

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a submission in respect of the **PROPOSED WAIKATO DISTRICT PLAN** by **AMBURY PROPERTIES LIMITED** pursuant to Clause 6 of Schedule 1 of the Act seeking the rezoning of land at Ohinewai

STATEMENT OF EVIDENCE OF STUART MATTHEW PENFOLD

1. INTRODUCTION

- 1.1 My name is Stuart Matthew Penfold. I am a planning consultant and Senior Planner at Bloxam Burnett & Olliver (BBO), a firm of consulting engineers, planners and surveyors based in Hamilton. I have been employed by BBO since 2018.

Qualifications and experience

- 1.2 I hold a Bachelor of Resource Studies degree which I obtained from Lincoln University in 2003. I am an Associate Member of the New Zealand Planning Institute (NZPI) and a member of the Resource Management Law Association (RMLA). I have 17 years' experience in the field of planning and resource management in New Zealand.
- 1.3 My planning and resource management experience has been gained on a wide range of projects, including leading planning, consenting and engagement programs for nationally significant projects for the NZ Transport Agency, large capital projects for Auckland Transport and various large land development projects, such as Long Bay in Auckland.
- 1.4 I have experience in plan changes, including providing expert evidence at Auckland Unitary Plan hearings and participation in mediation. I was part of the team that enabled a plan change on behalf of Waikato Regional Airport Limited to enable business park development and integration with terminal operations.

- 1.5 In the Waikato and Bay of Plenty regions I have been involved in consenting transport infrastructure for the NZ Transport Agency, Tauranga City Council and Hamilton City Council.

Involvement in the Sleepyhead Estate project

- 1.6 BBO was engaged by Ambury Properties Limited ("APL") in 2019 to provide planning input and advice in relation to submissions to the Proposed Waikato District Plan (PWDP) for the rezoning of approximately 178ha of land located in Ohinewai from the current rural zoning to a mix of industrial, commercial and residential zoning.

- 1.7 I was the co-author of the Assessment of Environmental Effects and s32AA Evaluation Report that was provided to the Panel on 6 December 2019. My key role in formulating that report was to coordinate the assessment of effects reporting that would provide sufficient understanding of the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the rezoning.

- 1.8 I have attended:

- (a) Several technical meetings with APL's technical experts and submitters and regulatory authorities as part of the project's engagement activities.
- (b) Several hui that were organised as part of the Tangata Whenua Governance Group.
- (c) A public open day for members of the Huntly and Ohinewai community at the local Ohinewai Community Hall on 31 October 2019.
- (d) A number of topic specialists and APL representatives and discussed the proposal and planning and consenting matters relating to the development.
- (e) A site meeting with Chloe Trenouth and Carolyn Wratt on site on the 23 December 2019.

- 1.9 I have also managed the resource consenting process for Stage 1 of the development programme, including applications to the Waikato District Council and Waikato Regional Council for bulk earthworks and Stages 1 and 2 of the Sleepyhead Factory.

- 1.10 I have been requested, in my capacity as a planner, to present expert planning evidence pertaining to the rezoning proposal on behalf of Ambury Properties Limited, in particular with respect to environmental, economic, social, and, where appropriate, cultural effects. Where necessary, I comment on the appropriateness of proposed plan provisions required to implement the proposed rezoning, to address the management of effects at the District Plan level and ensure the staging of necessary infrastructure.
- 1.11 Mr Olliver will address the wider context of the rezoning sought and the strategic planning framework matters.
- 1.12 I have visited the site on numerous occasions, and last visited the site on Monday, 23rd January 2020.

Purpose and scope of evidence

- 1.13 The purpose of my evidence is to describe the expected effects of the proposal that would be enabled by the rezoning, and the mitigation measures that are recommended to address those effects via the proposed planning provisions that have been developed by Mr Olliver.
- 1.14 I will not describe the proposal in detail as that has been addressed by John Olliver (and other witnesses). Mr Olliver also provides an assessment of the rezoning against the strategic planning framework, addresses the statutory requirements required for an assessment of the rezoning and provides an overview of proposed plan provisions so I will not address those matters either. In order to avoid repetition, I do not address in any detail issues that have been addressed in Mr Olliver's evidence, e.g., infrastructure funding, economic effects, social effects and the Vision and Strategy.
- 1.15 My evidence addresses two types of issues:
- (a) Key environmental and other issues in respect of which information is considered to remain outstanding, as agreed by the planning experts during expert conferencing as recorded in Planning Expert Joint Witness Statement (PEJWS).
 - (b) Potential effects that need to be addressed in the context of APL's submission.
- 1.16 Specifically, my evidence will:
- (a) Set out the statutory framework for assessment of the rezoning proposal, with respect to the requirements of assessment of

environmental, economic, social and cultural effects (to the extent that that has not been addressed in Mr Olliver's evidence) (Section 3).

- (b) Comment on the key issues identified via the planning conferencing and expert evidence provided (Section 4).
- (c) Comment on potential infrastructure and effects-related issues arising from implementation of the Ohinewai Structure Plan in accordance with the rezoning (Section 5).
- (d) Comment on issues raised in submissions (Section 6).
- (e) Provide a summary of the proposed plan provisions as it relates to the management of effects and staging of infrastructure provision (Section 7).
- (f) Provide a brief conclusion (Section 8).

