating to the Rural Zone, I see no need for Objective 5.1.1 to have an elevated status, particularly as all the objectives for the Rural Zone should work together as a consistent package. It is recommended that the advice note and Objective 5.1.1 be amended as follows:

5.1 The Rural ~~Environment~~ Zone

~~Objective 5.1.1 is the strategic objective for the rural environment and has primacy over all other objectives in Chapter 5.~~

5.1.1 Objective – the Rural ~~Environment~~ Zone

~~(a) Subdivision, use and development within the rural environment is provided for where:~~

~~(i) High class soils are protected for productive rural activities;~~

~~(ii) Productive rural activities, rural industry, network infrastructure, rural commercial, conservation activities, community facilities activities, and extractive activities are supported, while maintaining or enhancing the rural environment;~~

~~(iii) Urban subdivision, use and development in the rural environment is avoided.~~

(a) Within the Rural Zone:

(i) Enable farming activities;

(ii) Protect high class soils for farming activities;

(iii) Provide for rural industry, infrastructure, rural commercial, conservation activities, community facilities, and extractive activities, while maintaining or enhancing the rural environment;

(iv) Avoid subdivision, use and development in the Rural Zone for activities that have no functional need to locate in the Rural Zone and/or that create allotment sizes similar to that provided for in Country Living, Village, or Residential Zones.

2.2 Policy 5.3.2 – Rural Character and Amenity

16. Whilst there appeared to be broad agreement regarding the policy framework at the hearing, there were two topics where there remained disagreement. The first is regarding the articulation of 'rural character and amenity'. The as-notified Plan provided little meaningful direction on these terms or the outcomes sought. The s42A report recommended a new Policy 5.3.2 which sought to better articulate the existing character in the Waikato District, noting that such character is necessarily varied across a zone as geographically broad as the Rural Zone. This policy has a more narrative style, and in other district plans would perhaps have some of this content replaced by zone descriptions that sit alongside the policy framework. The Waikato Plan does not make use of narrative zone descriptions as a tool. I accept that in terms of drafting style, Policy 5.3.2 does differ from the more directive balance of the recommended policies. In my view such a difference is acceptable given both the diversity of the zone and the subjective nature of concepts like character and amenity.

17. Alternative wording was put forward by Horticulture NZ [419], with Federated Farmers [680] evidence referring to the narrative zone description format used in the Waipa Plan. In part these alternative wordings are to do with drafting style, and in part they relate to matters of substance, and in particular the degree to which non-farming activities form part of rural character. There appears to be general agreement that there is a role for such a policy, and that concepts such as rural character and amenity need to be fleshed out in order to properly inform decision making on future resource consent applications. I am not persuaded that the alternative wording advanced by submitters provide a better framework than that recommended in the s42A report, however I do acknowledge that this is a subjective matter and that the Panel themselves expressed some reservations regarding both the styling and the content of the policy as recommended.

18. The degree to which the Rural Zone policy and rule framework should provide for non-rural activities (and in particular community activities) turns on two key concerns raised by submitters. The first is the risk of unwinding wider urban growth directions regarding urban activities locating within urban zones/ townships, and the second concern is regarding reverse sensitivity risks to established farming and rural industry. In my view the Rural Zone encompasses a diversity of activities that have a functional (and historic) need to locate within rural areas. In short, the rural environment legitimately includes a wide range of activities that are not just farming. These activities should be anticipated at a policy level, with the recommended rule framework still requiring that they be assessed on a case-by-case basis through a resource consent process to ensure that their effects are adequately mitigated and their scale and location is appropriate. The recommended matters of discretion include

consideration of both urban growth outcomes, and reverse sensitivity risks. I do not see this framework as 'opening the door' to activities that would be better located within townships, as I consider there is a role for a range of non-farming activities in rural areas, subject to proposal-specific assessment through a consent process.

19. It is revealing that the majority of submissions (and presentations at the hearing) were not related to farming activity, but instead related to subdivision (and in particular the ability to create small lifestyle lots), the provision and protection of infrastructure and industry, provision for community activities, and extractive industry. The volume of submissions and evidence on these 'non-farming' topics illustrates the reality that the Rural Zone is home to much more than just agriculture and horticulture.

20. Resolution of the purpose of the zone, and the degree to which it should or should not provide for non-farming activities, is therefore a key decision which then ripples through the policy and rule framework.

2.3 Consistent terminology

21. The Panel indicated that they supported improved consistency in the use of terminology across the policy framework. The wording as set out in Appendix 2 to the Rebuttal Statement was the product of an iterative process whereby the wording has evolved from the Proposed Plan as notified, through amendments sought by submitters in both their original submissions and then in evidence, and through amendments recommended in the original s42A report. These incremental changes, limited to a certain degree by submission scope, has meant that some of the terminology has become somewhat inconsistent across the provisions as a whole.

