

**Before Independent Hearing Commissioners  
In Ngāruawāhia**

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Under the Resource Management Act 1991 (the Act)

In the matter of a submission by Ambury Properties Limited and others 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

and Ambury Properties Limited and others  
(Submitters)

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

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**Statement of evidence of Ian David Mayhew for Waka Kotahi NZ Transport Agency and Waikato Regional Council – Planning**

14 August 2020

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## **1 Qualifications and experience**

- 1.1 My full name is Ian David Mayhew. I am a Principal Planning and Policy Consultant for 4Sight Consulting Limited, a role that I have held for 10 years. Prior to that I was a Director of Hill Young Cooper, an Auckland-based planning consultancy.
- 1.2 I hold a Master of Science from Auckland University. I am a full member of the New Zealand Planning Institute and an Accredited Hearing Commissioner.
- 1.3 I have over 30 years' experience in resource management and planning, including for the (previous) Auckland Regional Council and for the last 20 years as a consultant.
- 1.4 My relevant experience includes:
- a Undertaking and managing major infrastructure consenting and designation processes for the transport and energy sectors, on behalf of applicants/requiring authorities and regulatory authorities (s42A);
  - b Expert planning evidence for various aspects of the Auckland Unitary Plan, including freshwater, stormwater and several future growth precincts;
  - c Expert planning witness for Waikato Regional Council (**Council**) on its Plan Change 1 to the Waikato Regional Plan;
  - d Hearing Commissioner on a plan change hearing for a substantial residential growth area in Havelock North;
  - e Advising Tauranga City Council on aspects of the future development of the Tauriko West Strategic Growth Area; and
  - f Preparation of section 32 evaluations for national instruments and regional and district plan changes.
- 1.5 My evidence is given on behalf of Waka Kotahi and the Council in relation to the submission seeking rezoning by Ambury Properties Limited (**APL**) and other parties at Ohinewai in respect of the proposed Waikato District Plan (**PWDP**).

## **2 Involvement with the proposals**

- 2.1 I have been engaged by Waka Kotahi and the Council in relation to this matter since January 2020. This has included:

- a A review of the information provided by APL and other parties in respect of their submissions to the PWDP;
  - b A site visit, conducted by Mr Olliver and Mr Gaze for APL on 30 January 2020; and
  - c The collation of a memo to APL (March 2020) outlining Waka Kotahi and the Council's initial feedback on the APL proposal to enable these to be considered and responded to by APL, either through further discussions or at the hearing.
- 2.2 I participated in the planning conferencing undertaken on 25 and 26 June 2020 and am a signatory to the Planning Joint Witness Statement (**JWS**).

### **3 Code of conduct**

- 3.1 I have read and am familiar with the Code of Conduct for Expert Witnesses in the current Environment Court Practice Note (2014). I have complied with it in the preparation of this summary statement and during expert witness conferencing. I also confirm that the matters addressed in this statement are within my area of expertise, except where I rely on the opinion or evidence of other witnesses. I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

### **4 Scope of evidence**

- 4.1 My evidence addresses the following:
- a An overview of the key issues relating to the Ohinewai Structure Plan (**OSP**) from the perspective of Waka Kotahi and the Council;
  - b An assessment of the proposal against the following statutory instruments:
    - i The National Policy Statement on Urban Development 2020 (**NPS-UD**);
    - ii Te Ture Whaimana o Te Awa o Waikato – the Vision and Strategy for the Waikato River (**Vision and Strategy**);
    - iii The National Policy Statement for Freshwater Management 2020 (**NPS-FM**); and
    - iv The Waikato Regional Policy Statement (**WRPS**).
  - c Consideration of 'other' management plans and strategies:

- i The Future Proof Strategy, 2017 (**Future Proof**);
  - ii The Waikato District Council Growth and Economic Development Strategy (**Waikato 2070**); and
  - iii Other plans and strategies.
- d S32 AA of the Act evaluation;
- e Part 2 of the Act;
- f Proposed planning provisions for the OSP;
- g Other re-zoning requests by submitters
- i Shand Properties Limited (**Shand**);
  - ii Ohinewai Lands Limited (**OLL**); and
- h Conclusion.

4.2 I have read the evidence prepared by the other expert witnesses presenting evidence on behalf of Waka Kotahi and the Council.

## **5 Summary of evidence**

5.1 APL and other parties have lodged submissions on the 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.

5.2 Waka Kotahi and the 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 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.

5.3 My evidence outlines a range of issues in respect of the APL proposal. These include:

- a The lack of consideration of potential cumulative effects of the proposal and other potential development, and the potential requirements for upgrading of transport and other infrastructure.
- b The lack of 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 assessed (as would normally be the case in growth planning).
- c The suitability 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. These matters require potentially 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 planning 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 and the water allocation status of the catchment, and substantial queue for resource consents.
- f The certainty of whether TGG's vision and benefits of the OSP will occur, as a number of important aims of the proposal are not easily ensured through plan provisions.

5.4 I consider that the recently gazetted NPS-UD has limited relevance to the proposal on the basis that OSP is not an 'urban environment' as defined in the NPS-UD. However, on the basis that it does apply, 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;
  - 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).
- 5.5 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.
- 5.6 I acknowledge that the proposal may give partial effect to some objectives of the Vision and Strategy. However due to the uncertainty regarding water and wastewater servicing of the site, I consider that it is premature to conclude that the proposal will, as a whole, give effect to the Vision and Strategy in respect of key objectives relating to the protection and enhancement of the Waikato River.
- 5.7 As the Panel will appreciate, the WRPS is an extensive document and contains a range of provisions – objectives, policies and implementation methods – of relevance to this proposal and I have undertaken a detailed assessment of key provisions that I do not reiterate here. In summary, in my opinion, 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.
- 5.8 Flood risk and ecological effects (particularly on the black mudfish), can be mitigated through appropriate provisions for development and subdivision.
- 5.9 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 as it is new and is a substantial departure from the Future Proof that has not been developed in conjunction with Future Proof partners and for which the evidence base is not clear.
- 5.10 In my opinion the proposal 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 itself;
  - b It has the potential to require substantial public investment in infrastructure development and maintenance;
  - c The potential for unintended consequences, including the settlement becoming a dormitory town; and
  - d The effects on the long term functions and benefits on the Expressway.
- 5.11 In my opinion, the submission by APL seeking a re-zoning request should be rejected. The primary basis for this is that the proposal does not, in the round, give effect to key objectives and policies of the WRPS, including:
- a Objective 3.12, Policy 6.3 and associated method;
  - b Policy 6.14 and the criteria for alternative land release;
  - c The Development Principles in Section 6A; and
  - d The Future Proof Guiding principles.
- 5.12 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 s42A report that the proposal overall, particularly in relation to the residential component, is not.
- 5.13 Should the Panel accept the 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.
- 5.14 I consider that the submissions by Shand and OLL seeking re-zoning requests should also be rejected.

## **6 Introduction**

- 6.1 APL and other parties have lodged submissions on the 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). The most significant of these submissions is that of APL, which has supported its request

with technical assessments and evidence. The APL re-zoning request is the primary subject of my evidence below, although I briefly also address the Shand and OLL submissions.

- 6.2 The APL proposal is described in the evidence of APL's witnesses, but in summary incorporates<sup>1</sup>:
- a 68ha of industrial zoned land, including 37ha for The Comfort Group's (TCG) Sleepyhead 10 ha Factory;
  - b 13ha of business / commercial zoned land for a service station, discount factory outlet shops (DFO), 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;
  - d 55ha of public open space including stormwater management areas, recreational facilities, ecological enhancement areas and other community areas.
- 6.3 On 27 July 2020<sup>2</sup>, parties were advised by APL that the DFO was being removed from the OSP and that the 5.5 ha that was allocated to this development was being transferred to an industrial zoning.
- 6.4 Waka Kotahi<sup>3</sup> and the Council<sup>4</sup> 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 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.
- 6.5 The following sections of my evidence discuss these matters in more detail, in the context of the WRPS and other statutory instruments.

## 7 Key Issues

- 7.1 In this section I summarise the key issues and matters of concern in respect of the APL proposal.

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<sup>1</sup> Evidence of Mr Olliver for APL.

<sup>2</sup> Memo from Mr Olliver, 27 July 2020.

<sup>3</sup> Further submission 1202.

<sup>4</sup> Further submission 1277.

## **Cumulative Effects of Development**

- 7.2 The information provided on behalf of APL has focussed on the OSP area only and has not assessed the implications of wider growth in the Ohinewai area. There are several other submissions to the PWDP that seek or have sought zoning changes in the area, some of which have been withdrawn and others which do not appear to be supported by evidence. While several of these submissions have been withdrawn, they indicate a desire for additional rezoning in this area, including a potential industrial zoning for land on the western side of the Waikato Expressway (**Expressway**). Should the OSP zoning be approved, it is reasonable to assume that the development would act as a catalyst for further zoning changes in the vicinity.
- 7.3 In his evidence, Mr Olliver places significant weight on the Waikato 2070 Strategy, to support the OSP proposal. This Strategy is not the product of an RMA statutory process. The Strategy was prepared under the Special Consultative Procedure of the Local Government Act 2002, and hence is a matter to which regard should be had in accordance with section 74(2)(b) of the Act. However, there is no requirement for the Strategy to give effect to the WRPS, which it does not do. I also note that the PWDP itself also states the importance of ensuring that the District's settlement pattern is consistent with that of Future Proof as set out in the WRPS<sup>5</sup>.
- 7.4 Both the Council and Waka Kotahi have expressed significant concerns at the lack of strategic analysis and evidence base supporting the significant departure from the Future Proof land use pattern in Waikato 2070, which in turn has been relied upon, in part, to support the APL proposal.
- 7.5 Ms Loynes advises<sup>6</sup> that:
- 'In its response to Waikato 2070, Waka Kotahi specifically highlighted issues with the Ohinewai proposal. Its view is that Waikato 2070 should be consistent with the WRPS and no evidence was provided as to why this Growth Strategy should deviate from the agreed settlement pattern set out in Future Proof and embedded in the WRPS'.*
- 7.6 She further advises<sup>7</sup>: *'The responses from Future Proof, Waikato Regional Council, and Hamilton City Council [to Waikato 2070] all highlighted the need for a clear evidence base to justify the deviation from the Future Proof Settlement*

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<sup>5</sup> Section 1.5.4 (c) of the PWDP.

<sup>6</sup> Ms Loynes, para 8.57.

<sup>7</sup> Ms Loynes, Para 8.58.

*Pattern. This has not been provided in relation to the above [Waikato 2070] Strategy or the Ohinewai Proposal.'*

7.7 In short, neither Waikato 2070 nor the OSP evaluation have adequately assessed a range of growth scenarios in the area to assess potential cumulative effects, including the long term impacts on the function and benefits of the Expressway, and the potential requirements for upgrading of transport and other infrastructure.

7.8 Future plan changes and development can arguably be considered on their own merits. However, a key aim of strategic growth planning is to identify suitable options and their respective benefits and drawbacks; assess a potential growth area in detail; determine the extent and nature of the development that can be sustained and supported; and identify, plan for, and ultimately fund the infrastructure that is necessary to support the desired growth option. In my opinion this is expected by the NPS-UD, the WRPS and good practice urban planning, and has been absent in Waikato 2070 and the APL proposal.

7.9 I note that Mr Olliver advises:

*'In an ideal world, the sequence of strategic and spatial planning should be undertaken first, and the subsequent development proposal neatly fitted into it. However, that is not always the case, given the dynamic and unpredictable nature of urban development in a growing region creates challenges.'*<sup>8</sup>

7.10 I agree that there needs to be some ability to accommodate unanticipated development proposals, and indeed the WRPS (and the NPS-UD) includes the ability to consider alternative land release patterns and timing. However, in my opinion, given the extent of the requested departure from the agreed settlement pattern (that is embedded in the WRPS), a more strategic approach to considering wider development and cumulative effects is warranted – noting that Future Proof was developed through a substantial collaborative process and then embedded into the WRPS through a contestable RMA process.

### **Assessment of alternatives**

7.11 The proposal's assessment of effects presupposes a development at Ohinewai, rather than looking at whether there are other alternatives that may achieve similar outcomes. In part, this appears to result from TCG's desire not to *'slice and dice the Ohinewai pie'*<sup>9</sup>.

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<sup>8</sup> Mr Olliver, para 7.18.

<sup>9</sup> Mr Gaze, para 5.26.

- 7.12 Mr Gaze advises that APL has considered different locations for their proposal but concluded that most were too small to accommodate TCG's operations<sup>10</sup>. However, it appears that this is predicated on a development that is the scale of that proposed at Ohinewai, which appears on its face to be substantially larger than TCG's 'needs' both in terms of the area of industrial development that is proposed and the potential housing requirements of its workers – noting that it is intended that most of the housing will be sold on the open market.
- 7.13 Sections 32 and 32AA of the Act require the objectives of a re-zoning proposal to be examined as to whether they are the '*most appropriate way*' to achieve the purpose of the Act, and whether the policies and other provisions are the '*most appropriate way*' of achieving the objectives, including other reasonably practicable alternatives. In my opinion, an assessment of what is '*most appropriate*' and what are '*reasonably practicable alternatives*' requires consideration of other development sites and configurations. Such an evaluation would normally be undertaken as part of a strategic growth assessment but has not been done as part of this re-zoning proposal.
- 7.14 APL seeks to establish a new satellite town, outside of the growth form that has been identified and adopted in the WRPS, located approximately 3 km distance from the Huntly Urban Limit<sup>11</sup> and approximately 5 km from the current edge of the urban zoned area of the Huntly township. Given this departure from the adopted growth pattern, I consider that the proposal warrants an assessment of alternatives that considers not only alternative sites, but also alternative scales and land use configurations, in accordance with section 32/32AA of the Act. That is, the re-zoning request needs to be considered through a strategic lens that considers whether the proposal is the most appropriate long-term option for the District and wider sub-region.

### ***Suitability of the Site***

- 7.15 Council and Waka Kotahi technical reviewers have identified a number of concerns that raise issues as to the suitability of this location for the proposed development – particularly in relation to the residential component. In addition to the inconsistency with the land use pattern embedded within the WRPS, these include:
- a The severance of Ohinewai township across the Expressway. This is likely to initially be primarily an issue associated with access to the primary school.

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<sup>10</sup> Mr Gaze, para 3.8.

<sup>11</sup> As indicated in Future Proof 2017.

However, it is reasonable to assume that, should the APL proposal be approved, over time there will be development in and around the existing township on the western side of the Expressway – resulting in an increasingly divided community and the requirement for more short trips across the Expressway for day to day activities. I acknowledge that some severance across a State Highway or other major infrastructure is not uncommon in a number of existing towns and cities. However, developing a new industrial and residential node with this severance as a starting point is not consistent with the WRPS<sup>12</sup> and, in my opinion, does not represent best practice nor create liveable and integrated communities.

- b There are limited suitable local road and multi-modal (walking/cycling) connections to and from the site. Given the location of the proposal site, access to and from the OSP will predominantly be by road, and in turn road access will be reliant on the Expressway. I acknowledge that the site is, in theory, able to be serviced by public transport if sufficient funding is available, and this is actively being considered by APL. However, as Mr Kuo advises in his evidence<sup>13</sup>, the relatively isolated location of the site does not facilitate efficient and effective public transport and it is unlikely to be viable.
- c In respect of active modes, Mr Swears advises<sup>14</sup> *‘that the distances associated with active mode journeys outside the Site create an obstruction to those journey such that it is unlikely there will be a significant uptake in active mode transport beyond the boundaries of the Site’*. Ms Loynes echoes these concerns and expresses reservations as to the whether the overbridge would be used due to the walking distances and the roading/general environment<sup>15</sup>. Accordingly, while the OSP proposal includes mitigation to reduce the effects of severance and provide active mode travel options, these mitigations are unlikely to achieve a high level of use. Ms Loynes, Mr Swears and Mr Kuo all consider that the proposal will be a car-centric development, contrary to the Development Principles in section 6A of the WRPS.
- d The proposal involves the location of industrial, commercial and residential development within a flood risk area. This has been the subject of significant assessment and this effect can be mitigated – notably through the importation of substantial volumes of fill to elevate the development above

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<sup>12</sup> Policy 6.6.1(d).