1.17 Most of the issues I address in my evidence are raised in the section 42A report in relation to the proposed rezoning and I do not intend to address that document separately in order to avoid repetition.

1.18 A summary of my evidence is contained in Section 2.

Other relevant evidence

1.19 My evidence draws on and should be read alongside with the evidence of:

- (a) John Olliver – rezoning context, strategic planning assessment and proposed plan provisions.
- (b) Jonathan Broekhuysen – urban design / masterplanning.
- (c) Robert Quigley – social effects.
- (d) Phil Osborne – economics.
- (e) Tim Heath – economics.
- (f) Brent Wheeler – economics peer review.
- (g) Robert White – water supply and wastewater servicing
- (h) Pranil Wadan – stormwater.
- (i) Ajay Desai – flood modelling.

- (j) Ben Pain – erosion and sediment control.
- (k) David Stafford– groundwater.
- (l) Carl O’Brien – site contamination.
- (m) Cameron Lines – coal resources and effects of coal mining.
- (n) Nick Speight – geotechnical.
- (o) Matthew Gainsford – archaeological.
- (p) Ben Lawrence – acoustics.
- (q) Michael Graham – landscape.
- (r) Chad Croft – ecology.
- (s) Cameron Inder – traffic.

Expert Witness Code of Conduct

- 1.20 I have read the Code of Conduct for Expert Witnesses, contained in the Environment Court Consolidated Practice Note (2014) and I agree to comply with it. I can confirm that the issues addressed in this statement are within my area of expertise and that in preparing my evidence I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

2. SUMMARY OF EVIDENCE

Consideration of key issues

- 2.1 The planning expert conferencing identified key issues where information was considered to remain outstanding. My evidence has considered the key issues identified and with reference to the expert evidence of others, I have provided an assessment of the scale or significance of the issue and whether or not plan provisions are required to address it.
- 2.2 Key matters relating to transport, wastewater and water supply servicing, infrastructure costs, ecology and the provision of financially accessible housing were considered. In my opinion and having accounted for expert evidence, there are no matters that cannot be appropriately managed via either proposed plan provisions and / or the confirmation of private development agreements.

Consideration of other infrastructure and effects-related issues

2.3 While not being identified as key issues within the planning expert conferencing I have completed as assessment of other effects as a result of development enabled by the rezoning. In my opinion and having accounted for expert evidence, the section 42A report and matters raised by submitters, there are no matters that cannot be appropriately managed via proposed plan provisions.

Plan provisions

2.4 To account for the staging of infrastructure and the management of effects enabled by the rezoning, proposed plan provisions have been formulated to be incorporated into the District Plan. Plan provisions have been formulated to address the following:

- (a) The staging of transport infrastructure, including infrastructure improvements externally to the site such as the proposed pedestrian and cycling overbridge.
- (b) The staging of wastewater and water supply infrastructure. This staging restricts development within the OSP area until such time that servicing is available.
- (c) Ecological management matters, including requirements for the ecological rehabilitation and management plan framework, fish and bat management plans and predator control.
- (d) Stormwater management and flood risk, including requirements for stormwater management plans and minimum ground levels for development within the OSP area.
- (e) Landscape effects, including landscaping buffers and building setbacks.
- (f) Noise effects, including noise provisions for existing game bird hunting adjacent to the site.

3. STATUTORY FRAMEWORK – RMA TESTS

3.1 Mr Olliver has set out in his evidence an assessment of the statutory tests for the rezoning, including sections 31, 32, 32AA, 74, 75, Part 1 of Schedule 1 and Part 2 of the RMA; relevant national policy statements; the Waikato

Regional Policy Statement (WRPS) and Te Ture Whaimana o Te Awa o Waikato (the Vision and Strategy for the Waikato River).

- 3.2 In my evidence, I set out a planning assessment of the environmental economic, social and cultural effects of development that would be enabled by the rezoning.
- 3.3 Given the scale and nature of the rezoning requested, I consider it reasonable to carry out a complete assessment of effects in relation to the proposed changes as if APL's submission were a plan change request made under clause 21 of Schedule 1 of the RMA.
- 3.4 This assessment is informed by the expert evidence put forward by various specialists. To avoid duplication where Mr Olliver has addressed the consideration of effects in his assessment, I do not repeat that assessment here. Where necessary, reference is made to proposed plan provisions as set out in Mr Olliver's evidence.

4. **CONSIDERATION OF KEY ISSUES IDENTIFIED VIA EXPERT CONFERENCING**

- 4.1 This section of my evidence comments on the key environmental and other issues in respect of which information is considered to remain outstanding, as agreed by the planning experts and recorded in the Planning Expert's Joint Witness Statement (PEJWS).
- 4.2 I comment on each issue and, where necessary, refer to the evidence of the relevant experts. I also refer to matters that have required specific management via proposed plan provisions or where a response to either the section 42A report or submitter's concerns warrants further consideration.