22. Following the hearing, I recommend that the terminology be streamlined. These terms fall into two groups, namely those that are focussed on an outcome i.e. 'recognise', 'retain', 'maintain', and 'enhance', and those that relate to how an activity is to be managed (with links to the subsequent rule activity status). As a guide, the following terms have been used, with the policies amended to ensure consistent use of this terminology:

Outcome-based terms:

- 'Recognise' = an acknowledgment that an activity and associated effects (both positive and negative) is an existing feature of the Rural Zone. This wording provides direction as to anticipated outcomes, rather than linking directly to rules;
- 'Retain' = perpetuate the status quo;
- 'Maintain' = is similar to retain but indicates more proactive and ongoing management is necessary e.g. "maintain pest control in order to retain existing birdlife";
- 'Enhance' = improve the status quo;
- 'Protect' = a stronger direction than 'retain', with the key outcome again being to perpetuate the status quo;
- 'Ensure' = make certain the desired outcome occurs;

Activity-based terms:

- 'Enable' = the activity is anticipated, with a permitted activity rule;
- 'Provide for' = the activity is generally anticipated, however some control may be necessary to ensure effects are appropriately managed, either as conditions or built form thresholds. The rules for such activities will generally have a controlled or restricted discretionary activity status;
- 'Manage' = the activity may be appropriate in the Rural Zone, but equally may not be on a case-by-case basis. The rule framework will generally have a discretionary status;

- 'Limit' = the activity is generally not appropriate, however it may be acceptable in discrete circumstances or in small numbers. The rule framework will generally have a discretionary or non-complying status;
- 'Minimise' = strongly limit such activity, whilst recognising that there may be a very narrow range of unique circumstances where it may be acceptable. The rule framework will generally have a non-complying activity status.
- 'Avoid' = the activity is not anticipated, and indeed is directly sought to not occur in the Rural Zone. The rule framework will generally have a non-complying or prohibited activity status.

23. The policy framework has been amended to make more consistent use of the above terms.

2.4 Hamilton Urban Expansion Area

24. The difference in view between the s42A recommendations (both land use and subdivision) and Hamilton City Council has been well-canvassed in evidence. The evidence focussed primarily on the recommended shift from Prohibited to non-complying activity status in the Urban Expansion Area (UEA). I note that a bundle of community-related activities such as spiritual, health, and community facilities, are permitted in the Operative Plan (provided they are contained in buildings smaller than 2,000m^2), with the s42A recommendation that they shift to a discretionary activity. In short, the recommendations are to require an assessment of community facilities i.e. make the rule framework tougher, whilst also providing a consenting pathway as a non-complying activity for activities that are currently prohibited. The proposed framework in my view better implements the outcomes sought of ensuring that future urban growth opportunities are not unduly compromised, whilst also providing a consenting pathway for benign activities in recognition of the long multi-decade timeframes before such urban development is anticipated.

25. The Panel queried the clarity of the proposed policy framework of the UEA. This framework has been considered in an earlier hearing. The wording recommended in that earlier hearing is as follows:

> *Objective 5.5.1 – Protect land within Hamilton's Urban Expansion Area for future urban development.*
>
> *Policy 5.5.2 – Avoid ~~Manage~~ subdivision, use and development within Hamilton's Urban Expansion Area to ensure future urban development is not compromised.*

26. It is recommended that Policy 5.5.2 be amended to better reflect the intent to avoid activities that have the potential to undermine coordinated urban growth, whilst by inference not avoiding activities that will not impact such growth. It is recommended that the policy be amended as follows:

> Policy 5.5.2 –Avoid ~~Manage~~ Subdivision, use and development within Hamilton's Urban Expansion Area that will compromise coordinated ~~to ensure~~ future urban development ~~is not compromised~~.

2.5 Intensive farming

27. There is widespread acknowledgement in submissions and in evidence presented at the hearing that intensive farming is a normal and anticipated activity in rural areas, with good on-site management systems necessary to ensure effects are appropriately managed. Submitters raised concerns regarding how intensive farming is proposed to be defined (and conversely the lack of a clear permitted activity pathway for free-range activities). Related concerns were raised regarding the size of required setbacks from boundaries and whether compliance with the setback should result in a permitted rather than restricted discretionary pathway.

28. Consequently there are three outstanding issues with the intensive farming rules, namely:

1) definitions;

2) size of setbacks; and

3) whether compliance with the setbacks should result in permitted rather than restricted discretionary activity status.

I discuss these three issues in turn.

29. It is generally accepted that pasture-based farming systems for sheep, cattle, goats, or deer do not constitute 'intensive' farming. Such systems are not however referred to as 'free-range', rather they are accepted as a normal status quo farming activity that falls within the permitted pathway for 'farming'. For poultry and pig farming the 'status quo' expectation is reversed, whereby 'normal' poultry or pig farming has traditionally occurred within buildings. 'Free range' terminology is therefore typically only applied to poultry or pig farming, to differentiate pasture-based operations from more traditional intensive building-based models.

30. As recommended in the s42A report, extensive, pasture-based systems are permitted as part of 'farming' under Rule 22.1.2 (P1), whether the livestock being farmed is sheep, cattle, pigs, or poultry. As such, a separate 'free range' definition was not considered necessary. Clearly this approach has caused uncertainty for submitters[1], especially those representing the poultry industry. In terms of the outcome the District Plan rules are seeking to achieve, we are in agreement that pasture-based systems where pasture cover is able to be maintained should be permitted and should not be subject to the need to obtain a resource consent. In order to provide the requisite level of certainty to Plan users, it is recommended that a new definition and associated permitted activity rule (22.1.2 (P22)) be added to the Plan for 'free-range pig or poultry farming', and the intensive farming definition be amended.