<sup>13</sup> Mr Kuo, section 7.

<sup>14</sup> Mr Swears, para 6.17.

<sup>15</sup> Ms Loynes, para 8.21.

the flood plain. However, as I discuss below, the starting point provided in both the WRPS and the Future Proof Guiding Principles is that development in hazard areas should be avoided where it is practicable to do so. Given the limited consideration of other options, particularly associated with the residential component, I consider that the practicable need to locate industrial and residential development in a flood plain has yet to be demonstrated.

- e Potential impacts on ecology – particularly relating to the habitat of significant indigenous species, primarily the ‘at risk-declining’ black mudfish that may be present on the site. While black mudfish have not been found in investigations to date, their presence near to the site indicates that this is a reasonable possibility and, if found, the WRPS directs protection of the habitat where possible<sup>16</sup>.

7.16 I accept that some of the technical issues and constraints including flooding, severance and transport may be able to be addressed and mitigated to some extent and acknowledge the work that has been undertaken by APL in this regard. However, mitigation does not necessarily resolve the issue and may still result in a sub-optimal outcome. This particularly in relation to the road network, public transport and active transport modes.

7.17 In addition, mitigation is likely to come at a not-insignificant cost. While it may be argued that cost is a development risk for APL, a consequence of high development costs is the implication for ‘affordability’ of housing and hence the extent to which the proposal will be able to achieve its aim of affordable housing for some of the workforce. Cost limitations may also affect the delivery of local amenities and/or important social infrastructure (e.g. walkways, sports fields, community buildings as advised by Ms Hackell<sup>17</sup>.

7.18 While some of the issues raised by Council and Waka Kotahi’s technical experts regarding the suitability of the proposed site may be able to be mitigated to some extent, it raises the fundamental question as to whether the site is suited to urban development of the nature that is proposed. This is particularly the case for the residential component, the primary justification for which appears to be proximity to the proposed industrial development. However, as the majority of the houses are to be sold on the open market, the basis for the residential component does not appear to have been substantiated. In the absence of the industrial

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<sup>16</sup> Policy 11.2.

<sup>17</sup> Ms Hackell, para 7.4.

component, it seems unlikely that this area would be identified for the medium density urban growth that is proposed.

### **Effects on the transport network**

7.19 Based on modelling undertaken by Mr Inder, Mr Olliver concludes that<sup>18</sup>:

*'the Waikato Expressway, including the Ohinewai Infrastructure, has sufficient capacity to accommodate the additional traffic generated by OSP, taking into account the demands of the Future Proof settlement pattern out to 2041. It is efficient and affordable to use this spare capacity. It maintains the operational effectiveness of the Expressway; the ITA does not identify any significant impacts or any need for major upgrades'*

7.20 However, Ms Loynes<sup>19</sup> highlights the national importance of the Expressway in this location:

*'The Waikato Expressway was constructed as a Road of National Significance (RoNS). The Expressway is also identified as one of only four routes in the whole of New Zealand classified as "National (High Volume)" routes. This level of classification reflects the national significance of these routes in terms of connecting large population centres, delivering efficient routes for large freight volumes and access to port and airport activities.'*

7.21 In respect of utilising the available capacity on the Expressway for local road trips, Ms Loynes considers that:

*'the use of high speed, high capacity roading for short distance trip making to fulfil daily needs is not efficient. The Waikato Expressway is designed to meet the long term freight and interregional travel needs of the country. Any 'spare capacity' that exists is capacity that could be used by the economically important trips that the Waikato Expressway was designed to support over its lifetime'.*

7.22 Ms Loynes outlines the strategic objectives of the Expressway<sup>20</sup>. She advises that the Expressway Network Management Plan<sup>21</sup> recognises that *'development outside the Future Proof land use patterns particularly through plan changes, may undermine the investment in the Expressway as a strategic route'*.<sup>22</sup>

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<sup>18</sup> Mr Olliver, para 7.36.

<sup>19</sup> Ms Loynes, para 8.1.

<sup>20</sup> Ms Loynes, para 8.2.

<sup>21</sup> Waikato Expressway Network Plan (2014).

<sup>22</sup> Ms Loynes, para 8.4.

- 7.23 As Ms Loynes advises, the framework in the WRPS and the Future Proof Guiding Principles do not just seek to manage effects on regionally significant transport infrastructure but to *'recognise and protect the value and long-term benefits of regionally significant infrastructure'*<sup>23</sup>.
- 7.24 As a route of the highest significance nationally, and taking into account the relevant statutory framework, the long-term value and benefits of (and investment into) the Expressway should be *'protected'* from proposals that have the potential to diminish the safety and efficiency of the Expressway, and the benefits to the current and future community and economic development that it is intended to serve.
- 7.25 In my opinion, this reinforces the need for a strategic approach to development along this corridor - one that considers a range of development options and alternatives to deliver employment, housing and economic development. Such an approach should be developed in a collaborative manner that seeks to best utilise and capitalise on the benefits of the Expressway in the long term, rather than utilise existing capacity for local trips 'because it is there'.

#### ***Water and Wastewater Servicing***

- 7.26 I agree with the statement in the AEE Addendum that *'as set out in the s42A report it is not necessary at rezoning stage to have a final confirmed solution for water and wastewater issues, but rather to have a realistic and viable options, including a reasonable likelihood of any consenting'*. That is, it is not necessary at zoning stage to have the preferred option 'locked down', but that sufficient certainty that a feasible option can and will be delivered is required. Of particular relevance in this case is whether the proposed water and wastewater solutions give effect to the Vision and Strategy.
- 7.27 I have considered the evidence of Mr White on behalf of APL and remain concerned as to how the critically important issues of water and wastewater servicing are to be addressed in a way that will ensure that the Vision and Strategy objectives in respect of the protection and restoration of the River will be given effect to. While Mr White identifies medium term options for water supply and wastewater, these options appear to rely on additional consenting and/or plant upgrades. For example:
- a In respect of water supply, Mr White has identified that either the Huntly Water Treatment Plant or the Te Kauwhata Water Treatment Plant could

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<sup>23</sup> WRPS Objective 3.12 (e).

provide water until a long-term solution is delivered. However, water availability from Huntly may be limited by requirements for Ngaruawahia while the Te Kauwhata consent expires in 2024.

- b Mr White advises that there is additional capacity for wastewater at the Huntly Wastewater Treatment Plant, but that the plant has been in non-compliance for some time such that upgrades would be required for the plant to accommodate the additional wastewater within its consented limit. He does not identify the scope of what upgrades are required nor the feasibility of doing so.

- 7.28 The long term 'option' for both water and wastewater appears to be the options promoted in the very recent mid-Waikato Water and Wastewater Servicing Strategy<sup>24</sup> (**MWSS**), which I understand has been released for engagement with stakeholders.
- 7.29 Mr White indicates that the expert conferencing agreed that the to-be determined MWSS would be the appropriate solution, but that at the time concerns were raised as to whether there was sufficient detail available to have confidence that the MWSS will deliver on the Vision and Strategy for both water supply and wastewater. In response to this, he advises that the *'MWSS [wastewater] solution would need to go through a consenting process where the Vision and Strategy would be a key determining factor'*<sup>25</sup>. He makes a similar conclusion in respect of the necessary additional water take required to service the OSP<sup>26</sup>.
- 7.30 I note that the MWSS itself indicates that it has been developed rapidly and is, by necessity, high-level and states that matters including consenting (and iwi and stakeholder engagement) affordability and staging require further assessment<sup>27</sup> as do effects on Maori cultural values<sup>28</sup>. I note that it also appears to be developed on the presupposition of development at Ohinewai, rather than a more strategic assessment of the water and wastewater servicing requirements of other growth and development options. In my opinion, a logical starting point for a water and wastewater servicing strategy in this corridor would have been to first assess the water and wastewater requirements of the Future Proof settlement pattern while addressing any matters of non-compliance at the Te Kauwhata and Huntly wastewater treatment plants so that they perform, at a minimum, in

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<sup>24</sup> Mid-Waikato Water & Wastewater Servicing Strategy, June 2020. Received 5 August 2020.

<sup>25</sup> Mr White, para 7.4.

<sup>26</sup> Mr White, para 7.5.

<sup>27</sup> MWSS page 4.

<sup>28</sup> MWSS page 37.

compliance with their resource consents. This should occur before looking at alternative areas requiring servicing such as APL.

- 7.31 Further, I understand that the lower Waikato catchment is considered 'over allocated' in respect of some contaminants and that while water allocation is currently below the defined water availability limit, there is a substantial 'queue' for additional water allocation that would exceed the allocation limit if all were granted<sup>29</sup>. Additionally, take and discharge consent applications are subject to the Vision and Strategy, which directs improvement and restoration. In this context, I consider that any consenting of additional water takes and wastewater discharges should not be considered a 'given'.
- 7.32 Accordingly, I am concerned that the MWSS has not progressed to a stage that it provides sufficient certainty for the proposal, particularly the residential component, to progress. As I discuss in my evidence below, I consider that this is a fundamental servicing and wider environmental issue that may not be adequately addressed through staging conditions (as is currently proposed).

### ***Flood Risk***

- 7.33 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.
- 7.34 Given the flood risks that exist at the APL site, Council staff and experts have worked with APL's advisors to ensure that the risks are appropriately understood, modelled and mitigated so that the proposal will ensure that people and development are not in areas subject to unacceptable flood risk.
- 7.35 As a result of this assessment, Mr Basheer concludes that it has been demonstrated that flood risk can be adequately managed and mitigated on the OSP area. Mitigation would be largely achieved through the filling of the site and substantial raising of ground levels across most of the site. With some 2,000,000 m<sup>3</sup> of fill needing to be imported to the 178 ha site, and additional cut-to-fill volumes from within the site itself, ground levels would be raised more than 1 m on average across the entire site to enable development to occur above flood risk levels. However, as the focus is on protecting the industrial, commercial and residential development areas, the ground height in these areas is likely to be

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<sup>29</sup> WRC pers comm. There are some 400 applications in the queue for water allocations in the Waikato River catchment.

raised substantially more; with less infilling in the areas that are less vulnerable to the effects of flooding (e.g. parks/reserves).

- 7.36 While the infilling of the OSP area would result in a loss of flood storage within the wider catchment of the LWWFCS, Mr Basheer considers that this is minimal and will not affect other properties elsewhere. Accordingly, it is considered that flood risk on the OSP area can be adequately managed, subject to suitable plan provisions in respect of ground and building platform levels.
- 7.37 However, the conclusions from this assessment cannot be applied to the other proposed re-zoning sites, particularly the Shand property which lies substantially closer to the Waikato River and is subject to several flood risks of concern as outlined in Mr Basheer's evidence, 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.
- 7.38 Flood risk needs to be fully assessed before any more intensive development is approved for the Shand property.

### ***Black Mudfish***

- 7.39 It is acknowledged that, in the main, the OSP area has little indigenous vegetation and habitats for indigenous fauna of significance. However, as advised by Dr Wilding, 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. While mudfish have not been found at the site in investigations to date, the experts agree that the presence of black mudfish cannot be ruled out<sup>30</sup>.
- 7.40 Dr Wilding advises that 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.
- 7.41 Accordingly, if black mudfish are found on the site, then Policy 11.2 and Method 11.2.2 of the WRPS apply. A Fish Management Plan is proposed by APL to mitigate the effects of development on the site on native fish species. Dr Wilding supports the preparation of such a management plan, but he is concerned that as currently proposed by APL the Fish Management Plan will be too narrow in its implementation. As currently proposed, the management plan will only apply

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<sup>30</sup> Ecology JWS para 4.1.

where there are 'watercourses' in the areas where earthworks are undertaken (and not wetlands or drains that may provide mudfish habitat), and is deficient in that it does not provide for the protection of existing habitat where it is possible to do so.

- 7.42 Sampling to date suggests that mudfish may not be present on the site, despite having been found nearby. Further, the scale of earthworks that are proposed is such that protection of mudfish habitat (if it is present) may not always be possible. However, there are also wetlands and drainage areas in the proposed OSP where it may be possible to retain habitat. In my opinion, the WRPS directs that opportunities to protect habitat should be taken as a priority, if it is possible to do so.
- 7.43 Finally, I note Dr Wilding's opinion that if black mudfish are present on the site, and their habitat cannot reasonably be protected or retained, then it is unlikely that translocation will be successful and the mudfish will be lost. This is a potential adverse effect of the proposal that may not be able to be mitigated, and supports the needs to protect mudfish habitat where it is possible to do so.

***Lack of certainty that TCG's vision and benefits will occur***

- 7.44 TCG's vision for the OSP is outlined in the evidence of Mr Turner, Mr Gaze, Mr Broekhuysen and others. As expressed in Mr Turner's evidence this vision encompasses:
- a A 100,000m<sup>2</sup> factory facility for TCG's operations;
  - b An industrial area which takes advantage of the site's location and proximity to the North Island Main Trunk railway (and a proposed new railway siding);
  - c A residential community that will assist TCG's staff to get on the housing ladder, in a location close to their workplace; and
  - d Development structured around a series of high amenity green spaces for residents and employees to enjoy.
- 7.45 In part this vision is encapsulated in the OSP and associated planning provisions, partially via the Masterplan prepared by Mr Broekhuysen and also through the intentions of TCG.
- 7.46 I raise this as an issue because the matter before the Panel is a submission seeking to re-zone land to provide for industrial, commercial and residential land uses. While aspects of the TCG vision can, and are, incorporated into the

proposed plan provisions, other aspects are not readily translated into provisions that will guarantee that they will be delivered on. This does not mean that these benefits will not occur, but rather that there is little to ensure they will. Examples of this include:

- a Housing that is affordable to TCG workers: I understand that the primary mechanism to deliver 'affordable' housing in this context is development density (25 lots/ha of net developable land). TCG is also considering methods by which workers can be assisted into property ownership (e.g. stair-casing)<sup>31</sup>. While this housing density is currently proposed in the plan provisions, this does not guarantee affordability for TCG employees. As I have outlined above, the OSP has numerous challenges that require potentially costly mitigation to overcome the site's shortcomings, including water and wastewater servicing, transportation upgrades as outlined by Mr Swears and flood risk. I also note that mechanisms such as 'staircasing' do not lend themselves well to plan provisions.
- b Whether there is a desire by TCG workers to live and work in this location: As advised by Ms Hackell<sup>32</sup>, this appears to be a fundamental gap in the social impact assessment process to assess whether there is worker demand for housing in this location. Should the development proceed without a reasonable proportion of onsite workers, and even more houses are sold on the open market, this will exacerbate the transportation issues and car dependency of this location.
- c The viability of the rail siding: While the proximity of the site to the North Island Main Trunk line (**NIMT**) is identified as a significant benefit of the proposed location, and access to the main trunk rail line would have the potential to reduce freight trips on the transport network, the development of the rail siding would require substantial investment as part of the development. In this regard, I note the recent article in the New Zealand Herald<sup>33</sup>, which indicates that while 'Sleepyhead' is keen to utilise the site's close proximity to rail to reduce the number of trucks used in its operations, a rail siding is '*horrendously expensive*' and cannot be done without Government assistance. In the context of the OSP, there do not appear to be any plan provisions that require the rail siding to be constructed – only requirements for road upgrades *should* a rail siding be built. It is also relevant that the transportation modelling undertaken assumes that no rail

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<sup>31</sup> Mr Gaze, paras 5.19 to 5.22.

<sup>32</sup> Ms Hackell, paras 5.4 - 6.4.

<sup>33</sup> 24 February 2020.

siding will be constructed. As there is no certainty that the rail siding will be constructed, it is inappropriate to put much weight on the potential benefits of the siding (for example reductions in freight movements by road).