Transport

- 4.3 The key issues relating to transport as identified in the PEJWS table are as follows:
- (a) *Do the traffic impacts lead to need for major upgrades such as relocation of the Lumsden Rd/Tahunā Rd intersection or replacement of the NIMT overbridge to address safety or capacity concerns; and*
 - (b) *Can acceptable public transport connections to the site be provided?*

- 4.4 I agree that these two issues are key issues for consideration and provide my assessment of the significance or otherwise of the effects, after taking into account the evidence of Mr Cameron Inder. I also provide further commentary of the transport effects of the rezoning in the context of required transport infrastructure, the timing of development and the proposed plan provisions in response to those matters.
- 4.5 Mr Inder has responded to these key issues in his evidence. His position is that major upgrades are not required to provide for the rezoning and that acceptable public transport connections can be provided to the site.
- 4.6 With respect to the possibility of major upgrades being required (e.g. relocation of the Lumsden Road/ Tahuna Road intersection or replacement of the NIMT overbridge, Mr Inder has comprehensively addressed these concerns in his evidence¹. I note the following:
- (a) A Road Safety Audit (RSA) was undertaken to assess safety concerns raised by the NZTA representative (Mr Swears) and WDC representative (Ms McMinn) around the NIMT rail overbridge and the Tahuna Road/ Lumsden Road intersection.
 - (b) The RSA was completed on 4 July 2020 and raised two moderate concerns and one minor concern relating to road safety (recommended signage, barriers, and geometric improvements). The RSA also found that the proposed merge length between the roundabout and the rail bridge to be satisfactory.
 - (c) Mr Inder considers that the roundabout upgrade concept design as proposed has no fatal safety flaws and that the safety concerns identified can be addressed through design amendments without involving relocation of the Tahuna Road/ Lumsden Road roundabout or replacing the NIMT overbridge.
- 4.7 With respect to public transport connections, Mr Inder has undertaken additional discussions with the Waikato Regional Council and APL and there has been a commitment provided by APL in order to progress funding discussions between the parties². Pending these agreements, the provision of public transport can be confirmed.

¹ Statement of evidence of Cameron Inder, para. 9.55-9.65

² Statement of evidence of David Gaze, para. 5.8

- 4.8 As set out in Mr Olliver's evidence, plan provisions are proposed in order to require the proposed public transport services in two stages, as follows:
- (a) Interim stop located on Tahuna Rd (westbound) - Stages 2A, 2C & 2D.
 - (b) Bus terminus within service centre – Longer term, proposed Stage 5 subject to demand and with timing to be confirmed with other stakeholders (WDC, WRC & APL).
- 4.9 With a rezoning of the scale proposed by APL, improvements to existing transport infrastructure are inevitable, as is the provision of the necessary infrastructure to enable the development within the OSP itself. The timing of the transport network improvements have been set out in detail in the evidence of Mr Inder, while the proposed plan provisions in response have been addressed by Mr Olliver. Mr Gaze also addresses matters relating to the timing of infrastructure and funding in terms of the commitment of APL to funding agreements.
- 4.10 In summary, it is my opinion that:
- (a) The key issues identified with respect to transport have been sufficiently addressed and are not of a scale that would preclude the rezoning.
 - (b) The proposed plan provisions adequately address the requirements for transport network improvements and that the more detailed matters relating to road design, signage, barriers can be readily resolved at subdivision and/ or land use consent stages.

Wastewater and water supply

- 4.11 The key issues relating to wastewater and water supply are as follows:
- (a) *Is there sufficient certainty, including certainty of funding, to support the Huntly Wastewater Treatment Plant as the appropriate solution for the medium term (years 3-6)?*
 - (b) *Is there sufficient certainty to support the Mid-Waikato Servicing Strategy (MWSS) outcome as the appropriate solution for the long term (year 7+)?*
 - (c) *Is there sufficient certainty for water supply from the Huntly Treatment Plant?*

- 4.12 Mr Robert White has addressed these issues in his evidence and set out the servicing options available for the OSP area. A summary follows.

Wastewater

- 4.13 Servicing of the site has been confirmed as being viable for the short-term development (Years 0-2) via the existing on-site wastewater system. As a result of expert conferencing, a commitment from APL with respect to confirming the maintenance and ongoing operation parameters of the wastewater system has been provided in the evidence of Mr Gaze³.
- 4.14 For the medium term (Years 3-6), wastewater servicing is available at the Huntly WWTP. It is acknowledged that the Huntly WWTP has existing performance issues, and that these issues are required to be resolved prior to any connections from the OSP area. Funding agreements will be entered into to enable the required upgrades to be completed within the required timeframe as set out in the staging provisions⁴. Positive outcomes are expected with respect to environmental and cultural matters as plant performance will be improved as a result of the investment.
- 4.15 Mr White has set out that the Huntly WWTP has the capacity to account for the long-term servicing needs of the rezoning, however notes that the consent expires in 2029. It has been confirmed by WSL that the Mid-Waikato Servicing Strategy has accounted for the OSP area and that the Huntly WWTP is being considered as an option in the long-term. Further discussions between APL and WSL are expected mid-late July 2020 and it is anticipated that further information on the MWSS can be provided to the Hearing Panel prior to, or at the Hearing.