31. Whilst evidence was somewhat light, I also accept that poultry hatchery activities do not generate the level of amenity-related effects that potentially affect neighbouring properties due to the size of the birds being so much smaller i.e. chicks rather than hens. It is recommended that hatcheries be included in the exemptions from the intensive farming definition, noting that the Operative Plan Franklin Section has long provided such a pathway as a controlled activity and hatcheries do not appear to have resulted in high levels of effects or complaints[2].

32. The notified activity status framework (and setback distances) is a roll-over from the Operative Plan (Waikato Section) whereby intensive farms are fully discretionary activities, unless the activity complies with setbacks in which case the activity status is reduced to restricted discretionary. Conceptually I agree with submitters that you could design a District Plan rule framework that included a permitted activity pathway where the setbacks are met, if the development of the District Plan provisions was informed by expert evidence that clearly demonstrated that compliance with such setbacks would adequately mitigate effects in the vast majority of situations. In the absence of such evidence, and noting the diversity of intensive farming systems and localised contexts such as topography and climate and surrounding levels of residential development, it is recommended that the setbacks and activity status framework be retained as notified. This enables case-by-case assessment of specific farming proposals, noting that submitters identified that such effects can often be appropriately managed provided good on-site management systems are in place. The primary tool for ensuring such systems are in place and are able to be enforced is via conditions attached to resource consents. If effects can indeed be adequately managed such that they do not extend beyond site boundaries then a resource consent should not be unduly challenging to obtain.

[1] Mainland Poultry [833], Combined Poultry Industry Representatives [821], The Surveying Company [746]

[2] Combined Poultry Industry legal submissions and correspondence with Waikato Regional Council

2.6 Artificial Crop Protection Structures and 'building' definition

33. Horticulture New Zealand presented a comprehensive set of evidence regarding the role and purpose of Artificial Crop Protections Structures ('crop structures'), and sought that such structures be explicitly provided for through their own definition, be listed as a permitted activity (subject to meeting conditions), and be explicitly excluded from the built form standards.

34. In the s42A recommendations, I recommended that the height limit be increased to 15m (for structures more than 50m away from road or internal boundaries)[3], and that crop structures be excluded from the rules controlling site coverage[4]. I recommended that crop structures remain subject to the rules controlling daylight admission[5] and boundary setbacks for non-habitable buildings[6].

35. The rule framework controls 'buildings'. The definition of 'building' is a National Planning Standards term, with the Hearing 5 process on definitions including a recommendation that the NPS definition be adopted. Buildings are therefore defined as meaning:

> *A temporary or permanent moveable or immovable physical construction that is:*
>
> *(a) Partially or fully roofed; and*
>
> *(b) Fixed or located on or in land;*
>
> *But excludes any motorised vehicle or other mode of transport that could be moved under its own power.*

36. As noted by the submitter, a crop structure without a roof would be permitted as it would not by definition be a 'building' and therefore would not be subject to the various built form rules which control the mass of 'buildings'. The visual and amenity impacts on neighbours and streetscape are generally caused by the large side walls, rather than the roof per se. As such the definition of 'building' creates a potentially problematic permitted baseline issue for not just crop structures but for any large rural buildings such as dairy sheds or barns where it could be argued that a high solid wall could be erected hard on the boundary with no setback or daylight controls at all and would have the same visual or shading effects as a large building without a roof. Whilst such arguments would need to be tested to ensure they were not putting forward a fanciful straw man scenario, the building definition is potentially problematic in ensuring that the rules effectively control the sorts of effects that they are designed to manage.

37. The original notified definition of building did not have a roofing component as a definition trigger, and therefore also captured structures. It also included a series of exemptions for structures such as fences, walls, and water tanks. The building definition will apply across chapters, and therefore creates the same issue for the standard set of built form rules that occur in the majority of zones. As such it requires a 'whole of plan' lens to be applied to the solution. Ultimately either the definition will need to be further amended, or the built form rules amended to apply to 'buildings and structures' with exemptions for features such as boundary fences or narrow poles/ aerials incorporated into the rule itself. I have recommended changes to the built form rules to include reference to 'structures' as well as buildings, and as a consequential amendment have also included exemptions for low fences, walls, and small ancillary structures.

38. In reviewing the built form rules in the light of the definitions, I have noted that the site coverage recommendation in the s42A report (4% for sites' less than 10ha) was based on an assumption that dwellings would only be located on lots that are at least 8,000m^2 based on

[3] Rule 22.3.4.1 (P1)
[4] Rule 22.3.6 (P1)(b)
[5] Rule 22.3.5(P1)
[6] 22.3.7.1(P2) and (P4)

the 'child lot' subdivision provisions, and therefore 4% still enabled a reasonable building footprint for small lots. I have since noted that the Proposed Plan enables residential units to be erected on any existing titles, which may include those that are less than 8,000m^2 in area. For these small lots the 4% limit may be unnecessarily restrictive e.g. a 5,000m^2 lot could only have 200m^2 of buildings. The notified Plan enabled site coverage of 2% or 500m^2 (whichever is larger) which better provided for development on small lots. As a consequential amendment it is recommended that Rule 22.3.6(P1)(a)(i) be amended so that building coverage not exceed 4% of the site area or 500m^2 (whichever is larger) for sites smaller than 10ha.