- d The provision of public transport: I acknowledge that the proposal includes a bus stop and that APL has had discussions with both the Council and WDC regarding the provision of public transport to and from the site. As Mr Kuo advises in his evidence:<sup>34</sup>

*'there are strategic and operational reasons as to why WRC is unable to provide a public transport service to the proposed development area at this time.'*

While this funding gap can be filled by TCG, and a public transport option provided, there is no certainty that this will continue – for example if it is not well patronised or should TCG choose to vacate the site. In my opinion, it would be difficult to develop plan provisions that seek to require and secure a reasonably frequent public transport option into the future.

- 7.47 I stress that am not trying to detract from TCG's vision and intentions towards its business and its workers. Rather that, in respect of a request for rezoning under the District Plan review process, caution must be exercised before placing too much reliance on aspects that will not be ensured through the proposed plan provisions requested by APL.

## **STATUTORY ASSESSMENT**

### **8 NPS-UD**

- 8.1 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. As such it is very recent and is supported by limited guidance. I have provided my initial assessment below and will provide an update to this, as necessary, at the hearing.

- 8.2 The purpose of the NPS-UD is outlined in Section 1.3 as follows:

#### *1.3 Application*

- (1) *This National Policy Statement applies to:*

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<sup>34</sup> Mr Kuo, para 5.1.

- (a) *all local authorities that have all or part of an urban environment within their district or region (i.e. tier 1, 2 and 3 local authorities); and*
- (b) *planning decisions by any local authority that affect an urban environment.*

**urban environment:** *means any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that:*

- (a) *is, or is intended to be, predominantly urban in character; and*
- (b) *is, or is intended to be, part of a housing and labour market of at least 10,000 people*

- 8.3 Given the scale of the development and residential area, the OSP area does not, in itself, qualify as an *'urban environment'* as defined in the NPS-UD. The question of whether the OSP area is an urban environment when considered in conjunction with Huntly has been considered by Mr Keenan. He concludes that the combined area does not form part of a labour market of more than 10,000 people. Accordingly, my interpretation is that the OSP is not part of an urban environment as defined under the NPS-UD. In my opinion, this is logical given the physical separation between Huntly and Ohinewai and that the land in between is not *'predominantly urban in character'*.
- 8.4 On the basis that the OSP is not part of an urban environment, many of the provisions of the NPS-UD do not apply. However, should the combined Huntly and Ohinewai areas be considered to be an urban environment, I have briefly addressed relevant objectives and policies<sup>35</sup> below.
- 8.5 Objective 1 seeks to achieve *'well-functioning urban environments'* that enable people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future. Policy 1, which I address below, defines the "minimum" requirements a well-functioning urban environment must have.
- 8.6 Objective 2 directs regional policy statements and district plans to enable more people to live in, and more businesses and community services to be located in, areas of an urban environment in which one or more of the following apply:

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<sup>35</sup> Attachment A to my evidence.

- a the area is in or near a centre zone or other area with many employment opportunities;
  - b the area is well-serviced by existing or planned public transport; and
  - c there is high demand for housing or for business land in the area, relative to other areas within the urban environment.
- 8.7 In my opinion, the OSP does not meet these criteria. While TCG wishes to relocate its operations at Ohinewai, there does not appear to be other substantial demand for industrial and residential land, as discussed elsewhere in my evidence.
- 8.8 Objective 6 directs that local authority decisions on urban development that affect urban environments are:
- a integrated with infrastructure planning and funding decisions; and
  - b strategic over the medium term and long term; and
  - c responsive, particularly in relation to proposals that would supply significant development capacity.
- 8.9 That is, when considering a proposal that provides for future development, it is not sufficient to just assess the effects of an individual proposal on a 'case-by-case' basis. Rather, it needs to be considered in a medium to long-term strategic context that is aligned with infrastructure planning and funding decisions. I have previously expressed my concerns as to the lack of strategic assessment associated with the proposal. I address the issue of responsiveness below.
- 8.10 Objective 8 directs that New Zealand's urban environments support reductions in greenhouse gas emissions; and are resilient to the current and future effects of climate change. I accept that with appropriate design and engineering the OSP area can be made to be resilient to the effects of climate change. However, as I advise above, transportation experts for Waka Kotahi and Council all consider that the development will be 'car-centric' with a high reliance on private motor vehicle use. Therefore, I consider that the proposal does not give effect to this objective.
- 8.11 The concept of a '*well-functioning urban environment*' is defined in Policy 1 of the NPS-UD, being one that, as a minimum:

- has or enables a variety of homes in terms of type, price, and location, of different households; and enables Māori to express their cultural traditions and norms; and
  - has or enables a variety of sites that are suitable for different business sectors in terms of location and site size; and
  - has good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and
  - supports, and limits as much as possible, adverse impacts on, the competitive operation of land and development markets; and
  - supports reductions in greenhouse gas emissions; and
  - is resilient to the likely current and future effects of climate change.
- 8.12 In my opinion, while the proposal is consistent with some aspects of this policy – for example it provides choice of location and site size as most greenfield developments would – it does not give effect to all of these “minimum” requirements.
- 8.13 The OSP proposal does not create good accessibility for ‘*all people*’, being a development that is highly dependent on private motor vehicle usage to access services (including shops, medical centres and high schools) that are essential for the efficient function and social cohesiveness of communities. As advised by Mr Kuo, due to its location and layout, the proposal would incentivise car-based journeys over other transport modes, including public transport. That is, while a public transport system could be provided, the effectiveness of such a service would likely be limited by the nature of the development and its location. Accordingly, the proposal does not support reductions in greenhouse gas emissions.
- 8.14 Additionally, the proposal risks creating, in part, a ‘dormitory town’, with the associated social and greenhouse gas emissions implications as advised by Ms Hackell<sup>36</sup>.
- 8.15 Policy 8 of the NPS-UD has potential relevance to the proposal to the extent that it directs local authorities to be responsive to plan changes that ‘*would add significant development capacity*’ – although this policy anticipates that significant

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<sup>36</sup> Ms Hackell, section 6.

development capacity would be defined by criteria in an RPS. I also note that this policy is specific to plan changes which, technically, this proposal is not.

8.16 Similarly, Sub-part 2 – Responsive Planning, 3.8 provides for the consideration of un-enabled or out of sequence (with planned release) plan changes that provide significant development capacity. At face value, this policy may have relevance to the OSP proposal as it is an out of sequence development, but again I note that this policy is drafted to be specific to plan changes, not a submission seeking rezoning.

8.17 However, leaving aside the issue of whether Policy 8 and Policy 3.8 apply to a submission seeking a rezoning request, in my opinion the proposal does not meet the minimum requirements of a “well-functioning urban environment” for the reasons I have outlined above.

8.18 In summary, in my opinion, the OSP proposal is unlikely to be considered part of an ‘urban environment’ but, if it is, it:

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

8.19 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.

## **9 Te Ture Whaimana o Te Awa o Waikato / Vision and Strategy for the Waikato River**

9.1 The planning status of the Vision and Strategy is prescribed by section 12 of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 (**Settlement Act**) in that it:

- must be incorporated into the WRPS without review or amendment;
- prevails over any inconsistent provision in any NPS, the NZCPS and any national planning standard.

9.2 The vision and the objectives of the Vision and Strategy are provided in Attachment B to my evidence. I do not propose to traverse all the objectives, as most are not of specific relevance to this proposal. I also note that my

assessment is based on my own interpretation of the Vision and Strategy. I accept that this may be a different interpretation to that provided by the Waikato River iwi who have mana whenua over the River and its catchments.

- 9.3 In my opinion, the objectives provide for a range of positive outcomes and improvements. While I consider that these are primarily focused on the restoration of the health and well-being of the River and its catchments, they also clearly provide for restoring and protecting economic, social and cultural outcomes, and Waikato River iwi relationships with the River (for example Objectives b, c and d).
- 9.4 In that context, I consider that there are aspects of the proposal that are likely to contribute to some of the objectives in the Vision and Strategy<sup>37</sup>, provided that the proposal is implemented in accordance with the evidence that has been provided by APL. These include:
- a social, cultural and economic benefits associated with aspects such as training and employment that are described in the evidence of Mr Gaze<sup>38</sup>; I acknowledge that other parties are better placed than myself to advise the Panel on this matter;
  - b improved access to the Waikato River to better enable sporting, recreational, and cultural opportunities; *provided that* the potential connections that are signalled in the OSP are implemented, particularly the cycleway through to Huntly which appears to be the primary method of improving access along<sup>39</sup> the Waikato River. I note that this is included in the staging provisions, but that APL does not own this land;
  - c potential contaminant reductions at the proposed site; *provided that* earthworks and stormwater management can be implemented in a way that contributes a net benefit where compared to its existing rural land use; and
  - d that the ecological restoration that is proposed results in a net benefit (including in respect of off-setting the potential loss of black mudfish, should they currently be present on the site).
- 9.5 However the main issue of concern, as identified in the JWS<sup>40</sup>, relates to the provision of wastewater and water supply services and the certainty as to

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<sup>37</sup> As noted in the JWS (para 9.2), not all objectives will be relevant to this proposal.

<sup>38</sup> Mr Gaze, para 2.53.

<sup>39</sup> Note that a cycle way along the stop-bank as signalled may not provide for direct access 'to' the Waikato river for safety and structural reasons.

<sup>40</sup> Para 9.4.

whether there is a viable and reasonable solution, sufficiently certain to justify the re-zoning of the site, that will give effect to the Vision and Strategy.

- 9.6 It was agreed by the planning experts that there is no stated hierarchy of objectives within the Vision and Strategy. However, in my opinion, the primary outcome that is sought is the restoration and protection of the Waikato River for future generations. I have concluded this as:
- a The Vision seeks a healthy Waikato River that sustains abundant life and prosperous communities, who in turn are responsible for restoring and protecting the River; and
  - b Section 3 of the Settlement Act states that '*The overarching purpose of the settlement is to restore and protect the health and wellbeing of the Waikato River for future generations*'.
- 9.7 I stress that I am not in any way diminishing the importance of economic growth / prosperity and improved social and cultural outcomes for Waikato River iwi and their relationship with the River. Rather, in my opinion, the over-riding consideration as to whether the proposal gives effect to the Vision and Strategy is primarily driven by the following central objectives:
- a Not requiring the River to absorb further degradation;
  - b The restoration of water quality so that it is safe for people to swim in and take food from; and, ultimately
  - c The restoration and protection of the health and wellbeing of the Waikato River.
- 9.8 I have briefly discussed water and wastewater servicing above. Notwithstanding the evidence that has been provided by APL, and the recently released MWSS, I remain concerned that substantial uncertainty remains. The MWSS itself indicates that it has been developed rapidly and is, by necessity, high-level and notes that matters including consenting, cultural effects, affordability and staging require further assessment<sup>41</sup>.
- 9.9 Given this lack of certainty in water and wastewater servicing and the associated outcomes it will achieve, I remain unconvinced that it has been adequately demonstrated that the central outcomes of the Vision and Strategy in respect of the restoration of the Waikato River can and will be met. There are aspects of

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<sup>41</sup> MWSS pages 4 and 37.

the APL proposal that will contribute to some objectives of the Vision and Strategy, and hence give partial effect to these objectives. However, 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.

9.10 At the Expert Conferencing there was discussion as to whether the issue of water and wastewater provision could be addressed through provisions in the OSP such that progression to future stages that require enhanced water and wastewater servicing would not be allowed unless consented solutions are in place. In my opinion, it is important that at this stage in the process that there are practicable and consentable options available for water and wastewater servicing that will give effect to the Vision and Strategy, including a good understanding of the cost implications and where these lie. This is because:

- a The WRPS provides a clear direction for integrated growth and infrastructure provision;
- b Unless progression to subsequent stages of the OSP (in the absence of adequate servicing) is a prohibited activity, there will still be scope to apply for a resource consent for subdivision or development in advance of servicing; and
- c The statutory plan considerations for a resource consent are lesser than those for a district plan review. In accordance with section 104 (1)(b) of the Act, a consent application is only required to have regard to the WRPS and the Vision and Strategy, whereas a district plan is required to give effect to these statutory instruments. Hence ensuring there is a feasible water and wastewater servicing option at the plan stage will provide greater certainty that the Vision and Strategy will be given effect to.

9.11 In my opinion, the current information does not provide 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, to the extent that this issue can be appropriately managed through staging and plan provisions.

## **10 The National Policy Statement for Freshwater Management 2020**

10.1 The NPS-FM was gazetted on 3 August 2020 and comes into effect on 7 September 2020 and hence it has potential relevance to the OSP proposal. Again, this is a very recent national direction, although as I advise below I consider that it has little relevance to the proposal at this stage.

- 10.2 The objective of the NPS-FM is to ensure that natural and physical resources are managed in a way that prioritises:
- a first, the health and well-being of water bodies and freshwater ecosystems;
  - b second, the health needs of people (such as drinking water);
  - c third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.
- 10.3 That is, it prioritises the health and well-being of water bodies and ecosystems above all other uses and values.
- 10.4 I have undertaken an initial high-level review of the NPS-FM and conclude that while it potentially has relevance for the proposal, this is most likely to be at the resource consent stage when the effects of specific activities for which regional resource consents will be required will be assessed. I anticipate that it will have implications for water takes and wastewater discharges, and potentially also for earthworks, and the modification of natural watercourses and wetlands (should they be present), and other activities.
- 10.5 One policy I would like to draw to the Panel's attention to is:
- Policy 9: The habitats of indigenous freshwater species are protected.*
- 10.6 I have addressed the potential effects of the proposal on the black mudfish in my evidence above, and again below in the context of the WRPS. In my opinion Policy 9 reinforces, or perhaps more correctly directs, the need to consider the protection of black mudfish habitat should this be found to be present on the site.
- 10.7 Additionally, Policy 3.5.4 directs that:
- Every territorial authority must include objectives, policies, and methods in its district plan to promote positive effects, and avoid, remedy, or mitigate adverse effects (including cumulative effects), of urban development on the health and well-being of water bodies, freshwater ecosystems, and receiving environments.*
- 10.8 I assume that this will be addressed in the wider District Plan review process (if not already) and will apply to the OSP, should the OSP request be approved.

## **11 WRPS**

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

relevance to this proposal. The witness conferencing process narrowed down the provisions of most relevance and hence most focus. However, other provisions are also of some relevance. I have included the provisions that I address below in Attachment C to my evidence.

### **Terminology**

11.2 Section 2 – General Interpretation provides guidance as to how some terms in the WRPS are to be interpreted as follows:

*This Regional Policy Statement has adopted the following standard terminology:*

- *'Shall' has been used where methods are of a directive nature, where little discretion is intended to be exercised, and where it is intended that district or regional plans shall give effect to the method.*
- *'Should' has been used where it is intended that the direction should be followed, except where there are good reasons not to, as demonstrated in a s32 report or other appropriate evaluation or analysis.*
- *'Will' has been used in those methods that apply to only the Waikato Regional Council and where it is intended that the direction should be followed, except where there are good reasons not to, as demonstrated in a s32 report or other appropriate evaluation or analysis.*

*While district plans are required to give effect to the Regional Policy Statement, territorial authorities may choose to adopt a stronger or more restrictive management regime within the areas under their control. In this respect the provisions of this policy statement can be considered as 'bottom lines'.*

11.3 In light of this guidance, and consistent with my own opinion, the use of 'shall' means that there is little or no scope to do otherwise; while 'should' means an outcome is expected to occur, unless it is impracticable or there is a compelling reason not to do so. There are a range of other terms and qualifiers used in the provisions. I address those in the respect of the context in which they are used.