Water supply

- 4.16 Servicing of the site has been confirmed as being viable for the short-term development (Years 0-2) via proposed rain-water reuse tanks and back up supply from an on-site supply bore.
- 4.17 For the medium-term servicing of the site, supply is available from the Huntly WTP. It is acknowledged that there are external growth factors that influence the available supply from Huntly, and to account for this, APL will provide for additional allocation to be transferred from existing allocation

³ Statement of evidence of David Gaze, para. 6.6.

⁴ Statement of evidence of John Olliver. proposed plan provisions Tables 16.6.5.1, 17.6.5.1. 20.6.4.1.

owners. In his evidence Mr Gaze⁵ has confirmed that this allocation is available.

- 4.18 Long-term servicing of the site is dependent on the outcomes of the MWSS and discussions are currently underway between APL and WSL. Mr White has outlined that both the Huntly WTP or the Te Kauwahata WTP are viable options for the long term.
- 4.19 While funding agreements are not currently in place between the key parties as of lodging of evidence (9 July 2020), work is underway and it is expected that agreements in principle will be available prior to or at the Hearing. Mr Gaze has provided evidence with respect to the relationship of the staging of infrastructure and funding⁶.
- 4.20 After accounting for the evidence of Mr White and accounting for matters raised by submitters, it is my opinion that wastewater and water supply options to service the OSP area have been appropriately set out and do not preclude the rezoning of the site. Plan provisions⁷ are proposed that provide certainty that development will not proceed until such time as servicing is available.

Infrastructure costs

- 4.21 A key issue has been identified with respect to the funding of infrastructure as follows:
- (a) *Are the infrastructure costs internalised and what are the implications for public funding of infrastructure?*
- 4.22 It is my understanding that this relates to whether or not the costs of infrastructure improvements to enable the rezoning are entirely borne by APL or that some costs may be borne by the public.
- 4.23 I note that the majority of infrastructure upgrades are to be borne by the developer, with some aspects of infrastructure upgrades to be subject to be funding agreements via a private development agreement which is in the process of being negotiated with the Waikato District Council. Furthermore, there may be further agreements entered into as development progresses where shared benefits may be realised.

⁵ Statement of evidence of David Gaze, para. 7.12

⁶ Statement of evidence of David Gaze, Section 8

⁷ Statement of evidence of John Olliver. proposed plan provisions Tables 16.6.5.1, 17.6.5.1, 20.6.4.1

4.24 Mr Gaze has provided commentary on funding matters in his evidence and provides a useful summary table⁸ of the expected funding arrangements per existing infrastructure improvement or as infrastructure proposed as part of development within the OSP area.

Ecology

Black Mudfish

4.25 The key issue relating to ecology as identified in the PEJWS table is as follows:

(a) *Do the plan provisions adequately address the risk of impacts on potential black mudfish habitat?*

4.26 Mr Croft's evidence is that:

(a) There is uncertainty over the presence of black mudfish on the site, however by taking a precautionary approach at the consenting stage, increased understanding can be obtained through a number of methods.

(b) If mudfish are found on site through additional surveys, various options for their management can be investigated, including:

(i) Avoidance of specific habitats.

(ii) The translocation of captured individuals to either existing or restored habitat; or

(iii) The capture and holding of individuals for the purposes of a captive breeding, rearing and translocation program.

(c) While certainty in mitigation outcomes cannot be absolute, the above management strategies provide options for managing the effects of development if black mudfish are found to be on-site.

4.27 Further investigations and reporting on ecological values is an integral part of the development process and will be undertaken as part of the resource consenting phase of the development within the OSP area. That will include further fish surveys.

⁸ Statement of evidence of David Gaze, Section 8.

- 4.28 To address specific requirements for fish management, plan provisions have been formulated as part of a wider Ecological Rehabilitation and Management Plan (ERMP) framework. These provisions are included in the set of proposed plan provisions attached to Mr Olliver's evidence⁹.
- 4.29 Mr Croft has confirmed that the ERMP provision is suitable to ensure specific and appropriate management requirements for the protection of black mudfish are implemented.
- 4.30 After considering Mr Croft's analysis and evidence, it is my opinion that the potential presence of black mudfish on site can be appropriately managed via proposed plan provisions.

Bats

- 4.31 The management of bats as a Threatened – Nationally Critical species that may be present on site is also addressed via the proposed ERMP provisions discussed above.

Positive outcomes

- 4.32 In his evidence, Mr Croft sets out a summary of the positive effects that are likely as a result of the rezoning, these include:
- (a) A likely reduction of nutrient runoff to the adjacent Lakes as a result of retiring the current dairy farm operation on site;
 - (b) Restoration and creation of wetlands on the site and availability of wetland habitat for wetland dependent indigenous flora and fauna; and
 - (c) Creation of an ecological buffer adjacent to the Lake Rotokawau SNA and potentially expanding the conservation estate through negotiated agreements or partnerships with the Department of Conservation (DOC), Mana Whenua and/ or other stakeholders.