39. Putting definition issues to one side, in terms of crop structures I remain of the view that these are large-scale structures where the side netting can be in place either permanently, or for a number of months depending on the season and the type of crop. Where such structures are located close to road or internal boundaries, then they have the potential for visual and shading effects on neighbouring properties and streetscape. Both the daylight admission and setback rules shift to a restricted discretionary activity status where they are breached, with a relatively narrow set of matters for consideration. I acknowledge the value that such crop structures have to the horticultural industry, as set out in the submitter's evidence, and that requiring such structures to be set back from boundaries can lead to some inefficiency in the utilisation of the site for horticultural purposes. The proposed rule package in my view appropriately balances the benefits of such structures with their potential visual and shading effects through a permitted pathway where they are set back at least 12m from road or internal boundaries, and a restricted discretionary pathway where they are not. Given that internal boundary effects are invariably limited to the immediately adjoining property, if the applicant is able to obtain the written consent of the neighbour then the consenting pathway should be straight forward. Conversely if the neighbour considers that they would be unreasonably affected then there is a consenting process available for the site-specific circumstances to be assessed.

40. I do not therefore recommended that further specific exemptions be made for crop structures.

2.7 Earthworks, wetlands, and the NES - Freshwater

41. Fish and Game and the Department of Conservation both noted that since the s42A report was drafted the National Environmental Standard – Freshwater ('NES-FW') has been gazetted. A District Plan rule can be more stringent that these regulations, but cannot be more liberal (or at least if it is then the NES-FW will also apply). District Councils are responsible for administering the NES-FW provisions insofar as they relate to landuse activities.

42. Submitters correctly identified that the District Plan provisions controlling works in or adjacent to wetlands and waterways need to dovetail with the NES-FW to avoid duplicating or conflicting regulation of the same activity. As the earthworks rules are structured such that they apply on a zone-by-zone basis, so too the solutions will need to apply across the various zones and hearings. A 'whole-of-plan' lens therefore needs to be applied rather than the wheel being reinvented for each zone.

43. The NES-FW is a complex piece of regulation, with the definition of 'wetland' potentially challenging in its application and alignment with the currently proposed District Plan regulatory framework. It has not been possible to undertake this review in the time available and within the scope of the Rural Zone alone, and I am reluctant to make somewhat 'off-the-cuff' recommendations on what is a potentially complex piece of alignment. It is recommended that a separate discrete piece of work be undertaken to properly review the NES-FW and to align it with the earthworks and activity rules across the various zones/ hearings.

2.8 Meremere Dragway

44. The submitter presented legal submissions at the hearing seeking an amendment to the Meremere-specific Policy 5.3.12 to better recognise the positive contribution the dragway

makes to the District's economy and social wellbeing. The submitter also sought an amendment to the recommended definition of 'Meremere dragway activity' to make explicit that the definition (and therefore the permitted activity rule) includes several ancillary elements that are integral to the operation of the dragway.

45. I agree with both of the amendments sought. In terms of the definition, the s42A report recommended the inclusion of an explanatory statement at the start of the definitions chapter that clarifies that "*where the defined word is an activity, unless otherwise stated in the rules, the activity includes the building the activity occurs within and any ancillary activities that are integral to the day-to-day operation of the defined term*". As such the relief sought by the submitter is arguably addressed in the generic statement. That said, I can appreciate that the submitter would want certainty regarding the activity status of the ancillary elements. These elements are integral to dragway activities and do not broaden the scope of the activities at the dragway beyond those that would reasonably be anticipated. They are likewise consistent with the wording I have recommended for 'motorised sport and recreation' as a separate activity.

46. As noted in the s42A report, the dragway is a long-established facility that does not sit easily within the wider outcomes anticipated for the Rural Zone. The objectives and policies for the Rural Zone bear little relevance to the dragway. Given its scale and contribution to the District, it is however appropriate that it be recognised in the District Plan in some way. This can either be through a policy and rules in the Rural Zone (as is currently proposed), through scheduling (as is the case in the Operative Plan and as sought by the submitter), or through zoning. The Proposed Plan does not include scheduling as a tool, and in any event I note that the Operative Plan scheduled provisions provide little material difference compared with the permitted rule in the Proposed Plan.

47. Whilst the dragway is provided for through Policy 5.3.12 and associated rule 22.1.2(P6), ultimately it may be more effective if the dragway site is rezoned to the Motorsport and Recreation Zone. The nature of the activities occurring on the Meremere site potentially have a better alignment to the outcomes anticipated in the Motorsport Zone than the Rural Zone.

48. As the notified motorsport zone is specific to Hampton Downs, a new section or rules would need to be inserted for Meremere. Given the narrower range of activities and the smaller scale of facilities at Meremere compared with Hampton Downs, such provisions should be relatively straight forward i.e. a Meremere-specific permitted activity rule and a clear rule/ consenting pathway for activities that fall outside of the Meremere definition/ permitted rule.

49. Rezoning proposals will be considered through a separate hearing process and therefore I have not developed an alternative set of Motorsport Zone provisions as part of this response. The amendments shown in the recommended Plan text are therefore made on the basis that provision for Meremere dragway remains part of the Rural Zone.

50. I appreciate that if the submitter has an interest in pursuing a change in zoning that they will need to provide further evidence/ draft provisions as part of the rezoning hearing. Alternatively if they are content to remain in the Rural Zone and rely on the policy, definition, and rule discussed above then no further action is required.