### **Urban Growth and Development**

11.4 As I have indicated above, there are a number of objectives that have relevance to urban growth and development. These include:

- a Objective 3.2, which requires the role of sustainable resource use and development and its benefits in enabling people and communities to provide

for their economic, social and cultural wellbeing to be recognised and provided for;

- b Objective 3.4, which requires the achievement of the Vision and Strategy and the restoration and protect on the health and well-being of the Waikato River;
- c Objective 3.10, requiring the sustainable use and development of natural and physical resources;
- d Objective 3.12, which requires the development of the built environment (including transport and other infrastructure) and associated land use to occur in an integrated, sustainable and planned manner which enables positive environmental, social, cultural and economic outcomes including:
  - i integrating land use and infrastructure planning, including by ensuring that development of the built environment *does not compromise* the safe, efficient and effective operation of infrastructure corridors;
  - ii integrating land use and water planning, including to ensure that sufficient water is available to support future planned growth;
  - iii *recognising and protecting* the value and long-term benefits of regionally significant infrastructure;
  - iv minimising land use conflicts, including *minimising potential for reverse sensitivity*;
- e Objective 3.14, which seeks to maintain or enhance the mauri and identified values of freshwater bodies including by maintaining or enhancing the overall quality of freshwater within the region; safeguarding ecosystem processes and indigenous species habitats and enabling people to provide for their social, economic and cultural wellbeing and for their health and safety;
- f Objective 3.24, which requires the effects of natural hazards on people, property and the environment to be managed; and
- g Objective 3.27, which sets housing capacity targets for the Future Proof Growth Area.

11.5 These objectives are given effect to by a substantial number of policies and implementation methods that, in my opinion, seek outcomes including:

- a Subdivision, use and development that occurs in a planned and coordinated manner including having particular regard to the potential for reverse sensitivity<sup>42</sup>;
- b Growth of the built environment is managed to *ensure* that it is coordinated with the development of transport and other infrastructure in a way that *maintains or enhances* the operational effectiveness, viability, safety and *efficient and effective* functioning of existing infrastructure<sup>43</sup> and *protects* the investment in that infrastructure<sup>44</sup>;
- c New development provides for multi-modal transport options including interconnected walking and cycling facilities and public transport and the location of industry where there is good access to strategic transport networks and road, rail or freight hubs<sup>45</sup>;
- d *Avoid, as far as practicable, the exacerbation* of community severance caused by defined significant transport corridors, and otherwise remedy or mitigate these adverse effects;
- e *Protect* the significant habitats of indigenous fauna and where this is not possible, remedies, mitigates or offsets effects – recognising that remediation, mitigation and offsetting may not be appropriate where the indigenous biodiversity is rare or at risk; and
- f *Manage* the risk of natural hazards using a holistic and integrated approach.

11.6 The primary expectation in respect of development within the Future Proof area is the adoption of the Future Proof settlement pattern and associated residential and industrial land release timing<sup>46</sup>, supported by the appropriate provision of infrastructure. In reviewing or preparing plans, territorial authorities are directed to consult with the Waikato Regional Council, tāngata whenua and Waka Kotahi, to identify locations and limits for future urban development, including future areas of major commercial and industrial development. In doing this, district plans shall ensure that urban development is located and managed in accordance with Policy 6.14.

11.7 Future Proof and the WRPS do not provide for the proposed rezoning at Ohinewai, rather they indicate a strong preference for growth within and adjacent

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<sup>42</sup> Policy 6.1 and method 6.1.2.

<sup>43</sup> Policy 6.3(a)(ii) & (c) and Method 6.3.1 (e).

<sup>44</sup> Policy 6.3(a)(iii), Policy 6.6(a).

<sup>45</sup> Methods 6.3.1, 6.5.1(a).

<sup>46</sup> Policy 6.14, Tables 6-1, 6-2 and 6-3.

to existing urban areas. However, as was agreed in the Planning Joint Witness Conferencing, Policy 6.14 provides for the consideration of alternatives (to the Future Proof settlement pattern) and that this is applicable to the OPS proposal<sup>47</sup> in accordance with Method 6.14.3. Together, Policy 6.14 and Method 6.14.3 require alternative land release proposals to be consistent with the Future Proof Guiding Principles and the Development Principles in section 6A of the WRPS.

- 11.8 While Policy 6.14 applies to urban growth and development in the Future Proof area, any development is also required to give effect to the wider objectives and policies of the WRPS to the extent that they are relevant.
- 11.9 Given the number of objectives and policies of relevance to the proposal and that they are somewhat overlapping, particularly in respect of the integration of development and infrastructure, I have:
- a Primarily focussed my assessment on the key directive provisions, being Objective 3.12, Policy 6.3 and associated method, Policy 6.14 and associated Method 6.14.3, 6A and the Future Proof Guiding Principles; and
  - b Provided an overall assessment that also incorporates consideration of the other provisions I have discussed above.

### **Objective 3.12 – Built Environment**

11.10 This objective seeks that *'Development of the built environment (including transport and other infrastructure) and associated land use occurs in an integrated, sustainable and planned manner which enables positive environmental, social, cultural and economic outcomes'* and lists a range of matters that contribute to achieving this objective. I address the key clauses in turn below.

(a) *promoting positive indigenous biodiversity outcomes*

11.11 I consider that the proposal can provide opportunities to enhance indigenous biodiversity outcomes, including the development and enhancement of wetland areas. However, the development of the site may also result in the loss of black mudfish, should they be found to be present at the site. Based on Dr Wilding's evidence, changes to provisions could be made to minimise (but not eliminate) the risk of this adverse effect occurring.

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<sup>47</sup> Planning JWS 9.19 and 9.17.

(c) *integrating land use and infrastructure planning including by ensuring that development of the built environment does not compromise the safe, efficient and effective operation of infrastructure corridors*

11.12 This clause seeks integrated land use development and infrastructure planning while ensuring that the safe, efficient and effective operation of infrastructure corridors are not compromised.

11.13 The OSP and proposed planning provisions include a range of 'staging' requirements that seek to ensure that water, wastewater and transport infrastructure is upgraded as the proposed development progresses. However, as I have advised previously, my primary concerns relate to:

- a Uncertainty as to future water and wastewater servicing, including the ability to give effect to the Vision and Strategy.
- b The lack of a strategic assessment of options, either through the proposal or Waikato 2070, and the potential cumulative effects of development beyond the proposed site, such that effects on the Expressway in the long term (and subsequent infrastructure planning, upgrade and new infrastructure requirements), may not have been fully identified.
- c A range of compromises to transportation standards, guidelines, and principles in order to accommodate the proposal, as outlined in the evidence of Mr Swears<sup>48</sup>.
- d Reliance on private vehicle trips via the Expressway to access key services in Huntly or other centres that will in turn compromise the effectiveness of the Expressway in delivering its intended function of providing for inter-regional travel and freight movements.

(d) *integrating land use and water planning*

11.14 I address this matter in Section 7 of my evidence. While I appreciate that this issue has been considered through the MWSS, and a preferred option for water servicing identified, the feasibility and potential consent requirements of this preferred option are currently unknown. In my opinion, it is premature to draw any conclusion as to the efficacy of any proposed future solution in the absence of knowing how affordable and feasible the option is. This is particularly the case

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<sup>48</sup> Mr Swears, para 5.1.

where current allocation and queued resource consent applications currently exceed water availability limits.

(e) *recognising and protecting the value and long-term benefits of regionally significant infrastructure;*

11.15 This is matter of primary importance to Waka Kotahi and the economic development of the Waikato Region and beyond, given the national importance of the Expressway as addressed in Section 8 of Ms Loynes evidence. This objective goes substantially beyond simply managing effects on regionally significant infrastructure – it requires the ‘*value and long-term benefits*’ of that infrastructure to be ‘*protected*’.

11.16 One of the key strategic objectives of the Expressway is to enhance inter-regional and national economic growth and productivity by connecting large population centres, delivering efficient routes for large freight volumes and access to port and airport activities.

11.17 Ms Loynes advises<sup>49</sup> that ‘*the role of the Expressway was to create a fast, reliable and safe corridor for inter-regional movements with a particular emphasis on freight and with a specific injunction against its use for short distance private car trips*’.

11.18 Therefore, while the industrial component of the proposal may align with the objective and role of the Expressway, the alignment for the residential component is substantially less. In this regard, Ms Loynes advises that ‘*the strategic long term planning of development in the corridor rightly requires a focus on ensuring development proposals do not ‘lock in’ short distance car trips that cannot be resolved and which therefore will reduce the longevity of this route for the nation.*’<sup>50</sup>

11.19 As a route of the highest significance nationally, a proposal that will lead to development that will potentially diminish the investment in the Expressway, and the long term benefits to the current and future community and economic development that it is intended to serve, is not consistent with this objective.

(g) *minimising land use conflicts, including minimising potential for reverse sensitivity;*

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<sup>49</sup> Ms Loynes, para 6.6.

<sup>50</sup> Ms Loynes, para 6.7.

- 11.20 The issue of reverse sensitivity is one that does not appear to have been substantially addressed in the s42A report. While this report references Clause g<sup>51</sup> as a relevant matter, the report itself does not assess the potential for reverse sensitivity effects – although it recommends refusing the residential component proposed in the APL submission, which would substantially address this issue.
- 11.21 While a key aim of the OSP proposal is to provide for a resident workforce component, the potential contradiction to this aim is the establishment of a residential zone in close proximity to an industrial zone that will provide for a wide range of industrial activities.
- 11.22 By way of example, I understand that two of TCG's factories, at Rosebank Road and Great South Road, are classified as lower tier Major Hazard Facilities. Both these sites are indicated as using flammable gases and liquids, and materials that have acute toxicity<sup>52</sup>, and include spill response procedures that include site evacuation and, depending on the wind direction, evacuation of neighbouring properties. I do not have any information on the potential extent and severity of spills, nor whether the combining of multiple factories in a single site changes the risk profile/tier. However, these facilities are proposed to be located in the OSP. I acknowledge that the location of Major Hazard Facilities at the site will be an exception rather than a common occurrence. However, general industrial activities can also give rise to offsite effects (e.g. noise, odour, general amenity) on sensitive land uses, such as residential activities.
- 11.23 One mechanism to avoid reverse sensitivity effects is the provision of open space buffers between industrial and residential land uses<sup>53</sup>. Whether this would be sufficient to mitigate reverse sensitivity effects may depend on the types of industrial activities that could establish in the industrial zone and whether these give rise to effects that may extend beyond the buffer area.
- 11.24 Creating a new, greenfield development that puts sensitive land uses in proximity to industrial land uses, including a Major Hazard Facility, creates the potential for a long-term reverse sensitivity issue – unless there is sufficient confidence that the buffer distances (or other suitable mitigation) are adequate to ensure adverse effects on sensitive land uses are effectively managed in the long term.

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<sup>51</sup> S42A report, para 48.

<sup>52</sup> <https://worksafe.govt.nz/topic-and-industry/major-hazard-facilities/mhf-public-information/>

<sup>53</sup> Mr Olliver, para 7.79.

### Policy 6.3 – Co-ordinating growth and infrastructure

11.25 This policy was agreed by the planning experts as being fundamental to the assessment of the APL proposal<sup>54</sup> as it is intended to achieve Objective 3.12 and is a very directive policy in that it requires that the management of the built environment **ensures** that a range of outcomes are achieved. Accordingly, I assess each clause individually below.

- (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) *optimise 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;*

11.26 I acknowledge that the proposal includes staged development aligned with the provision of infrastructure. This goes some way to achieving sub-clause (i) by requiring necessary infrastructure prior to it being required to service subsequent stages of development. Although I note that Mr Swears has expressed concern that the proposal incorporates a series of compromises to transportation standards, guidelines and principles.

11.27 As I have discussed above, Ms Loynes raises concerns about the potential effects of the proposal on the Expressway, particularly on the nationally important strategic role that it serves.

11.28 Mr Swears also advises that based on traffic engineering practice, *'it is undesirable for an inter-regional arterial to be used for local trips to connect location such as the Site with a separate location such as (Huntly)'*<sup>55</sup>. He also indicates that measures have not been proposed to reduce the incremental road safety effects (in relation to the Ohinewai interchange) that may arise as a result of the traffic associated with the Proposal and states: *'a situation with identified safety issues will be made less safe as a result of the Proposal'*<sup>56</sup>.

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<sup>54</sup> JWS, para 9.12.

<sup>55</sup> Mr Swears, para 6.55.

<sup>56</sup> Mr Swears, para 6.58b.

- 11.29 These effects risk degrading the long term benefits and function of the Expressway, the substantial investment in its development and its on-going safe and efficient operation, in conflict to sub-clauses (ii) and (iii).
- 11.30 Sub-clause (iv) directs that new development does not occur until provision for necessary infrastructure is in place. As I have stated above, I am concerned that while the MWSS has identified preferred long term water and wastewater servicing options, there is substantial assessment and detail necessary to confirm that these options can be consented and afforded by the community. In my opinion, given this uncertainty, the outcome sought in sub-clause (iv) cannot be ensured at this time.
- (b) *the spatial pattern of land use development, as it is likely to develop over at least a 30-year period, is understood sufficiently to inform reviews of the Regional Land Transport Plan. As a minimum, this will require the development and maintenance of growth strategies where strong population growth is anticipated;*
- 11.31 As I have indicated previously, the assessment has not considered the cumulative effect of potential further development in this area. Such an assessment has also not been conducted as part of Waikato 2070.
- (c) *the efficient and effective functioning of infrastructure, including transport corridors, is maintained, and the ability to maintain and upgrade that infrastructure is retained;*
- 11.32 I have previously addressed the importance of the Expressway and the benefits and functions that it is intended to provide and the risk that the proposal raises in respect of the efficient and effective functioning of the Expressway. This is addressed further in Ms Loynes' and Mr Swears' evidence.
- 11.33 I do not consider Clause (d) to be particularly relevant to the proposal.
- 11.34 Clause (e) is primarily relevant to the extent that the infrastructure provided to support the development affects the function of the Expressway and operation of the wider transport network. I have addressed these effects elsewhere – particularly in relation to Clause (c) above.

### **Method 6.3.1 Plan Provisions**

- 11.35 This method directs district plans to include provisions that provide for a long term strategic approach to the integration of land use and infrastructure, that give effect to Policy 6.3.
- 11.36 Clauses (a), (b) and (c) seek to enable multi-modal transport facilities and connections. The proposal includes a range of walkways and cycle ways that will provide connections internal to the site, and provision for connections across the Expressway and along the Waikato River bank through to Huntly. In respect of connections outside the site, both Ms Loynes and Mr Swears express concern as to whether these will be utilised given the distances between the OSP area, the school/ neighbouring settlement and the road environment that will be crossed to get there. In addition, Mr Swears identifies potential design and safety issues associated with proposed pedestrian crossings on Tahuna Road that enable access to areas beyond the site. Mr Swears also notes that the distance between the site and Huntly is greater than typical for cycling journeys
- 11.37 Mr Kuo considers that the OSP proposal does not support the concept of compact urban form where a range of community facilities and services can be easily accessed (or efficiently provided for) by public transport, walking and cycling to create a liveable community. He considers that a large-scale development in a relatively isolated location with easy access to the State Highway network is likely to result in a high dependency on private vehicle use and increases the cost of providing transport infrastructure and services<sup>57</sup>.
- 11.38 Mr Kuo acknowledges that the site can be serviced by public transport if sufficient funding is available – although this would be the case for any area. However, the site 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<sup>58</sup>, such that any public transport would need to be privately funded. For a reliable service to be ensured in the long term, Mr Kuo considers that the funding mechanism should be locked into relevant plan provisions or some other mechanism<sup>59</sup>. However, in my opinion, this would be very difficult to achieve.
- 11.39 Clauses (d) and (h) seek that industry is located where there is good access to strategic transport networks and road, rail or freight hubs and the use of rail for freight movement. The location of the site, adjacent to the Ohinewai off-ramps and the North Island Main Trunk Railway is consistent with these clauses and

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<sup>57</sup> Mr Kuo, paras 7.8 and 7.9.

<sup>58</sup> Mr Kuo, paras 7.12 to 7.18.

<sup>59</sup> Mr Kuo, para 9.6.

provides an opportunity for use of the rail network for the transport of both inbound and out-bound goods at the site.