Ecology conclusion

- 4.33 In summary, it is my opinion that the key issues identified with respect to ecology have been sufficiently addressed and do not preclude the rezoning.
- 4.34 In particular, I consider that the proposed plan provisions adequately address the requirements for ecological management on site for a number

⁹ Statement of evidence of John Olliver - proposed plan provisions 16.6.3 RD5, 16.6.5 RD6, 17.6.3 RD4, 17.6.5 RD6, 20.6.2 RD5 and 20.6.4 RD5.

of threatened species, while also accounting for the restoration and ongoing management and maintenance of wetland areas on site. Furthermore, the positive ecological outcomes as a result of the rezoning should not be overlooked.

Provision of financially accessible housing

4.35 This key issue is as follows:

(a) *Is there sufficient certainty that a proportion of affordable/subsidised housing will be delivered?*

4.36 I understand that concerns have been expressed around the viability of the residential aspects enabled by the rezoning and that some experts are looking for certainty that APL / The Comfort Group will commit to their vision around financially accessible housing for their employees.

4.37 Mr Gaze provides useful evidence¹⁰ in this regard and explains that TCG is considering methods to achieve what is essentially employer support for selected staff. This will most likely be a shared equity/ ownership arrangement.

4.38 It is my opinion that this is not an effect that is required to be addressed as such, nor to be managed by plan provisions, if indeed it could be. Further, the expression of the APL (and The Comfort Group) vision for the OSP area is well documented by the evidence of others, including Mr Turner and Mr Broekhuysen.

Discount Factory Outlet

4.39 The key issue relating to the Discount Factory Outlet (DFO) is as follows:

(a) *Will the DFO have adverse retail distribution/social/economic effects on other commercial centres, particularly Huntly?*

4.40 This issue has been addressed extensively by Mr John Olliver in his evidence¹¹ and by evidence provided by a number of experts, including Mr Heath¹², Mr Osborne¹³ and Dr Wheeler¹⁴. Their evidence is that the DFO will not have adverse effects on the retail offer in other centres or otherwise impact of the commercial zoning hierarchy.

¹⁰ Statement of evidence of David Gaze, para. 5.17-5.22

5. **CONSIDERATION OF OTHER INFRASTRUCTURE AND EFFECTS-RELATED ISSUES**

5.1 This section of my evidence comments on the potential effects of the rezoning arising from implementation of development enabled by the Ohinewai Structure Plan (OSP), by reference to the conclusions reached by the relevant experts. (In order to avoid repetition, I do not restate their evidence, except where necessary for context).

5.2 Where necessary, I refer to proposed plan provisions as set out in Mr Olliver's evidence. These provisions have been formulated to address potential or identified adverse effects or as required to coordinate essential infrastructure.

Geotechnical considerations

5.3 Mr Nick Speight has set out the geotechnical risks associated with future development at the site and outlines that development in the more geotechnically challenging parts of the site will be avoided. Mr Speight has confirmed that a suite of options are available to mitigate areas of risk, including dynamic compaction, pre-loading and excavation and re-compaction.

5.4 It is acknowledged that there are geotechnical effects as a result of development, and these are expected to be limited to settlement from surcharging of ground levels or lowering of groundwater levels. The effects are considered to be low to negligible and can be addressed by specific measures at the time of development.

5.5 With respect to the s42A reportⁱ, I concur with Chloe Trenouth when she states: 'overall I consider that geotechnical matters do not preclude the rezoning sought by APL'.

5.6 I also accept that plan provisions are required to address the management of geotechnical hazards. To address the management of geotechnical hazards present on site, it is my opinion that the specific geotechnical design requirements for specific stages of development within the OSP area can be addressed by plan provisions set out by Mr Olliver¹⁵.

5.7 The management of effects as a result of those methods (e.g. noise and vibration) can be sufficiently addressed during the resource consent phase

¹⁵ Plan provisions 16.6.3 RD2, 17.6.3 RD1, 20.6.2 RD1

of development via existing District Plan provisions and/ or via section 106 requirements applicable to the subdivision process.

5.8 With respect to reference within the s42A report to geotechnical hazards on the site potentially being covered by the Stage 2 of the PWDP, I agree that this remains an unknown and APL will respond to Stage 2 once notified as required. However, as outlined above and in Mr Speight's evidence, the geotechnical hazards on site are well understood and there are established methods to address these.

5.9 Having taken into account the evidence of Mr Speight and with consideration of the s42A report, it is my opinion that there are no matters relating to geotechnical matters that preclude the rezoning, nor require specific plan provisions.

Groundwater

5.10 Mr David Stafford has set out the characteristics of the site and impacts of the proposed development with respect to groundwater. Mr Stafford has found that development of the site is anticipated to have negligible impact on the underlying aquifer or groundwater flow directions and there is no effect on neighbouring groundwater users surrounding the site.

5.11 As a result of increased impermeable surfaces associated with the development, stormwater infiltration or geotechnical methods (such as preloading or dynamic compaction) may be required to maintain groundwater levels within the peat to prevent ground consolidation. Mr Speight¹⁶ has also addressed this matter.

5.12 With regards to the s42A report¹⁷, the groundwater report has now been provided to Council. Waikato District Council's stormwater expert thereafter formed questions and discussions were undertaken within the Stormwater Expert Conferencing undertaken on the 16 June 2020. The question was framed as follows:

Has the risk of ground consolidation from a reduction of rainfall infiltration across the site been adequately accounted for in the stormwater management strategy for the site?