2.9 Reverse sensitivity – Pokeno Industrial setbacks

51. Synlait [581] and Hynds Pipe Systems [983] both sought setbacks for sensitive activities from their existing industrial plants in Pokeno. Synlait sought a 300m setback from the edge of the Heavy Industrial Zone, whereas Hynds sought a setback based on topography and aligned with a nearby ridge top. It was noted that a number of nearby submitters are also seeking changes to a residential zoning, with Hynds likewise seeking to rezone a block of adjacent rural land to a Heavy Industrial Zone. As stated in my s42A report, I consider that ultimately the need for a setback, and the extent of that setback, is something that can only be resolved once decisions on rezoning have been made.

52. In order to better understand the geographic implications of the various relief sought, the Panel requested that maps be prepared to illustrate the extent of the setbacks.

53. The Operative Plan has an Aggregate Extraction Zone located to the south and west of the industrial zone. A 500m setback for new sensitive activities is required from the outer edge of this extraction zone, with a 'large lot overlay' over a portion of the closest greenfield residential zone to the northwest of the industrial area. The Operative Plan setback is therefore tied to the potential use of this block for hard rock aggregate extraction and is unrelated to managing reverse sensitivity effects generated by the industrial zone. The Aggregate Extraction Zone and its associated setback nonetheless do create a buffer area that separates the Industrial 2 Zone from potential sensitive activities such as rural dwellings. Appendix 2, Map (i) shows the Operative Plan map, with the approximate 500m setback line added in red.

54. The Proposed Plan as notified removed the Aggregate Extraction Zone on the basis that the land was no longer needed for extractive activities. As far as I am aware there are no submissions seeking that an aggregate zone (or Aggregate Extraction Area Overlay) be reinstated. The area that was within the Aggregate Extraction Zone was notified in the Proposed District Plan as being Rural Zone. With the removal of the Aggregate Extraction Zone, the associated rule requiring a 500m setback from that zone has also fallen away. This has resulted in the Proposed Plan having a framework of a Heavy Industrial Zone with no buffer or setback requirements on its southern and western edges with what is proposed to be a Rural Zone (as notified).

55. Appendix 2, Map (ii) shows the Proposed Plan zone pattern, with the approximate location of a 300m setback as sought by Synlait shown in blue, and the ridgeline setback sought by Hynds shown in purple. As a general observation, whilst based on different criteria, the alignment of the two alternative setbacks is quite similar. Both setbacks likewise cover a considerably smaller geographic area than the 500m setback in the Operative Plan, due to a combination of the reduction in distance (300m cf. 500m) and the point of measurement starting at the Heavy Industrial Zone boundary rather than the outer edge of the Aggregate Extraction Zone boundary.

56. Appendix 2, Map (iii) shows the rural land sought to be rezoned to Heavy Industry by Hynds (purple area). Submitters seeking a change from Rural to Residential Zoning are shown in orange.

57. In my view the future development of this area needs to be assessed based on the answers to the following questions:

    1) Is there a need for additional heavy industrial land in Pokeno, and if so is the Hynds block the most appropriate location?

    2) Is there a need for additional residential land in Pokeno, and if so is some or all of the various other submitter blocks appropriate?

    3) Can the residential proponents demonstrate that edge/ buffer effects can be appropriately manged?

    4) If the answer is yes to all of 1-3, then the land will all be rezoned and there is no need to consider setback rules as part of the Rural Zone provisions, as the adjacent land will no longer have a rural zoning.

    5) If alternatively the residential submissions are declined, then the resultant zone pattern will be that of a Heavy Industrial Zone adjacent to the Rural Zone (with the boundary interface either being located as currently notified, or extended further out if the Hynds rezoning request is successful). In which case the Panel will need to make a determination first on the need for a setback rule, and secondly the metric upon which that setback is based i.e. a specified distance or local topography.

6) If the metric is 300m (as sought by Synlait), and concurrently Hynds are successful with their rezoning request, then the geographic extent of the setback will be larger as it will apply from the outer edge of the rezoned Hynds block, rather than the edge of the existing industrial zone. Alternatively if topography is used as the basis then the setback will remain that as sought by Hynds. In this regard I note that presumably Hynds are satisfied that even if they are successful in their rezoning request, the newly rezoned area does not require a large setback from its edge i.e. the setback they are seeking is set by topography, and has its primary focus being to protect the operation of their existing plant, irrespective of whether their rural block is rezoned.

58. Given the above process, combined with the lack of expert evidence (such as odour, acoustic, or landscape) by both the industrial parties and submitters seeking residential outcomes to justify the location of the setback/ zone boundaries, it is premature for me to make a recommendation on this matter at this point in the hearings process. It is anticipated that Synlait, Hynds, and the various parties seeking residential rezoning will all be filing evidence on the future landuse for this area as part of the rezoning hearings which will enable the Panel to ultimately make an informed decision on the zone pattern and rule framework for this part of the District.

2.10 Extent of the Coal Mining Areas and Extractive Resource Areas

59. The rule framework concerning extractive activities is recommended in the s42A report to provide for such activities within three identified overlays, namely the Coal Mining Area, Aggregate Extraction Area, and Extractive Resource Area. These areas are mapped to reflect existing coal operations, existing aggregate operations, and the one potential aggregate area south of Huntly. The recommended rule package provides for extractive activity in these areas as a restricted discretionary activity (rather than as a fully discretionary activity in the balance of the rural area or a non-complying activity if subject to various landscape and ecological overlays). So the rule framework is more enabling for extractive activity located within the overlays.