- 11.40 While this is promoted as an important locational advantage of the proposed site, and the Illustrative Masterplan and evidence indicates that a rail siding is intended, there does not appear to be any requirement in the staging plan for the rail siding to be built. My interpretation of the staging plan is that there is no obligation to build the rail siding, but if one is built then this triggers necessary road upgrades to ensure that it can be safely utilised.
- 11.41 The remaining clauses primarily address maintaining and enhancing the use of existing infrastructure (and not preventing its upgrade) and effects on the function of the transport network. I have addressed those in relation to more directive policies elsewhere in my evidence.

#### **Policy 6.14 Adopting Future Proof land use pattern**

- 11.42 This policy seeks to ensure that new development within the Future Proof area adopts the Future Proof land use pattern and timing, as evidenced by Clauses (a), (b) and (c). The expectation that industrial growth and development within the Future Proof area will largely occur in accordance with the identified growth pattern has enabled infrastructure providers such as Waka Kotahi to plan and develop their infrastructure to best service this growth pattern and provide for the long term social and economic needs of the local and wider community. As Ms Loynes advises<sup>60</sup>:

*‘the origins of the Future Proof partnership lies in the development of the Waikato Expressway and a desire by all local parties to see its construction. This investment was justified on the basis of an agreed plan for capitalising on its delivery and protecting its function for future generations as described in the Waikato Expressway Network Plan (2014)’.*

- 11.43 The efficient and effective integration of land use development and infrastructure is a fundamental purpose of strategic growth planning. Its importance is further evidenced by the multiple provisions in the WRPS that I have discussed above. Having an agreed plan for growth enables the planning and investment in major infrastructure to be undertaken with the confidence that this investment is well founded and is contributing to a common approach.

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<sup>60</sup> Ms Loynes, para 7.5.

11.44 It is also reasonable to assume that a range of other decisions (including private investments) are made in reliance on the planning documents. In this regard, recent changes to the Hamilton City and Waipa District Plans have reinforced the intent to develop in accordance with the Future Proof settlement pattern and, as I have noted previously, the PWDP itself also signals this intention.

11.45 Notwithstanding this, Policy 6.14 provides for alternative land release – which I interpret to be both in terms of location and timing – to implement alternatives to the Future Proof land use pattern. In respect of alternative industrial land release, the following clauses are relevant:

- (c) *New industrial development should predominantly be located in the strategic industrial nodes in Table 6-2 (section 6D) and in accordance with the indicative timings in that table except where alternative land release and timing is demonstrated to meet the criteria in Method 6.14.3.*
- (e) *new industrial development outside the strategic industrial nodes or outside the allocation limits set out in Table 6-2 shall not be of a scale or location where the development undermines the role of any strategic industrial node as set out in Table 6-2;*
- (f) *new industrial development outside the strategic industrial nodes must avoid, remedy or mitigate adverse effects on the arterial function of the road network, and on other infrastructure;*
- (g) *where alternative industrial and residential land release patterns are promoted through district plan and structure plan processes, justification shall be provided to demonstrate consistency with the principles of the Future Proof land use pattern;*

11.46 Only Clause (g) addresses alternative residential land release, although this is also addressed by Method 6.14.3.

11.47 The experts attending the Joint Witness conference agreed that:

- a Policy 6.14 provides the ability for the OSP proposal to be considered as an alternative land release;
- b Method 6.14.3 applies to both industrial and residential land release in accordance with 6.14 g;
- c The proposal is required to be assessed against the Future Proof Guiding Principles and the Development Principles in Section 6A of the WRPS; and

d Future Proof 2017 is the relevant Strategy to assess the proposal against<sup>61</sup>.

11.48 Accordingly, my assessment below focuses on these methods and criteria. In my opinion, the term 'consistent with' means 'compatible with' or 'the same nature as'. This aligns with Mr Olliver's opinion of the meaning of this term<sup>62</sup>.

### **6.14.3 Criteria for alternative land release**

11.49 This method states that:

*District plans and structure plans can only consider an alternative residential or industrial land release, or an alternative timing of that land release, than that indicated in Tables 6-1 and 6-2 in section 6D provided that:*

*(a) to do so will maintain or enhance the safe and efficient function of existing or planned infrastructure when compared to the release provided for within Tables 6-1 and 6-2.*

11.50 In respect of water and wastewater servicing, the proposal has the potential to act as a catalyst for investment in improvements to the Huntly Treatment Plant as an interim/medium term solution, which I understand has been in non-compliance for several years. Although, given this on-going non-compliance it is not clear to me why this has not already been addressed. In my opinion it is essential to ensure compliance with the Plant's discharge limits and standards to enable the Plant to be utilised for wastewater treatment and disposal from the OSP. To do otherwise would not be consistent with the Vision and Strategy.

11.51 I have expressed my reservations about the certainty of long-term wastewater disposal at this time. Additionally, I cannot comment on whether this maintains or enhances performance compared to that of the planned land use pattern. My review of the MWSS suggests that the study did not assess the option of improving the plant to incorporate growth and achieve compliance under the 'status quo' Future Proof land use development pattern. I would have expected this to have been the starting point for any strategic wastewater servicing assessment, with alternative options developed from this.

11.52 In respect of water supply, I note that the preferred option is to initially service the OSP area from Huntly, and then from Te Kauwhata. Again I have reservations about the certainty of the long term option which I assume will seek to obtain a

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<sup>61</sup> While the Future Proof principles originate from the 2009 strategy, they were evaluated from an economic perspective and confirmed as valid and relevant today (Future Proof 2017).

<sup>62</sup> Mr Olliver, para 2.16.

greater water allocation from a catchment that I am advised is over-subscribed from an allocation/application perspective with a lengthy consent application queue.

11.53 In respect of transport infrastructure, both Ms Loynes and Mr Swears have expressed significant concerns in relation to the proposal's effects on the road network, the Ohinewai interchange (which was not designed with this level of development in mind) and the use of the high speed Expressway for local trips. The lack of strategic analysis of alternative options means that whether another site or development form would have been better in terms of transportation connections, general transportation effects and potential cumulative effects remains unanswered.

b) *the total allocation identified in Table 6-2 for any one strategic industrial node should generally not be exceeded or an alternative timing of industrial land release allowed, unless justified through robust and comprehensive evidence (including but not limited to, planning, economic and infrastructural/servicing evidence);*

11.54 The Future Proof Industrial Land Study (March 2020)<sup>63</sup> concluded that:

*For the Waikato District, there is sufficient land available to meet the projected short-term demand with 34.69 ha available to meet a projected demand of 22.8ha (27.3 including a 20% margin). In the medium-term there is sufficient supply with 135.04ha to meet a projected demand of 77.1 ha (92.5 including a 20% margin). In the long-term there is sufficient supply with 265.8ha to meet demand of 209.4ha (240.8ha including a 15% margin).*

11.55 The study also advised that most industrial sites in Huntly are occupied and that there are small areas of disused industrial land throughout the town – although these sites generally consist of vacant buildings clustered amongst or in close proximity to residential activity, therefore resulting in possible difficulties in providing for industrial activities. There are currently no greenfield Industrial Zoned sites available in Huntly.

11.56 Notwithstanding the industrial land capacity available in the Waikato District, I acknowledge APL's evidence that there is not sufficient suitable land available in a single location to accommodate a site that meets TCG's needs. I also note Future Proof's further submission to the PWDP that stated that there is a shortfall of serviced and developable industrial and employment land in the Waikato

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<sup>63</sup> Future Proof Industrial Land Study, page 33.

District. However, the TCG proposal aside, the Future Proof Industrial Land Study suggests that available supply is sufficient to meet most short, medium and long term industrial land needs in the Waikato District, and that this is the case for the overall supply of industrial land in the sub-region<sup>64</sup>.

11.57 In respect of economic benefits, Mr Keenan advises that<sup>65</sup>:

*'If the development of the Ohinewai site occurs as proposed, there would be a significant increase in activity in the local economy. However, I consider that there is considerable uncertainty as to this occurring (including the effects of a pandemic-induced recession), raising questions about the extent to which benefits will be realised, and about the incidence of costs.'*

*The housing component of the proposal is considered by APL to be integral to the development. However, the market is untested in that location, and while I consider that there will be demand for the houses, the market-clearing prices for the respective housing types, the cost of the proposed affordable housing, and the possible emergence of Ohinewai as a dormitory town mean that the change to a residential zone carries significant risk of unintended consequences.'*

11.58 This indicates that while Mr Keenan agrees that there would be economic benefits from the proposal, the extent of these are uncertain, particularly in relation to the residential component – which carries significant risk of unintended consequences.

11.59 Ms Hackell<sup>66</sup> raises similar concerns, advising that the social impact assessment has assessed the best outcome (the Master Plan), but not considered reasonably foreseeable alternative scenarios that include:

- a The partial completion of the Masterplan which could include limited development of local amenities and/or important social infrastructure (e.g. walkways, sports fields, community buildings). This could amplify negative social effects such as social exclusion.
- b Ohinewai becoming a 'dormitory town', similar to Te Kauwhata.
- c The portion of housing offered to employees is small and the unspecified 'rent to own scheme' is not affordable leading to an increase in the portion of properties being sold on the open market.

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<sup>64</sup> Future Proof Industrial Land Study, page 33.

<sup>65</sup> Mr Keenan, para 5.1 and 5.2.

<sup>66</sup> Ms Hackell, para 5.1 to 5.5.

- d The positive social effects associated with local employment are not realised as locals do not benefit from the employment opportunities to the extent estimated and/or much of the employment is low waged and precarious.
- e The extent and quality of new jobs do not eventuate - a proportion of the employment is transferred from other locations, new employees travel from other locations and/or job opportunities are mixed with only a relatively small portion being permanent positions above the minimum wage.

11.60 Furthermore, Ms Hackell considers that the assessment focuses narrowly on the employment benefits and does not adequately assess the current social values existing in the area and the impact of the development on those values. She advises that the current employees of TCG (and their families) expected to relocate to Ohinewai were not included in the social assessment, which leaves the likely uptake of the live, work and play community concept a matter of conjecture.

11.61 Ms Hackell advises<sup>67</sup> that new residential developments located in rural areas can be isolated and disconnected from the existing urban fabric. Without enhanced links to social infrastructure in Huntly and Te Kauwhata there is a risk that residents of Ohinewai could suffer social isolation as well as issues with the ease and cost of access to services – noting the importance of public transport in providing access to services and employment. Further, dormitory towns are associated with car dependence and increased greenhouse gas emissions because residents must travel to access services and employment (if not employed by Sleepyhead/in the OSP). Research suggests that residents experience social isolation, financial stress and decreased health due to car dependent lifestyles.

11.62 In summary, while the best case potential economic and social benefits of the proposal have been highlighted in APL's assessments and evidence, possible alternative outcomes have not.

11.63 In respect of infrastructure servicing, I have addressed this elsewhere including the uncertainty of long term water and wastewater servicing and the potential incremental degrading of the benefits and function of the Expressway through the inappropriate (from a best practice transportation perspective) use of the high speed Expressway for local trips.

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<sup>67</sup> Ms Hackell, para 6.6.

- c) *sufficient zoned land within the greenfield area or industrial node is available or could be made available in a timely and affordable manner; and making the land available will maintain the benefits of regionally significant committed infrastructure investments made to support other greenfield areas or industrial nodes; and*

11.64 In respect of water and wastewater, the OSP site does not appear to maintain the benefits of regionally significant committed infrastructure<sup>68</sup> investments made to support other greenfield areas or industrial nodes. The site is in a 'stand-alone' location and requires specific servicing, including reticulation from either Te Kauwhata or Huntly (or both), and additional plant upgrades and resource consents.

11.65 In respect of transport infrastructure, Ms Loynes highlights her concerns at the lack of strategic assessment of the OSP proposal and Waikato 2070. As a result, rather than maintaining the benefits of the infrastructure investment that has been made to support development in accordance with Future Proof, the proposal risks *undermining* the investment in the Expressway – a risk that was identified in the Waikato Expressway Network Management Plan<sup>69</sup>.

- d) *the effects of the change are **consistent with the development principles** set out in Section 6A*

11.66 I address these below.

### **Clause 6A Development principles**

11.67 All of the principles below are prefaced by the statement: 'New development should...'. Consistent with guidance in the WRPS, 'should' means that an outcome is expected to occur, unless it is impracticable or there is a compelling reason not to do so.

- (a) *support existing urban areas in preference to creating new ones*

11.68 In my opinion, the effects of the proposal are not consistent with this principle. It will create a new urban settlement comprising industrial, commercial and residential land in a location that is distanced from existing urban areas<sup>70</sup> and separated by rural land uses. A lack of consideration of alternatives means that it has not been demonstrated that there is a compelling reason for a departure from

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<sup>68</sup> Municipal wastewater and water treatment plants and associated reticulation are defined as regionally significant infrastructure in the WRPS Glossary.

<sup>69</sup> Ms Loynes, para 8.4 and 8.5.

<sup>70</sup> Urban is defined as a concentration of residential, commercial and/or industrial activities, having the nature of a city, town, suburb or a village which is predominantly non-agricultural or non-rural in nature.

this principle – particularly for the residential component. As I have discussed above, Mr Keenan and Ms Hackell both raise concerns about the potential to create a dormitory town, and Ms Hackell raises concerns about the potential implications if enhanced connections to social infrastructure are lacking.

(b) *occur in a manner that provides clear delineation between urban areas and rural areas;*

11.69 Again, in my opinion the proposal is not consistent with this principle. The proposal results in another small settlement along the Waikato Expressway. It creates a new satellite urban area in a currently rural environment, is separated from the Huntly urban limit by approximately 3 km of rural zoned land and is severed from the existing Ohinewai settlement. In my view, this type of development blurs the urban/rural boundary.

(c) *make use of opportunities for urban intensification and redevelopment to minimise the need for urban development in greenfield areas;*

11.70 As I indicate in Section 7, alternative options including urban intensification and redevelopment do not appear to have been explored. While there may be insufficient industrial land to locate the TCG's operations within Huntly or other parts of the Waikato District, alternative residential options including intensification or redevelopment of existing urban areas that are closer to schools, shops, services and essential social connections do not appear to have been considered. Accordingly, I consider that the proposal is not consistent with this principle.

(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;*

11.71 Mr Swears has highlighted his concerns with the proposal, stating that it includes 'a series of compromises to transportation standards, guidelines, and principles in order to accommodate the proposal'<sup>71</sup> and concludes that in his opinion:

*'The Proposal creates a range of adverse transportation effects and the Applicant is proposing to either not address those effects or to address them in a manner that is inadequate.'*<sup>72</sup>

11.72 Mr Swears also raises a range of safety concerns, and that measures have not been proposed to reduce the incremental road safety effects (in relation to the

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<sup>71</sup> Mr Swears, para 5.1.

<sup>72</sup> Mr Swears, para 5.2.

Ohinewai interchange) that may arise as a result of the additional traffic associated with the Proposal. He also expresses concern regarding the design of pedestrian crossings that are needed to provide access to the proposed cycle/walkway across the Expressway, which are required to mitigate the severance of Ohinewai.

(e) *connect well with existing and planned development and infrastructure;*

11.73 I acknowledge that there is an opportunity for the development to connect to the North Island Main Truck railway, and this is beneficial from a freight and roading perspective. However, as I have advised previously, there appears to be no obligation for a rail siding to be constructed and therefore no certainty that the stated benefits to be derived from this will accrue. The site is also located adjacent to the Expressway, which facilitates access to the inter-regional roading network – although the use of this strategic network for local trips has the potential to undermine the long-term function and benefits of the Expressway.

11.74 Ms Loynes advises<sup>73</sup> that the Ohinewai Interchange ‘*was not designed with the expectation Ohinewai would grow to the extent proposed by APL, therefore, the interchange in its present form is unlikely to be entirely suitable for the type and volume of traffic associated with the proposal, or indeed any further allocations planned*’. Mr Swears also details a range of deficiencies in respect of transport infrastructure, describing them as ‘*a series of compromises to transportation standards, guidelines, and principles in order to accommodate the proposal*’<sup>74</sup>. Accordingly, while the site is located adjacent to the Expressway, its connection to the Expressway is not optimal.