5.13 As recorded in the Stormwater Joint Witness Statement dated 16 June 2020, the experts agreed and acknowledged the issue as follows:

¹⁶ Statement of evidence of Nick Speight, para. 9.8.

¹⁷ Refer para. 163.

On this issue, the experts agreed that this issue has been considered in the stormwater management strategy with input from discussions with geotechnical and groundwater specialists.

It is acknowledged that detailed design will further account for a multidisciplinary design process that accounts for geotechnical, groundwater and stormwater expertise.

5.14 Taking into account the above and the evidence of Mr Stafford and Mr Speight it is my opinion that this matter has been resolved.

5.15 In summary, having taken into account the evidence of Mr Stafford and Mr Speight and with consideration of the s42A report, it is my opinion that there are no matters relating to groundwater matters that preclude the rezoning.

Erosion and sediment control

5.16 Mr Ben Pain has set out in his evidence that significant earthworks are required over the course of a ten-year construction programme to enable suitable development outcomes within the OSP area. In undertaking these earthworks, well established erosion and sediment control (ESC) measures will be employed that will meet or exceed Waikato Regional Council (WRC) requirements.

5.17 Mr Pain outlines that the site topography is generally flat and progressive staging of the development will be undertaken to minimise the open areas on site and hence the sediment generation potential of the works. The tool-box of sediment control measures, e.g. sediment retention ponds will appropriately manage runoff from exposed areas. Detailed erosion and sediment control plans and methodologies will be developed at detailed development stage and form part of Regional Consent applications to the WRC.

5.18 I concur with the s42A report¹⁸ in relation to erosion and sediment control, in that erosion and sediment control can be achieved through future regional consenting processes.

5.19 Having taken into account the evidence of Mr Pain it is my opinion that there are no matters relating erosion and sediment control that preclude the rezoning.

¹⁸ Section s42A report dated 13 March 2020, Para. 172.

Stormwater management

- 5.20 Mr Pranil Wadan has set out the stormwater management framework for development within the OSP area. It includes stormwater management areas intended to provide stormwater treatment and centralised conveyance via a series of stormwater devices such as wetland, rain gardens and swales. The eastern-most area is proposed to be created as an enhanced natural wetland that provides for habitat for flora and fauna.
- 5.21 A 'treatment train' approach is adopted across the OSP in order to meet the water quality and erosion control requirements for discharges to a lake environment and stormwater management devices will be selected at detailed design stage to meet the necessary requirements.
- 5.22 The proposed development is expected to result in a decrease of nutrients due to the retirement of the current dairy farm, and while the rezoning of the site results in urbanisation, the stormwater contaminants as a result (total suspended solids, heavy metals and hydrocarbons) are managed through the treatment train approach.
- 5.23 Cultural considerations have been considered in the development of the stormwater management framework, in particular accounting for matters raised in the Kaitiaki Environmental Values Assessment (KEVA) completed by the Mana Whenua. I also acknowledge the request from Waikato Tainui as submitter that requests rain water re-use tanks become part of the plan provisions for development on the site.
- 5.24 With regards to the s42A report¹⁹:
- (a) I agree that plan provisions are desirable in order to provide certainty of stormwater management outcomes within the OSP. Plan provisions have been formulated to set out requirements for stormwater management on-site and these are addressed in the evidence of Mr Olliver²⁰.
 - (b) The technical matters referred to as outstanding have now been resolved via the expert conferencing process.
- 5.25 Having taken into account the evidence of Mr Wadan, the matters included in the s42A report and matters raised by submitters, it is my opinion that there are no matters relating to stormwater management that preclude the

¹⁹ Section s42A report dated 13 March 2020, Para. 173-180.

²⁰ Statement of evidence of John Olliver, Section 16

rezoning, provided that plan provisions relating to stormwater management are accepted as applying within the OSP area. These plan provisions include the following:

- (a) *All residential units must include provision for on-lot Low Impact Design stormwater devices based on at least a two-step treatment train approach with the first step being included on the residential lot.*
- (b) *All application for subdivision must be accompanied by a stormwater management report and plans. The report and plans must;*
 - (i) a) describe how the plans comply with any relevant discharge consent;
 - (ii) b) identify overland flow paths;
 - (iii) c) describe the nature and extent of any off-site stormwater management devices and how these devices are to be delivered if they are on land outside the application site;
 - (iv) d) if stormwater devices are to be located below 8.05m RL, describe how these devices are to be designed to be resilient to flood-related damage while not exacerbating flood risks for upstream or downstream activities.

Flooding

5.26 Mr Ajay Desai has outlined the extensive flooding modelling and analysis completed. As a result of the analysis, it has been shown that development of the site would result in a negligible increase in water levels or flood extents within the site or on neighbouring land. While parts of the site will remain as being flooded in the 100-year event, this is restricted to low lying areas in the east that are proposed for stormwater management and ecological enhancement.

5.27 As a result of development, the assessment has shown that the loss of flood storage for Lake Waikare associated with the development of the OSP area is inconsequential for various scenarios. Modelling has also indicated that the site as developed per the OSP is not subject to risk from a stop bank breach of the Waikato River, nor a blockage of the Tahuna Road drain.