60. The Waikato Regional Policy Statement ('WRPS') addresses the management of the built environment to appropriately recognise the effects that such might have on the access to minerals through Policy 6.8. This policy is to be implemented through method 6.8.1 which seeks to map the location of such resources. The method sets a series of criteria for assessing the significance of the resource, including scarcity, economic contribution, current and potential demands, constraints on extraction, the quality and size of the deposit, importance of the mineral to Tangata Whenua, and importance to infrastructure development. Of significance, to my reading of the implementation method, there is no requirement to include such mapping within district plans, rather the mapping of such areas is simply a tool to inform District Plan provisions. In terms of the coal resource, I note that the maps provided by Bathurst in themselves assist in fulfilling the implementation method, noting that the size of the deposits are substantial, and as such coal in north Waikato is not particularly scarce.

61. Method 6.8.2 requires district plans to:

(a) Include provisions to protect, as appropriate, access to significant mineral resources identified pursuant to Implementation Method 6.8.1; and

(b) May identify areas where new mineral extraction activities are appropriate and areas where new mineral extraction activities should be avoided.

62. In my view, the District Plan policy and rule framework should only protect access 'as appropriate', and within the context of implementing a policy that has its primary focus on the management of the *built environment* (rather than isolated rural dwellings). The District Plan *may* (but does not have to) identify areas where new extraction is appropriate, and likewise *may* identify areas where such activities should be avoided.

63. In my view the recommended policy and rule framework in the District Plan does exactly that. It identifies areas where coal mining is anticipated (with these areas recommended to be expanded to include the licence/ permit areas held by Bathurst and therefore provide for some expansion), and protects these areas from encroachment from new sensitive activities. The rule framework likewise identifies that extractive activities are non-complying where located within areas with identified high landscape or ecological values.

64. Bathurst Resources Ltd and BT Mining Ltd ('Bathurst') [771] provided legal submissions and evidence regarding their operations in the north of the district near Huntly. As set out in my rebuttal statement, I agree with their evidence insofar as the boundary of the Coal Mining Areas shown on the planning maps should align with the extent of Bathurst's existing licenses and permits. This more refined boundary provides for both existing mining operations and also recognises the potential expansion of these operations onto nearby land for which Bathurst hold mining rights.

65. Bathurst also sought that the wider coal fields be included in the District Plan maps as an 'Extractive Resource Area'. This overlay provides for potential future extractive activity (rather than existing operations). As notified, this overlay only applies to a very discrete block of land to the south of Huntly associated with potential future aggregate extraction. As a concept, its application is therefore geographically limited.

66. The rule package also limits new sensitive activities near these areas, to manage reverse sensitivity effects. New sensitive activities are required to be setback a minimum of 500m from Extractive Resource Areas containing a rock resource. The large distance of the setback, combined with the extensive nature of the coal field resource in the Waikato, will result in the relief sought by the submitter limiting new sensitive activities across an extremely large geographic area. It is considered that the costs of such a restriction are substantial (given the very large geographic extent of the setback's application), and outweigh by some margin the benefits of facilitating the hypothetical establishment of a new coal mine at some point in the future. Such a restrictive framework in my view goes well beyond what is required to implement the WRPS direction. As such I do not recommend that the coal fields be included in the Plan as an Extractive Resource Area.

67. As an aside, it is noted that the existing mapped areas are all generally under the control of mining companies (as they reflect existing operations). As a consequence, the rule package does not include any limits on new residential units *within* these areas, as it is assumed that reverse sensitivity risks are able to be manged through landownership by the mining companies. This is not the case with the coal fields in general, which extend across large tracts of land held by third parties. If the Panel are minded to accept the relief sought by Bathurst, then a new rule will need to be inserted into the Plan to limit the establishment of new sensitive activities *within* the Extractive Resource Areas, in addition to the existing rule that limits new sensitive activities within 500m of the outer boundary of these areas.

68. As a separate submission point, Bathhurst also sought that exploration and prospecting be permitted, subject to meeting permitted activity specific conditions. Having had the benefit of reflecting further on the evidence and legal submissions put forward at the hearing I agree that there is merit in explicitly providing for mineral exploration and prospecting as a permitted activity, subject to the activity meeting specified conditions to ensure that the effects of such activities are both modest and temporal. The recommended wording is based on that put forward by the submitter, with amendments to better separate the activity from the conditions, and to place permitted activity limits on areas with identified high landscape and ecological values (and where any subsequent extraction would be non-complying), and to limit the hours within which explosives can be used.

69. It is noted that a definition of the term 'mineral' is recommended in the s42A report for inclusion in the District Plan, with that definition explicitly including coal and aggregate. As

such it is recommended that the rule refer to mineral exploration and prospecting. I do not consider that the terms 'exploration and prospecting' need defining.

70. It is noted that Bathurst sought several amendments to the Chapter 1 (Introduction), clauses 1.4.2.3 and 1.5.7.7. I was not involved in the hearing to Chapter 1 and as such do not have the benefit of the wider context for the matters considered in this chapter. As such I do not feel that I am in a position to make a recommendation on the amendments sought by the submitter on Chapter 1. Obviously the Panel will be familiar with Chapter 1 and will be in a position to make an informed decision on these amendments.