11.75 The site is located some distance from existing water and wastewater services, and connections such that new infrastructure is required to provide these essential services. It therefore does not connect well with existing water and wastewater infrastructure. While the recent MWSS strategy has identified preferred options to service the site, these options are at a relatively early stage in the planning process.

(f) *identify water requirements necessary to support development and ensure the availability of the volumes required;*

11.76 Water requirements for the OSP area have been identified based on standard practice. Options for ensuring water availability have been identified, but these are still subject to further consideration. Resource consents are likely to be

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<sup>73</sup> Ms Loynes, para 8.7.

<sup>74</sup> Mr Swears, para 5.1.

required for increased water takes and there is a substantial queue of resource consent applications.

(g) *be planned and designed to achieve the efficient use of water;*

11.77 I would expect this to be met in any new industrial and residential development through the use of water efficient devices and other measures.

11.78 I understand from Mr Penfold's evidence for APL that Waikato Tainui has requested rainwater re-use tanks become part of the plan provisions for development on the site<sup>75</sup>. The provisions promoted by Mr Penfold include a requirement for on-lot stormwater devices, which I assume will generally be rain tanks, as part of proposed Rule 16.6.3 RD3<sup>76</sup>. The presence of such tanks would potentially improve water efficiency.

11.79 However, as I discuss in Section 16 of my evidence below, I consider it is unclear how the rules for Ohinewai will be applied in practice. Proposed Rule 16.6.1 indicates that permitted activity rule 16.1.2 of the proposed plan applies (with some limited exceptions). My interpretation of this rule is that residential dwellings can be developed as a permitted activity, without recourse to the restricted discretionary activity rule which requires the installation of on-lot stormwater management devices.

(h) *be directed away from identified significant mineral resources and their access routes, natural hazard areas, energy and transmission corridors, locations identified as likely renewable energy generation sites and their associated energy resources, regionally significant industry, high class soils, and primary production activities on those high class soils;*

11.80 The proposal is consistent with most aspects of this principle. The exception is that it is located within a flood hazard area. While I acknowledge that flood risk can be mitigated to acceptable levels, I interpret this principle as seeking *in the first instance* to avoid natural hazard areas where it is possible and feasible to do so – not to plan and locate a new industrial, and more importantly, residential<sup>77</sup> settlement in a flood plain as a starting point.

(i) *promote compact urban form, design and location to:*

(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*

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<sup>75</sup> Mr Penfold, para 5.23.

<sup>76</sup> Attachment b3 to Mr Olliver's evidence, page 51 or 56.

<sup>77</sup> Residential land uses are generally considered to be more vulnerable to the effects of flooding than industrial land uses.

*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;*

11.81 The OSP has some elements of a compact urban form as expressed in the policy, with the opportunity for employment, housing and recreation within the OSP area, and the provision of walking and cycling tracks, and potentially some public transport. However, a 'live, work and play' environment will only apply to a proportion of the residents. The others, including resident workers with multiple family members in employment or schooling, will largely be dependent on private motor vehicle use to access schools, tertiary education, employment, healthcare, social services, retail and other everyday services that are located in Huntly or other centres.

11.82 Ms Hackell and Mr Keenan also express concern that the OSP could become at least in part a 'dormitory town', as has occurred in Te Kauwhata, which gives rise to the costs and impacts of commuting to locations such as Auckland or Hamilton.

11.83 While the site can be serviced by public transport, there is no obligation for this to occur and it is unlikely to be sufficiently frequent or efficient to substantially reduce private motor vehicle use. As indicated in Mr Kuo's evidence<sup>78</sup>, an efficient public transport service is unlikely to be viable. Ms Loynes, Mr Swears and Mr Kuo all conclude that accessibility to and from the proposed OSP will be highly dependent on private motor vehicles.

(j) *maintain or enhance landscape values and provide for the protection of historic and cultural heritage;*

11.84 I understand that these factors have limited relevance to the subject site.

(k) *promote positive indigenous biodiversity outcomes and protect significant indigenous vegetation and significant habitats of indigenous fauna. Development which can enhance ecological integrity, such as by improving the maintenance, enhancement or development of ecological corridors, should be encouraged;*

11.85 Aspects of the proposal have the aim of enhancing ecological areas, particularly wetlands and provide ecological corridors – albeit ones to be used primarily for stormwater conveyance and treatment. As discussed in Section 16, the

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<sup>78</sup> Mr Kuo, paras 7.10-7.11.

proposed plan provisions, as currently drafted, do not provide for the protection of significant habitats of indigenous fauna should black mudfish be found on site. However, this deficiency can be addressed by way of amended provisions.

(l) *maintain and enhance public access to and along the coastal marine area, lakes, and rivers;*

11.86 The OSP incorporates aspects that, *if implemented*, provide the opportunity to enhance public access to and along lakes and rivers. While a cycleway along the Waikato River stopbank is included in the staging provisions, the land needed for this is not owned by APL and there are likely to be safety and maintenance access (to the stopbank) issues that would need to be addressed.

(m) *avoid as far as practicable adverse effects on natural hydrological characteristics and processes (including aquifer recharge and flooding patterns), soil stability, water quality and aquatic ecosystems including through methods such as low impact urban design and development (LIUDD);*

11.87 The OSP incorporates some elements of LIUDD – including raingardens, a treatment train approach, wetland enhancement and potentially on-site rain tanks. However, as I have advised above and address further in Section 16 of my evidence, I have some concerns as to how the ‘on-lot’ components will be given effect to in practice.

11.88 Additionally, in my experience, the accepted starting point for low impact/water sensitive urban design is working with, and minimising the impact on, natural hydrological processes. This is also the starting point for this principle. The location of the OSP in a flood plain area will necessitate the substantial infill and compaction of the area, which will result in significant modification to flooding patterns and hydrological processes. While I accept that this is necessary to protect the proposed development from flood risk, in my opinion the OSP is not consistent with this aspect of this principle.

(n) *adopt sustainable design technologies, such as the incorporation of energy efficient (including passive solar) design, low-energy street lighting, rain gardens, renewable energy technologies, rainwater harvesting and grey water recycling techniques where appropriate;*

11.89 These matters can be appropriately addressed at the resource consent stage. I have addressed the issue of rain tanks above. I am not sufficiently familiar with WDC development requirements and standards to advise whether the other elements of sustainable design are likely to be adopted.

- (o) *not result in incompatible adjacent land uses (including those that may result in reverse sensitivity effects), such as industry, rural activities and existing or planned infrastructure;*
- 11.90 A primary aim of the development is for a proportion of the residents to work, live and play in the area. This has resulted in the location of residential zones adjacent to industrial zones, although the OSP does provide some separation and buffering via open space.
- 11.91 As I have previously advised, I remain concerned that the location of residential areas adjacent to industrial zones, including a Major Hazard Facility, creates a potential for reverse sensitivity effects such as noise, odour and amenity.
- (p) *be appropriate with respect to projected effects of climate change and be designed to allow adaptation to these changes;*
- 11.92 Provided that appropriate plan provisions are adopted in respect of ground and building platform levels, including the ability to assess this at the subdivision / development stage, I consider that the proposal can be developed to be consistent with this principle.
- (q) *consider effects on the unique tāngata whenua relationships, values, aspirations, roles and responsibilities with respect to an area. Where appropriate, opportunities to visually recognise tāngata whenua connections within an area should be considered;*
- 11.93 I defer to other experts as to whether the proposal is consistent with this principle.
- (r) *support the Vision and Strategy for the Waikato River in the Waikato River catchment;*
- 11.94 I have addressed the Vision and Strategy in Section 9 of my evidence. At this stage I consider that it is premature to determine that the proposal is consistent with this principle.
- (s) *encourage waste minimisation and efficient use of resources (such as through resource-efficient design and construction methods); and*
- 11.95 I would expect this to be met in any new industrial and residential development.
- (t) *recognise and maintain or enhance ecosystem services.*
- 11.96 I have discussed this principle above.

### **Summary of Assessment Against the Development Principles in 6A**

11.97 Experts attending the Joint Witness Conferencing agreed that there is no stated hierarchy within the development principles.<sup>79</sup> While I agree with this statement, there are some principles that are more strategic, while others are more detail oriented and more likely to be given effect to at the consenting stage.

11.98 Overall, I consider that the proposal and the associated effects of the proposed OSP are not consistent with the Development Principles in 6A. This is primarily because:

- a The OSP proposal does not support existing urban areas in preference to creating new ones and blurs the line between urban and rural areas by creating a new satellite urban area, potentially a dormitory town, separated from Huntly by tracts of rural land.
- b Opportunities for urban intensification and redevelopment do not appear to have been considered, particularly in relation to the residential component, noting that extension/intensification of existing urban areas that are closer to schools, shops and social and other services may reduce water and wastewater servicing requirements and avoid short trip usage of the Expressway. Additionally, intensification and redevelopment of an existing urban area would minimise the potential for 'social isolation' that dormitory towns with car dependence are likely to suffer from.
- c While there are some elements of a compact urban design within the proposal itself, the reliance on schools, facilities and services in other locations and the limited ability to provide efficient and effective public transport will likely result in a high level of car-dependency. While the proposal includes walking and cycling facilities from the site via the overbridge, this is necessary mitigation for exacerbating the severance of Ohinewai across the Expressway and there is concern by transportation experts for Waka Kotahi that this will not be utilised to any significant degree.
- d The undesirable (from a traffic engineering perspective) use of the Expressway for short local trips, and the potential impact on the long-term benefits and function of the Expressway.
- e The need to make a series of compromises to transportation standards, guidelines, and principles in order to accommodate the proposal.

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<sup>79</sup> Planning JWS para 9.27.

- f The location does not connect well with existing water and wastewater services and requires the provision of dedicated infrastructure to service the future stages of the development.
- g The potential for incompatible land uses in proximity to each other.
- h The location of the site in a flood hazard area, necessitating substantial volumes of imported fill to mitigate flood risk.

### ***Future Proof Guiding Principles***

11.99 In addition to the Development Principles in Section 6A, Policy 6.14 requires consistency with the principles of the Future Proof land use pattern to be demonstrated. Future Proof incorporates some 31 guiding principles<sup>80</sup>, although not all are relevant to the land use pattern. I assess the key principles that relate to the land use pattern below:

*Promote increased densities in new residential development and more intensive redevelopment of existing urban areas.*

11.100 The proposal incorporates relatively high development densities - 25lots/ha. However, it does not seek to redevelop and intensify existing urban areas.

*Encourage development to locate adjacent to existing urban settlements and nodes in both the Waikato and Waipa Districts.*

*Recognise and provide for the growth of urban areas and villages within indicative urban and village limits.*

*Maintain the separation of urban areas by defined and open space and effective rural zoning.*

11.101 The development is not located adjacent to an existing urban settlement or within identified limits. It is located some 3 km from the indicative Huntly urban limit, separated by rural land uses.

*Ensure commercial and industrial development is located in selected sub-regional areas and that it is not located where it undermines the areas of influence of the Hamilton Central City, Cambridge, Te Awamutu, Pokeno, Tuakau, Te Kauwhata, Horotiu, Ngaruawahia, Raglan and Huntly.*

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<sup>80</sup> Attachment D to my evidence.

11.102 With the removal of the DFO from the OSP, the proposal is more consistent with this principle. However, the industrial component may not meet this principle as it includes substantial industrial land (beyond that required by TCG) that may affect the up-take of available capacity elsewhere.

*Provide housing and lifestyle choice within defined locations, including papakāinga, with greater emphasis on good urban design outcomes. Where possible, respond to government policies on land supply and housing affordability.*

11.103 The proposal is likely to provide housing choice and contribute to increased housing supply. However, as indicated in Mr Keenan's evidence<sup>81</sup>, the Housing and Business Development Capacity Assessment prepared by Future Proof indicates that there is 'sufficient residential capacity in the Waikato District in the short and medium term'. Moreover, it indicates that, with additional anticipated capacity, there is ample capacity in the long term'.

*Ensure that the settlement pattern generally avoids as far as practicable adverse effects on natural hydrological characteristics and processes, soil stability, water quality and aquatic ecosystems; maintain or enhance landscape values; and, promotes positive indigenous biodiversity outcomes and protects significant indigenous vegetation and significant habitats of indigenous fauna.*

*Ensure development is directed away from potential and known hazard areas as well as areas suited to energy generation and transmission, and important mineral resources (including sand and aggregate) and access routes to these resources.*

11.104 I have addressed these principles previously, the location of the site within a flood hazard area requires the importation of significant volumes of fill material to mitigate flood hazard risk.

*The staging and timing of the settlement pattern will align with the partners' long-term infrastructure strategies and that of any potential waters Council Controlled Organisation (CCO), as well as NZ Transport Agency plans.*

11.105 As outlined in Ms Loynes' evidence, Waka Kotahi has invested significantly in the Expressway has enabled development in accordance with the Future Proof Settlement Pattern. Ms Loynes is concerned that such a departure from the agreed settlement pattern (as promoted in the OSP and Waikato 2070) has the

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<sup>81</sup> Mr Keenan, para 9.2.

potential to undermine the investment in the Expressway, its function, objectives and stated benefits.

*Encourage development in established settlements to support existing infrastructure.*

11.106 As I have previously discussed, the location of the OSP midway between Huntly and Te Kauwhata necessitates the provision of substantial additional infrastructure to service the site.

*Protect existing and future infrastructure and transport corridors, including the Waikato Expressway, Southern Links and rail corridors, from development that could constrain or compromise the efficiency of infrastructure and transport corridor operation*

11.107 This is discussed at some length in the evidence of Ms Loynes and Mr Swears and in my evidence above. I note that one of the strategic priorities in the Government Policy Statement on Land Transport 2018/19 – 2027/28 is improving freight connections, and the Expressway also places emphasis on the efficient movement of freight. Accordingly, the industrial component of the proposal aligns with the function and the benefits of the Expressway, provided the technical concerns raised by Mr Swears can be addressed.

11.108 However, the residential component risks undermining the long term functioning of the Expressway by way of short local trips, which are undesirable on a high speed transport network.

*Ensure development is planned to support safe and efficient transport infrastructure, including public transport provision and reduced dependence on motor vehicles.*

*Recognise the need for stronger links between land-use and transport in respect of the settlement pattern and ensure capacity is matched with development potential.*

*Promote planning for an energy efficient, low carbon emissions, sustainable environment.*

11.109 As is discussed in the evidence of Ms Loynes, Mr Swears and Mr Kuo, the location of the site is not conducive to supporting public transport and is likely to be a highly car dependent development. This high reliance on motor vehicles is likely to have impacts in terms of energy and carbon emissions.

*Ensure large scale community facilities and services are planned on a sub-regional basis to avoid duplication of resources*

11.110 The recently released MWSS seeks to plan water and wastewater supply on a sub-regional basis and is the type of strategic planning that is consistent with this principle. However, this strategy itself indicates that it has been developed rapidly and that matters including consenting (and iwi and stakeholder engagement), affordability and staging require further assessment.

**Summary of assessment against the Future Proof Guiding Principles**

11.111 Overall, I consider that while there are aspects of the proposal that are consistent with some of the principles of the Future Proof land use pattern, the proposal as a whole is not consistent with these principles.

**Objective 3.2 – Natural Hazards, Policy 13.1 and Method 13.1.1**

11.112 Policy 13.1 requires natural hazard risks to be managed using an integrated and holistic approach that includes:

- (a) ensuring the risk from natural hazards does not exceed an acceptable level;
- (b) protecting health and safety; and
- (c) avoiding the creation of new intolerable risk.