Expert conferencing and plan provisions

- 5.28 During planning conferencing there was a request from Mercury Energy to include the flood extents on maps within the District Plan. There was no agreed outcome in this matter, however there was acknowledgement that this would be addressed in Stage 2 of the PWDP process.
- 5.29 It is my opinion that any consideration and decision around Mercury's request is best placed in that Stage 2 process, as it is a District-wide concern, with considerable interest in the matter likely from multiple parties.
- 5.30 Further, it is my opinion that the rezoning can proceed without notification or decisions on Stage 2 being confirmed, as sufficient understanding of the flood risk is well understood with respect to the rezoning and plan provisions are proposed to address the risk (8.05m minimum ground level required). There is the likelihood of the modelling undertaken by APL to assess flooding risk to the OSP being of a higher detail that may inform the WDC's Stage 2 district-wise Plan response.
- 5.31 During planning conferencing there was also a discussion around if there was a need for a plan provision to address the stop bank breach scenario and potential flooding within the OSP as a result. No agreement could be reached at conferencing however further technical work has been undertaken by Mr Desai since that time and that is reflected in his evidence and my summary in para. 5.26 above.
- 5.32 Post-conferencing discussions with both myself, Mr Desai and the WRC have concluded that there is agreement that there is no risk to the development from a stop bank breach, provided that the ground levels used in the modelling exercise are constructed at the time of development. Plan provisions are proposed²¹ that set out the minimum ground level (8.05m) to provide certainty that development is not subject to flooding as a result of a Waikato River stop bank breach.

S42A report

- 5.33 With regards to the s42A report²², I concur with Chloe Trenouth that her view that flooding does not preclude the rezoning of the site.

²¹ Plan provisions 16.6.5 RD2, 17.6.5 RD3 and 20.6.4 RD2.

²² Section s42A report dated 13 March 2020, Para. 155.

- 5.34 In terms of her specific recommendations with respect to plan provision, and having considered the evidence of Mr Desai, there is no need for the Tahuna Drain to be noted specifically on the OSP.
- 5.35 To address development within the modified flood plain and address the risk of a stop bank breach flooding, plan provisions are proposed that will require that a minimum ground level for development of 8.05m is required across the site. This is addressed in the evidence of Mr Olliver.
- 5.36 In summary, it is my opinion that based on the evidence of Mr Desai, accounting for the s42A report and matters raised by submitters, there are no flooding effects as a result of the rezoning that are of such significance that would preclude the rezoning. Where certainty of development outcomes is necessary, proposed plan provisions are proposed to manage risks of development within the existing floodplain.

Site contamination

- 5.37 Carl O'Brien has outlined the investigations and reporting undertaken for site contamination. Mr O'Brien states that while potentially contaminating activities have been identified, he does not consider any of these identified risks present an issue that cannot be readily managed using conventional contamination management practices. Any further contamination identified during progressive site investigations can be appropriately remediated and managed.
- 5.38 Having taken into account the evidence of Mr O'Brien, it is my opinion that there are no matters relating to contamination that preclude the rezoning. Any areas of contamination within the OSP area, if found via further site investigations, can be managed via well-established practices and under the relevant legislation and guidelines.
- 5.39 I concur with the section 42A report in relation to contamination that states:

'APL has provided a Preliminary Site Investigation which identified multiple discrete spots of potential contamination around farm buildings. This does not preclude the urban zoning of the site. Under the requirements of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health, detailed investigation would be required before any subdivision or change in activity took place. There is no reason at this stage to believe the contamination cannot be adequately mitigated.'

Archaeology

- 5.40 Mr Matthew Gainsford's evidence outlines that:
- (a) No archaeological sites were identified Within the site. There is the possibility that new archaeological sites may be uncovered during earthworks activities associated with development of the OSP area, however it was assessed that this potential is low.
 - (b) A precautionary approach should be adopted with respect to incidental discoveries of archaeological finds. This can be accounted for via an application for an archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014 at the appropriate time.
 - (c) The Proposed Waikato District Plan does not identify any historic heritage items on the site.
- 5.41 Having taken into account the evidence of Mr Gainsford, it is my opinion, that there are no matters relating to archaeology that preclude the rezoning.
- 5.42 I concur with the section 42A report in relation to archaeology and historic heritage that states:

'From the information provided I am satisfied that the presence of known or likely archaeological sites do not preclude the development of the APL, OLL or Planning Focus Ltd sites.'

Landscape and visual effects

- 5.43 Michael Graham has assessed the landscape effects of the development undertaken as expressed in the Sleepyhead Masterplan on the basis that it represents the most likely development scenario.
- 5.44 Adverse effects on visual amenity values as a result of the likely development of the site were found to be high from close proximity locations, diminishing to negligible once beyond 1km from the site. Plan provisions are proposed along Lumsden Road in order to address this.
- 5.45 No adverse effects were identified on the nearby Outstanding Natural Features (ONFs) of Lake Waikare and the Waikato River. A small portion of the site encroaches on planting of Lake Rotokawau (which forms part of the

Lake Waikare ONF) and it is anticipated that this part of the site will be enhanced with restoration planting.