3 Conclusion

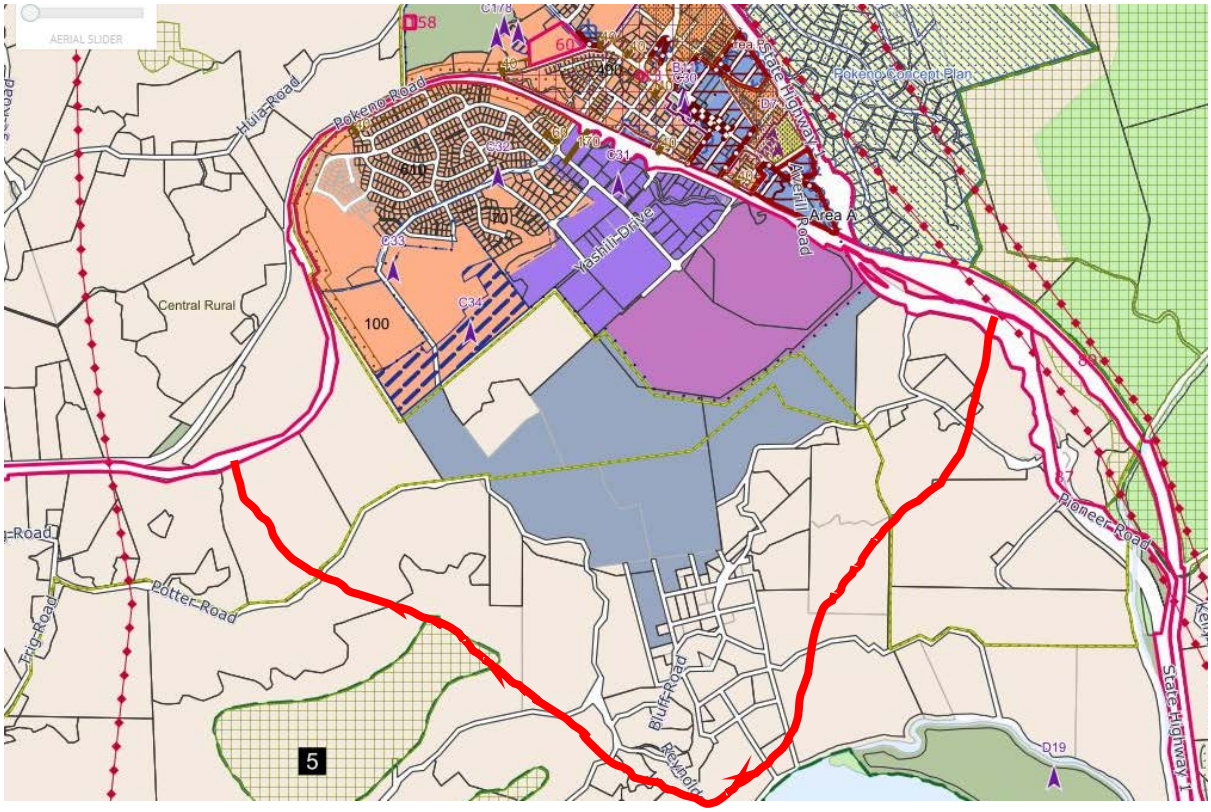
71. The Rural Zone takes in geographically diverse landscapes and contains a wide range of activities. It likewise makes up the majority if the district's land area and is both the home and workplace for many of the district's residents. The challenge is to design a zone framework that articulates clear outcomes for this area, and then has effective rules to implement those outcomes and that strike an appropriate balance between enabling the outcomes that are desired and effectively controlling the activities and outcomes that are not anticipated.

72. Evidence provided by submitters has been of considerable assistance in this regard, and I have no doubt that the Panel will reflect further on that evidence in further refining the provisions.

4 Appendix 1 – Recommended text changes

5 Appendix 2 – Pokeno Industrial Maps

5.1.1 Map (i) – Operative Zone with 500m setback



= Light Industrial

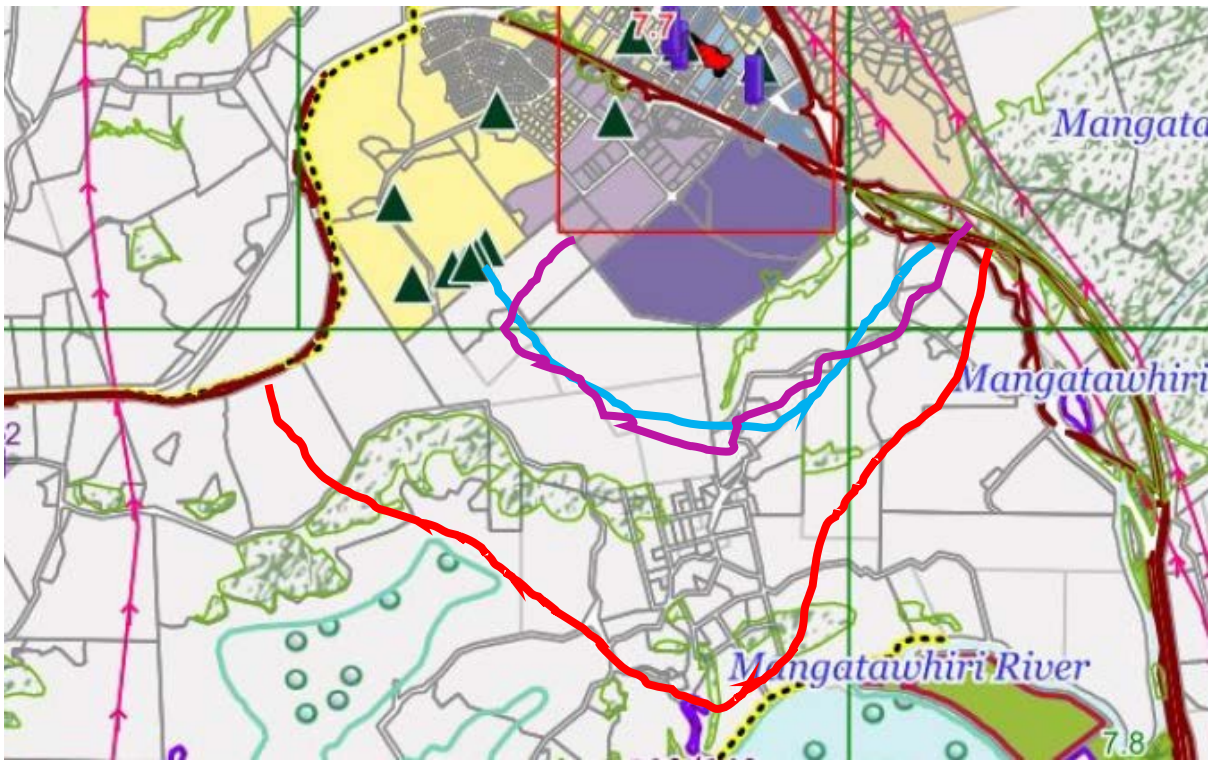
= Industrial 2 (Synlait and Hynds plants)