11.113 I briefly address these matters in relation to the OSP and also the Shand and APL sites.

*OSP Area*

11.114 I have addressed the issues relating to flooding in Section 7 of my evidence. Council's flood expert, Mr Basheer, concludes that it has been adequately demonstrated that flood risk can be managed and mitigated on the site.

11.115 Notwithstanding that the proposal seeks to locate within an existing flood plain, contrary to the intent of the Development Principles of Section 6A and the Future Proof Guiding Principles, I consider that natural hazard risks in respect of flooding can be managed and mitigated in the OSP area in accordance with Policy 13.1, *provided that* appropriate mechanisms are incorporated into the plan provisions to ensure this occur.

### *Shand Property*

11.116 The modelling and assessment carried out for the OSP was specific to that site and its proposed development. The conclusions from this assessment cannot be applied to the other proposed re-zoning sites, particularly the Shand property which lies substantially closer to the Waikato River and is subject to several flood risks of concern as outlined in Mr Basheer's evidence<sup>82</sup>, 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.

11.117 Accordingly, Mr Basheer concludes that it is *'inappropriate 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'*.

11.118 On this basis, this re-zoning request is not consistent with Policy 13.1 in that it has not been adequately demonstrated that flood risk can be managed on this property.

### ***Policy 11.2 Protect significant indigenous vegetation and significant habitats of indigenous fauna***

11.119 In the main, the OSP area has little indigenous vegetation and habitats for indigenous fauna of significance. However, as outlined in of my evidence in Section 7, Dr Wilding advises that:

- a Black mudfish may be present at the site and inhabit areas such as modified watercourses' man-made drains and wetlands;
- b If mudfish were identified at the site, the habitat would qualify as significant habitat of indigenous fauna in accordance with the criteria in 11A of WRPS;
- c Translocation of mudfish is unlikely to be successful;
- d The proposed Fish Management Plan is too narrow in its implementation and is deficient in that it does not provide for the protection of existing habitat where it is possible to do so; and

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<sup>82</sup> Mr Basheer's evidence, para 8.2.

- e That if black mudfish are present on the site, and their habitat cannot reasonably be protected or retained, then it is unlikely that translocation will be successful and the mudfish will be lost.

11.120 Accordingly, if black mudfish are found on the site, then Policy 11.2 and Method 11.2.2 of the WRPS apply. In my opinion, it is appropriate to address the potential for this eventuality at this time to ensure that the plan provisions give effect to these policies should black mudfish habitat be found and note that there is a proposed rule – which is triggered under resource consents for earthworks where there is a watercourse on the site<sup>83</sup>.

11.121 Policy 11.2 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 provides a hierarchy for the management of effects on significant biodiversity that regional and district plans shall:

- a protect areas and avoid loss or degradation in preference to remediation or mitigation;
- b require unavoidable effects<sup>84</sup> to be remedied or mitigated;
- c require any residual effects are off-set to achieve no net loss – preferably in relation to the species that is affected.
- d Recognise that remediation, mitigation and offsetting may not be appropriate where the indigenous biodiversity is rare, at risk, threatened or irreplaceable.

11.122 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 present on the site and it is possible to do so. More-so, this is particularly the case given that it is an ‘at risk - declining’ species and the low likelihood of successful translocation and mitigation.

11.123 Investigations to date indicate that mudfish are not present on the site. I also note that the scale of earthworks required to shape the site are substantial such that the protection of mudfish habitat (if found) may not be possible in all circumstances. However, there are also wetlands and drainage areas in the proposed OSP where it may be possible to retain habitat. Accordingly, I concur

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<sup>83</sup> For example Rule 16.6.3 RD5 of the residential provisions.

<sup>84</sup> Section 2 of the WRPS indicates that unavoidable adverse effects generally occur when the positive effects the activity will generate are considered to outweigh the adverse effects.

with Dr Wilding that the first approach of the Fish Management Plan should be to determine whether it is feasible to retain mudfish habitat if it is present on the site, and not automatically default to mitigation. In my opinion this approach is directed by the WRPS for an 'at-risk-declining' species such as black mudfish and, as I have indicated above, consistent with the Objective 9 of the NPS-FM.

11.124 I also agree with Dr Wilding's opinion regarding the term 'watercourse'. In my experience, this has different meanings to different people. To avoid any unnecessary interpretation confusion, a Fish Management Plan should be required for any earthworks that requires consent under the proposed earthworks rule (RD5). I do not think this is a particularly onerous requirement and, once prepared, could be utilised for multiple earthwork stages.

11.125 Finally I note Dr Wilding's opinion that if black mudfish are present on the site, and their habitat cannot reasonably be protected or retained, then it is unlikely that translocation will be successful and the mudfish will be lost.

### ***Overall summary of assessment against the WRPS***

11.126 As I have advised above, my assessment of the relevant statutory framework leads me to the conclusion that 'in the round' the OSP proposal does not give effect to the objectives and policies of the WRPS in relation to growth and development.

11.127 In addition, I consider that overall it is inconsistent with the Alternative Land Release Criteria and the Development Principles in 6A and the Future Proof Guiding Principles, for the reasons that I have presented above.

## **12 Consideration of 'other' management plans and strategies**

12.1 Section 74(2)(b)(i) that when preparing or changing a district plan, a territorial authority shall have regard to management plans and strategies prepared under other Acts. The extent to which regard is had to these 'management plans and strategies', particularly where they provide conflicting direction, depends on the weight that is given to each document. I address the issue of weighting below.

### ***Future Proof***

12.2 The Future Proof Strategy is a 30 year growth management and implementation plan specific to the Hamilton, Waipa and Waikato sub-region (Future Proof sub-region). The Strategy provides a framework to manage growth in a collaborative way for the benefit of the Future Proof subregion, both from a community and a

physical perspective. This sub-regional approach is needed in order to manage growth in a coordinated manner and to address complex planning issues, especially cross-boundary matters.<sup>85</sup> The Future Proof partners include the Waikato Regional Council, Hamilton City Council, Waipa District Council, Waikato District Council, tāngata whenua and Waka Kotahi/New Zealand Transport Agency.

12.3 The role of Future Proof includes:

- a Providing sub-regional leadership on growth management, infrastructure planning and development;
- b Setting sub-regional policy and approaches relevant to the Future Proof Strategy and using these to inform key regional documents such as the WRPS, Waikato Regional Land Transport Plan (RLTP) and the Waikato Plan; and
- c Implementing and enabling the Future Proof settlement pattern.

12.4 Future Proof provides a vehicle for ongoing collaboration and for the sub-region to achieve an integrated settlement pattern that, amongst other matters:

- a Aligns with infrastructure and funding; and
- b Provides certainty about the future growth and development direction of the sub-region.

12.5 The Future Proof Strategy, including the settlement pattern, is embedded in the WRPS and has been subject to the Schedule 1 processes of the Act. This settlement pattern has also been included in the Hamilton City District Plan 2017<sup>86</sup> and Waipa District Plan 2016<sup>87</sup> through their most recent review processes.

12.6 While Future Proof was first confirmed in 2009, it has been subsequently reviewed and reconfirmed in 2017. Through this review, the settlement pattern and guiding principles were not altered substantially. As part of the review, Future Proof commissioned an evaluation of the principles from an economic perspective to test their validity for the Strategy Update. This evaluation concluded that:

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<sup>85</sup> FutureProof 2017.

<sup>86</sup> For example, Section 2 of the Hamilton City District Plan, 2017.

<sup>87</sup> For example, Section 1.1.22 of the Waipa District Plan.

*'the Future Proof principles remain valid, and possibly more relevant today than when originally drafted'.<sup>88</sup>*

- 12.7 Accordingly, I consider that Future Proof and its associated settlement pattern remains relevant and should be afforded substantial weight. As it is embedded in the WRPS, I have assessed the relevant principles in accordance with the provisions of that document, above.

### **Waikato 2070**

- 12.8 Waikato 2070 has been developed to provide guidance on appropriate growth and economic development that will support the wellbeing of the Waikato District. It was also prepared using the Special Consultative Procedure of Section 83, of the Local Government Act (2002) and hence is a strategy to which regard must be had.
- 12.9 Waikato 2070 describes itself as being unique, taking an integrated approach to future growth in the Waikato District, combining economic and community development with future land use and infrastructure planning. The aim is to inform rural and urban communities, businesses, investors, iwi, governments, neighbouring local authorities and the Council itself, to help deliver and achieve the communities' vision. Whilst enabling growth, Waikato 2070 aims to do this in a way that protects the environment which is essential for the health and wellbeing of the people<sup>89</sup>.
- 12.10 The strategy indicates that planning, design and management of urban and rural areas, and the need to support economic and community development activities, will have long-term impacts particularly on the quality of life, social amenity, economic prosperity and wellbeing of the District's communities. The overall wellbeing of individuals is strongly influenced by the quality of the environments, including natural, rural and urban, where people live, work, learn and play.
- 12.11 Mr Olliver advises that significant weight should be given to Waikato 2070; noting that it is very up to date and has been developed in the knowledge of the OSP, and has subsequently recognised it.
- 12.12 I do not agree and consider that Waikato 2070 should be afforded significantly less weight (than given to Future Proof) as:

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<sup>88</sup> Future Proof Strategy, November 2017, page 10.

<sup>89</sup> Waikato 2070, page 5.

- a While it was prepared using the same special consultative process under the LGA as Future Proof, it has not been tested through an RMA process as Future Proof has through the WRPS Schedule 1 process;
- b While it has identified future growth areas and timings, these are subject to further investigation and feasibility;
- c As advised by Ms Loynes, it was not developed in conjunction with Waka Kotahi, who have serious reservations about the affordability and sustainability of the land use pattern it identifies and concerns that it represents a sharp departure from the WPRS and Future Proof guiding principles around clustering of new development around existing settlement patterns;
- d Furthermore, Waka Kotahi (and other Future Proof partners) have expressed its concerns that a clear evidence base to justify the deviation from the Future Proof Settlement Pattern has not been provided. In this regard, I note that while the notified strategy included an industrial area at Ohinewai, the residential component (being primarily that of APL and OLL) was adopted following submissions. The committee decision report<sup>90</sup>: *'noted the constraints to residential growth around Huntly and that growth to the north was the most logical option'*. This does not provide me with confidence that the decision to include residential development in the Ohinewai area was the subject of a robust assessment of the implications of residential development in this area.

12.13 Accordingly, there seems little basis to give substantial weight to a growth pattern that has been subject to limited analysis and collaboration with key partners. This contrasts with Future Proof, which is embedded in the WRPS and tested through that process, and which has also recently been implemented through the Hamilton City and Waipa District Plans and signalled in the PWDP itself.

***Waikato Regional Land Transport Plan and Waikato Regional Public Transport Plan***

12.14 As advised in the evidence of Mr Kuo, the preparation of these plans is a requirement of the Land Transport Management Act 2003 and requires public consultation. Accordingly, in my view these are relevant plans to which regard is to be had. I note that these are operative plans that have been prepared taking into account the WRPS and district plans, and have been, and are being, given

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<sup>90</sup> 200211 S&F Appendix 2 - Waikato 2070 Summary of Submissions and Deliberation notes (Approved Decisions).

effect to. Therefore, in my opinion they should be given significant weight to the extent to which they are relied upon by Mr Kuo.

### ***Waikato-Tainui Environmental Plan; Tai Tumu, Tai Pari, Tai Ao***

12.15 The Waikato-Tainui Environmental Plan (**WTEP**) is required to be taken into account in accordance with section 74(2A). The key strategic objectives include tribal identity and integrity, including “to grow our tribal estate and manage our natural resources.” The Plan is designed to enhance Waikato-Tainui participation in resource and environmental management.<sup>91</sup>

12.16 I defer to Waikato-Tainui to provide advice on how the WTEP should be applied in relation to the APL proposal

### ***Hamilton to Auckland Corridor (H2A)***

12.17 The Hamilton to Auckland Corridor Statement of Spatial Intent ('H2A') was launched in August 2019 as part of the Government's Urban Growth Agenda and focus on spatial planning. It is a partnership between the Crown, Iwi, and local government to enable sustainable growth between two of New Zealand's fastest growing cities. Ms Loynes addresses H2A in her evidence.

12.18 I agree with Mr Olliver and Ms Loynes that H2A is in the early stage of development and so less weight should be afforded to it.

### ***Waikato Area Blueprints***

12.19 As identified in the Planning JWS<sup>92</sup>, the Blueprints are not a plan that is required to give regard to under section 74(2)(b), but may provide some information on community perspectives.

## **13 Section 32AA of the Act**

13.1 I have reviewed the section 32AA evaluation that was lodged by APL in December 2019<sup>93</sup>. In my opinion, the assessment has not adequately assessed the proposal in accordance with the requirements of sections 32 and 32AA of the Act. In particular, whether the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of the Act, and having done this, whether the provisions are the most appropriate way to achieve the purpose of the Act. In my view, and in accordance with accordance with section 32(1)(b)(i),

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<sup>91</sup> <https://www.waikatotainui.com/services/taiao/tai-tumu-tai-pari/>.

<sup>92</sup> Para 10.6.

<sup>93</sup> Assessment of Environmental Effects Report and section 32AA Evaluation December 2019.

this requires the *identification of other reasonably practicable options* – that is, to be able to evaluate what is *‘the most appropriate way’* requires an assessment of these alternative options.

13.2 From my review, the lodged section 32 AA evaluation only appears to evaluate alternative statutory processes for implementing the proposal being:

- Lodge resource consents (discretionary activity) for industrial development scenarios;
- Wait for the PDP review process to be completed and then promulgate a private plan change seeking rezoning;
- Utilise the district plan review process and make a submission on the district plan seeking a change in zoning over the site.

13.3 The Ministry for the Environment’s Guide to section 32 evaluations<sup>94</sup> provides guidance on this aspect of section 32 evaluations, indicating:

*“Reasonably practicable” is not defined in the RMA, but may include options that:*

- *are both regulatory and non-regulatory;*
- *are targeted towards achieving the goal/objective;*
- *are within the council’s resources, duties and powers;*
- *represent a reasonable range of possible alternatives.*

13.4 The guidance also advises that:

*For more contentious proposals, it is good practice to have a number of alternatives to doing nothing, which could include:*

- *requiring different timeframes for achieving the same outcome*
- *seeking to either fully or partially achieve identified community outcomes*
- *providing for differing levels of trade-off between competing uses*
- *setting out extremes in terms of maximising protection or maximising development goals.*

13.5 I accept that, as advised in the guidance and stated Mr Olliver’s evidence, s32 case law has interpreted *‘most appropriate’* to mean *‘suitable, but not necessarily superior’*. This means the most appropriate option does not need to be the most

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<sup>94</sup> Ministry for the Environment. 2017. A guide to section 32 of the Resource Management Act: Incorporating changes as a result of the Resource Legislation Amendment Act 2017. Wellington: Ministry for the Environment.

optimal or best option, but must demonstrate that it will meet the objectives in an efficient and effective way’.

13.6 However, in my opinion a zoning proposal such as this, which has the purpose of establishing an industrial development and residential community that is not consistent with the primary growth framework within the WRPS, would be reasonably expected to provide a robust evaluation that considers the benefits and costs of other ‘reasonable practicable’ development options. I note that APL, who is seeking the rezoning change, has indicated that this is the only option in terms of location, scale and form.

13.7 Mr Olliver states that<sup>95</sup>:

*‘There may be situations where consideration of alternative sites would be relevant, such as where public land is involved or where significant adverse effects are expected; however, in my opinion, this is not one of them. The alternatives assessment required depends on the nature of the proposal and the decision-making context, and the evidence establishes that there will be no significant adverse effects that cannot be remedied or mitigated, such that consideration of alternatives is required for that reason.’*

13.8 I do not agree. In my opinion there are strong reasons that support a robust consideration of alternatives including:

- a While APL considers that the location is the only site feasible for the proposal, it represents a substantial departure from the settlement pattern that is embedded in the WRPS and has potential implications that go well beyond the OSP itself – that is, it is not consistent with the framework to which other public and private parties (across the region and nationally) are working to;
- b The proposal has the potential to require substantial public investment in infrastructure, including an unspecified contribution to: water and wastewater servicing (estimated capital cost \$180 M<sup>96</sup>), a rail siding (extremely expensive and cannot be done without Government assistance), a range of other infrastructure upgrades as detailed in the staging plan;
- c The potential for wider public capital and operational expenditure, including upgrades, maintenance etc;

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<sup>95</sup> Mr Olliver, para 10.5.

<sup>96</sup> MWSS – pages 27 and 35.

- d The potential for unintended consequences, including the settlement becoming a dormitory town; and
  - e The effects on the long term functions and benefits on the Expressway.
- 13.9 In my opinion, these factors necessitate 'getting it right' – that is, ensuring that this is the *most appropriate* location and nature/scale of development for both industrial and residential development.

## **14 Part 2 of the RMA**

- 14.1 Part 2 of the RMA states the sustainable management purpose of the Act as:
- “managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—*
- a *sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
  - b *safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
  - c *avoiding, remedying, or mitigating any adverse effects of activities on the environment.”*
- 14.2 The Supreme Court in *King Salmon*<sup>97</sup>, in the context of a plan change, held that there was no need to refer back up the hierarchy of planning instruments to Part 2 to determine a plan change, unless there was some invalidity, uncertainty, or incomplete coverage in the documents promulgated under it, because other high level planning instruments (in that case the New Zealand Coastal Policy Statement) were deemed to have given effect to Part 2 at the national, regional and district level.
- 14.3 In my opinion, there is no fundamental reason for recourse to Part 2 in respect of consideration of the OSP re-zoning request. This is because:
- a The WRPS comprehensively addresses the issue of urban growth and development and is not materially deficient or incomplete in this regard.

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<sup>97</sup> *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38.

- b The WRPS incorporates the Future Proof settlement pattern and principles. The principles have recently been reviewed and have been found to be, if anything, even more relevant than when they were first developed.
  - c The evidence of Mr Keenan and the Future Proof Industrial Land Study (2020) indicate that there is no deficit of residential or industrial land that indicates Future Proof is deficient in terms of adequately providing capacity for growth in urban environments, as anticipated by the NPS-UD (noting its potentially limited application to the subject rezoning request).
  - d The WRPS explicitly provides for departures from the Future Proof settlement pattern and the criteria by which this should be assessed, and it is accepted by the planning experts that these apply to the re-zoning requests.
- 14.4 Ms Trenouth states in s42A report<sup>98</sup> that she considers Part 2 to be relevant for the consideration of the APL proposal because concerns are raised about whether the WRPS is out of date and a change to the PWDP is required to give effect to both the WRPS and the NPS-UDC.
- 14.5 For the above reasons, I do not agree. However, should recourse to Part 2 be appropriate then I agree with Ms Trenouth's analysis that the proposal is not consistent with Part 2 as follows:
- a The residential and business zones [now largely removed] do not represent the efficient use and development of the site in accordance with section 7(b); and
  - b The residential and business components [now largely removed] do not achieve the purpose of sustainable of development as required by section 5.
- 14.6 In addition, I note that I do not agree with Mr Olliver's Part 2 analysis<sup>99</sup> as:
- a Mr Keenan agrees that if the proposal occurs as proposed, there would be a significant increase in activity in the local economy. However, he considers that there is considerable uncertainty as to this occurring.
  - b In respect of social benefits, Ms Hackell expresses concern that the social impact assessment is not balanced because it highlights benefits without including the possibility of failure and reasonably foreseeable outcomes –

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<sup>98</sup> Para 336.

<sup>99</sup> Mr Olliver, paras 5.36 to 5.47.

including partial completion of the Masterplan and the Ohinewai development becoming a dormitory town.

- c Residents of the development will be highly car dependent, resulting in an inefficient use of energy and resources.
  - d The serviceability of the site by water and wastewater, and associated adverse effects, have yet to be sufficiently determined.
  - e The adverse effects on the transport network, including the adoption of a series of compromises to transportation standards, guidelines, and principles in order to accommodate the Proposal.
  - f The impacts on the long term benefits and functions of the Expressway, a route of national strategic significance, through the use of this high speed State highway for short local trips. Strategic objectives of the Expressway include to *“enhance inter-regional and national economic growth and productivity”*.
- 14.7 In my opinion, while there are aspects of the proposal that are consistent with Part 2, I concur with Ms Trenouth that the proposal overall, particularly in relation to the residential component, is not.

## **15 Other submissions seeking rezoning**

### ***Shand Properties Limited***

- 15.1 Shand seeks the re-zoning of approximately 61ha of land adjacent to Ohinewai North Road (to the west of the Expressway) from rural to Country Living. The submission includes a report from Tonkin and Taylor in respect of the proposal. I understand that this submission has not been withdrawn.
- 15.2 Mr Basheer addresses flood risk on this property. He advises that this site is likely to be subject to significant risk from flooding, including as a result of a stop bank breach, and that there has not been an adequate assessment of the proposal to demonstrate how this risk would be managed and mitigated.
- 15.3 Policy 13.1 and Method 13.1.1 seek to manage natural hazard risk from new development to not exceed acceptable levels and that the creation of new ‘intolerable risk’ is avoided. As the proposal has not fully assessed flood risks and appropriate mitigation, it cannot be assumed that this policy and method will be given effect to.

- 15.4 Mr Swears also raises concerns regarding the potential cumulative impacts of the Shand proposal, which he advises will further reduce transport levels of service. He also advises his concern that development at the Shand site may lead to 'at grade pedestrian movements across the Expressway' and that these would need to be addressed.
- 15.5 Accordingly, at this time, I consider that the re-zoning request has not provided sufficient information that it gives effect to the WRPS and should be rejected.

### **OLL**

- 15.6 I have reviewed the communication from counsel for OLL to the Panel dated 15 May 2020 in which it is advised that 'OLL confirms that it is not withdrawing its submission and requests that the relief sought in its submission and section 32AA Report filed on 5 December 2019 be considered by the Panel in its deliberations'.
- 15.7 My review of the OLL submission and the provided s32AA report indicate that the relief sought is 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. I assume the latter is the area currently being pursued. I understand that OLL are asking for the identified area to be shown as a future growth area. I note that the PWDP maps include an 'Urban Expansion Area' and assume this is the re-zoning that they are seeking.
- 15.8 In respect of the relief sought, the OLL area is identified on the Waikato 2070 maps as an indicative area for future residential development – and note my evidence above in respect of the lack of strategic assessment, evidence base and assessment of cumulative effects in support of this indicative growth node at Ohinewai.
- 15.9 In the absence of a more robust assessment, and evidence supporting the request, I consider that this proposal has not been adequately assessed to identify it as an Urban Expansion Area at this time.

### **16 Proposed planning provisions for the OSP**

- 16.1 Notwithstanding my conclusions above, should the APL re-zoning request be approved, I provide the following observations on the provisions as they have been presented in Attachments B1 and B3 to B5 of the evidence of Mr Olliver. I advise the Panel that I have not undertaken a 'forensic' assessment of the provisions and acknowledge that there are aspects that I have may not have fully

understood or other aspects that should be addressed to make the draft provisions workable in practice.

### *Infrastructure Staging/Provision*

16.2 Infrastructure staging tables (and an associated staging plan) have been included in the Industrial, Business and Residential Zone draft provisions. This is a requirement of subdivision as a restricted discretionary activity (non-compliance with this defaults to discretionary). Should the proposal proceed, developing and upgrading infrastructure is essential to ensure the development is serviced and adverse effects are appropriately managed and mitigated. In this regard I make the following observations:

- a The overarching proposed policy for Ohinewai<sup>100</sup> is multi-faceted, and in my view, not particularly strong in relation to the staging of infrastructure (clause ix). Given the importance the WRSP places on matching infrastructure servicing and development, and my opinion above in respect of water and wastewater, I consider that there should be a clear and directive policy that subdivision and development cannot proceed in advance of infrastructure provision/upgrade, as required in the staging tables. Such a policy is required to provide a clear expectation of outcomes for a resource consent process.
- b It appears that development in the industrial zones could be carried out without subdivision and hence that there would be no requirement to comply with the staging/infrastructure provisions, and potentially other subdivision restricted discretionary activity (**RD**) requirements such as ground height.
- c Other than the staging associated with the land development phase, there are no other 'triggers' for infrastructure provision (e.g. vehicles per day, number of consented dwellings etc) should, for example, traffic levels be different to those in the ITA. Rule RD6 for Industrial activities requires an updated ITA to be provided for all developments to '*confirm the staging and timing of transport infrastructure upgrades and recommends any necessary mitigation measures*'. However, it is not clear whether this can result in staging being brought forward if traffic volumes are substantially different to those modelled in the ITA. I also note that an updated ITA is not required for residential sub-divisions.

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<sup>100</sup> Policy 4.1.20 in Attachment B1 to Mr Olliver's evidence.

- d In this regard, Mr Swears advises:<sup>101</sup>

*I also consider that the planning provisions should provide for reassessment of the traffic effects in terms of the need for capacity improvements being required at the Interchange, either as a direct result of the Proposal or as a direct result of the Proposal combined with other potential land-use development at this location.*

#### *Road Layout and Management*

- 16.3 As identified in the statement of Mr Swears, there are a range of road layout and management issues (for example turning movement restrictions) that are, or should be, proposed. There needs to be a mechanism by which these are given effect to within the plan provisions. The requirement for an ITA (or an updated ITA) at each major stage of development may help to address these and other transport related issues identified above. As above, I note that these are required for industrial subdivision, but not for residential subdivision that may ultimately result in substantial traffic volumes.

#### *Relationship with Other Plan Provisions*

- 16.4 In my opinion, it is not always clear how the Ohinewai-specific provisions are intended to work in conjunction with the remainder of the PWDP. For example:
- a Rule RD3 of the Residential Zone rules requires residential units to ‘include provision for on-lot Low Impact Design stormwater.....’. Firstly, it is not clear what, include ‘provision for’ means. Secondly, I anticipate that following subdivision, dwellings could be developed under the permitted activity rules in 16.1.2 of the PWDP. To ensure the intended outcome, this requirement should be also be applied as a permitted activity standard.
  - b Rule 20.6.1 – Land use in the draft Industrial provisions states that ‘*All of the Permitted Activities in 20.1.1 are Restricted Discretionary Activities*’. However, there do not appear to be any matters of discretion provided for the permitted activity rules for which restricted discretionary consent is now required. Irrespective of this, I am uncertain as to the vires of this statement which effectively changes the activity status for a number of activities in the Plan. It would perhaps be more useful for these activities to be specifically identified in the Ohinewai-specific plan provisions and for these plan

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<sup>101</sup> Mr Swears, para 15.1.

provisions to be 'stand-alone' and not require reference to other parts of the PWDP.

- c The provisions for Major Hazard Facilities and the extent to which they are managed in respect of their proximity to residential areas. I understand that the Panel has directed provisions to be prepared, but I have not been party to them.

#### *Flood Hazards*

- 16.5 I have addressed the issue of flood hazards in my evidence above. While I consider that this is a matter than can be addressed in the OSP provisions, further consideration of the provisions is required to ensure that flood risk is appropriately managed and mitigated, including appropriate building platform levels and a requirement to reassess flooding during subdivision and development when detailed design is known.

#### *Activity Status*

- 16.6 All activities in an industrial zone appear to be restricted discretionary. However, there does not appear to be any corresponding matters of discretion provided.
- 16.7 Non-compliance with the restricted discretionary activity rules (land use and subdivision) becomes a discretionary activity. However, the Ohinewai-specific objective and policies against which such non-compliances would be assessed are quite general. Ideally non-compliance with the key restricted discretionary activity rules (e.g. infrastructure staging and provision) would default to non-complying and be supported by a suite of more targeted objectives and policies.

#### *Infrastructure Funding*

- 16.8 There is also no information regarding who has responsibility for funding the various infrastructure. The only reference to this is a note regarding a private developer agreement with Council which reads:

*'Note 1; A private developer agreement between the developer and the Council will allocate financial responsibility for the upgrades where there are shared benefits.'*

- 16.9 This further reinforces my concerns in respect of providing certainty that proposed (and necessary) infrastructure provision and mitigation will occur in a timely and sequenced manner and where it is intended that the costs of this will lie.

## **Conclusion**

16.10 Should the Panel approve the OSP, then in my opinion there would be benefit in directing further consideration and engagement in respect of the provisions to ensure that they are 'fit for purpose' in line with the Panel's decision.

## **17 Response to the Council Officer's report**

17.1 I have reviewed the S42A report prepared by Chloe Trenouth on behalf of WDC.

a I agree with the conclusion that:

*'The proposed settlement cannot be a 'self contained' settlement, it lacks size/critical mass to be a fully functioning 'town' and as such it poses significant social and transport issues'<sup>102</sup>*

This aligns with the evidence of Ms Hackell, Ms Loynes, Mr Swears and Mr Kuo.

b I agree with the conclusion below, which is consistent with my evidence above, that:

*There is insufficient planning justification for establishing a Residential zone at Ohinewai, and to do so would not meet the principles of Future Proof or the development principles of the WRPS. The proposal will likely result in demands for the substantial expenditure of public funds on infrastructure, when those funds would be more efficiently used elsewhere, supporting more growth and wider outcomes, overall, such as addressing Huntly's infrastructure needs.<sup>103</sup>*

c I acknowledge the conclusion that *'The economic benefits of the proposed Industry zone are significant to the district, providing employment that could be served by nearby towns'<sup>104</sup>*. I note that Mr Keenan agrees with this, although he is cautious as to the level of uncertainty, the extent to which benefits will be realised and the incidence of costs. I also advise that in my opinion, the industrial land use is more aligned to the role, function and benefits of the Expressway than the residential component. However, I remain concerned at the lack of strategic assessment supporting the scale of development proposed.

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<sup>102</sup> Para 343.

<sup>103</sup> Para 344.

<sup>104</sup> Para 346.

- d I agree that the ‘overall urban development proposed by APL has been demonstrated to be technically feasible, though subject to multiple constraints’<sup>105</sup>. As I have discussed above, and in the evidence of Mr Spears, Mr Basheer and Mr Kuo, the site is subject to multiple constraints including flooding, severance and transport that can be mitigated to some extent, but which still result in a sub-optimal outcome. This particularly in relation to the road network, public transport and active modes.
- e I agree that ‘If the Panel is minded to accept the APL proposal, revisions and additions would be needed to the proposed plan provisions to address the issues raised throughout the [s42A] report’<sup>106</sup> and in my evidence above.

## **18 Conclusion**

- 18.1 In my opinion, the submission by APL seeking the rezoning of the site should be rejected. The primary basis for this is that the proposal does not give effect to key objectives and policies of the WRPS, including not being consistent with the Development Principles in Section 6A and the Future Proof Guiding principles.
- 18.2 At this stage, I consider that it is premature to determine the extent to which the proposal gives effect to the Vision and Strategy, as it has yet to be demonstrated that water and wastewater provision can be provided to the site in a way that meets the objectives of the Vision and Strategy.
- 18.3 I note that:
  - a 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;
  - b 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 the potential for the OSP to become a ‘dormitory town’;
  - c 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 access perspective; and

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<sup>105</sup> Para 348.

<sup>106</sup> Para 351.

- d The location of the site, which is not conducive to effective and efficient public transport and active modes and will result in a car dependent development - requiring the use of the Expressway for local trips by those private vehicles. This places a reliance on the private car to meet the reasonable daily needs of residents to access employment, food, education and wider community services, and will undermine the strategic function of the Expressway.
- 18.4 Should the Panel be of a mind to accept the submission and approve the re-zoning request, then I consider that there would be benefit in directing further consideration and engagement in respect of the plan provisions to ensure that they are 'fit for purpose' in line with the Panel's decision.
- 18.5 I consider that the submissions by Shand and OLL seeking re-zoning requests should also be rejected.

**Ian David Mayhew**

14 August 2020