= Aggregate Extraction Zone

= 500m setback (approx.)

Nb. The rural zoned block surrounded by Aggregate Extraction and Industrial zones, and a large lot residential overlay (blue dashes over orange) is also subject to the sensitive activity setback.

5.1.2 Map (ii) – Proposed Plan with setbacks



= Heavy Industrial Zone (Synlait and Hynds)

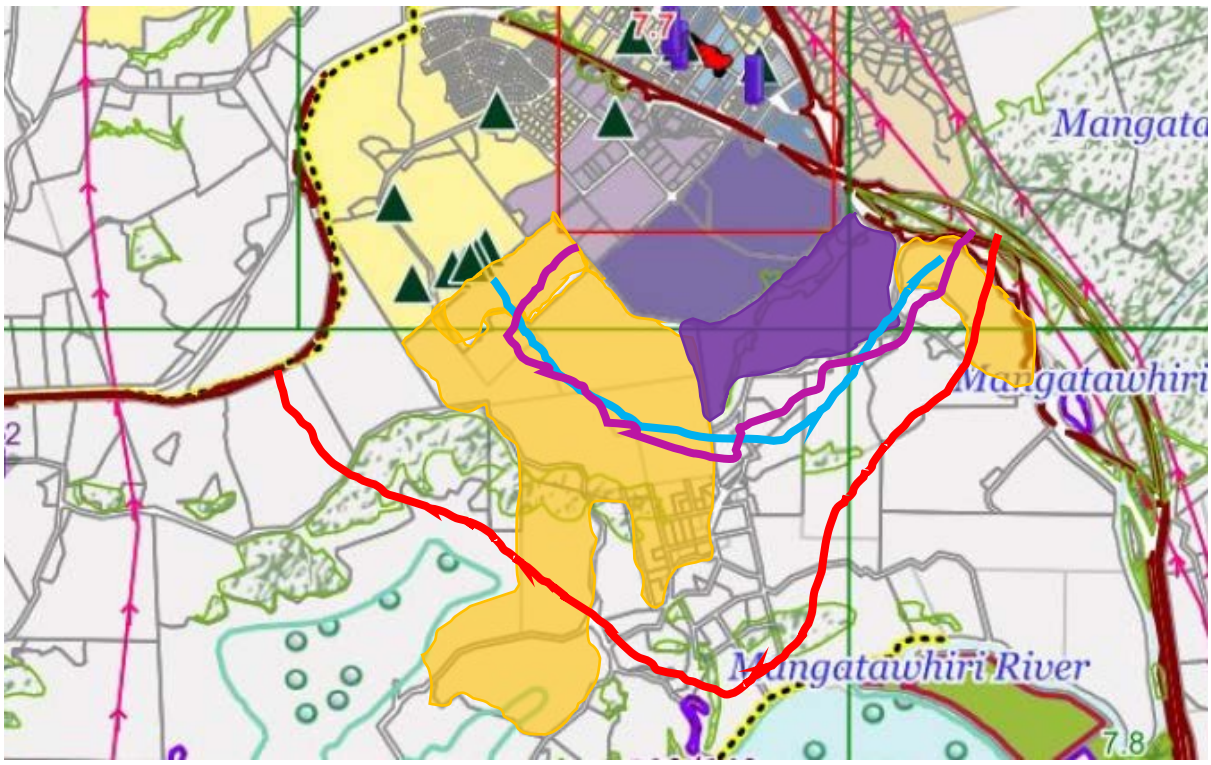
= 300m setback sought by Synlait

= Topographic setback sought by Hynds

= 500m setback (Operative Plan – for comparison)

Nb. All setback lines are approximate

5.1.3 Map (iii) – Proposed Plan with setbacks and rezoning requests



=Industrial rezoning sought by Hynds

= Residential rezoning sought by multiple parties [451, 862, 205]