- 5.46 Plan provisions requiring setbacks and landscape planting buffers have been carefully designed to address potential adverse landscape and visual effects to the greatest extent practicable. To large extent these provisions also address the matters raised in submissions, in particular from residents won Lumsden Road.
- 5.47 The plan provisions have also addressed the concerns of Mr Jones in the section 42A report that sought a 5m landscape buffer on Lumsden Road. These provisions are included in the evidence of Mr Olliver.
- 5.48 I concur with the section 42A report in relation to landscape and visual effects that states:

"Mr Jones considers that, when urban design, landscape and visual assessment matters are reviewed concurrently that the change from rural to urban character is appropriate given the sites' location; that the proposed design and layout respects underlying landscape values and integrates with existing landscape patterns; and that the large scale of the proposal has allowed for an integrated design of the growth area."

- 5.49 Having taken into account the evidence of Mr Graham, the matters raised by submitters, the s42A report, and including the recommended plan provisions requiring landscape buffers and building setbacks, it is my opinion that there are no matters relating to landscape and visual effects that preclude the rezoning.

Acoustic and vibration effects

- 5.50 Ben Lawrence has outlined his assessment of the acoustic and vibration effects of the proposed rezoning. Predictions showed that generally, activities located within the proposed Industrial zone can comply with the PWDP noise rules at all adjacent Village, Residential and Rural zoned receivers with generally no constraints on operations. Activities likely to establish in the Business zone will not be constrained due to noise effects on the neighbouring Residential zone.
- 5.51 Investigations and modelling showed that an exception of industrial activities located at the eastern and western sides of the Industrial zone may require mitigation to comply at the existing Village and proposed Residential zone.

Mitigation options can be confirmed with further design and assessment and addressed via the development stage (building consent and or land use consent).

- 5.52 There are three existing Rural zoned dwellings within the proposed Industrial zone. Limits are recommended for the adjacent Industrial sites to ensure noise received at the existing dwellings is controlled to an appropriate level. These limits are the same as the PWDP rule for noise emissions from Business zones received at Residential/Village zones.
- 5.53 There is the potential for high noise and vibration from dynamic compaction activities (as noted in Mr Speight's evidence) required for development works, however these effects can be managed via a construction noise and vibration management plans (CNVMP) addressed at resource consent stage.
- 5.54 Assessment of the noise effects as a result of game bird shooting on the nearby Lake Rotokawau Reserve was assessed. It was considered that the gun noise has the potential to provide adverse effects on residents in the proposed Residential zone and plan provisions are proposed in order to mitigate this effect.
- 5.55 Reverse sensitivity concerns regarding the location of residential dwellings adjacent to existing game bird shooting activities is to be remedied via 'no complaints' covenants to be placed upon residential lots upon subdivision.
- 5.56 To address the adverse noise effects as a result of game bird shooting on the Residential area, plan provisions are proposed to manage this effect.
- 5.57 With regards to the s42A report²³, I concur with Chloe Trenouth that her view that acoustic issues do not preclude the APL rezoning.
- 5.58 Having taken into account the evidence of Mr Lawrence, it is my opinion that there are no matters relating to noise and vibration that preclude the rezoning.

Cultural Effects

- 5.59 The purpose of this section of my evidence is to set out a response to the matters raised within the Kaitiaki Environmental Values Assessment (KEVA) that has been provided to APL by the Mana Whenua of the area as part of the Tangata Whenua Governance Group (TWGG).

²³ Section s42A report dated 13 March 2020, Para. 181.

5.60 While various experts have referred to matters relating to water quality, ecological and archaeological matters, and the evidence of Mr Olliver provides a response to matters relating to the Regional Policy Statement, the Vision and Strategy and proposed plan provisions, the summary below captures APL's overall response to the KEVA.

5.61 This information also responds to the s42A report²⁴ where at the time of its writing, the KEVA was not yet available to Council.

KEVA Recommendations	
Item for Implementation	APL response
<i>Retiring marginal lands from unsustainable land uses.</i>	The rezoning leads to the retirement of the current dairy farming operation.
<i>Protect water-bodies from erosion and sediment, and any contaminants.</i>	Mr Pain outlines the proposed erosion and sediment control philosophy and Mr Wadan outlines the stormwater management framework. As set out in their evidence, development enabled by the rezoning will protect water bodies from erosion and sediment and any contaminants. It is intended that all actions associated with the rezoning and future development will enhance the relationship of Waikato Tainui and the Awa. The environmental and ecological improvements will include restoring wetlands on the site as well as contributing to restoration of water quality in the wider catchment. The Ecological Rehabilitation and Mitigation Plan provisions are to be developed with input from the Mana Whenua and it is envisaged that the management of tuna and other hauaanga kai habitats can be accounted for in those plans. The development of the OSP area provides for significant enhancement opportunities as outlined by Mr Croft and Mr Broekhuysen. The plan provisions requiring Ecological Rehabilitation and Mitigation Plans will embed this requirement into future development.
<i>The recognition and enhancement of the relationship between Waikato-Tainui and the Waikato River, its flood plains, and the shallow riverine lakes.</i>	
<i>Protection of water-bodies (river, lakes, wetlands, streams/tributaries), from the negative impacts of land use (includes agricultural, residential/commercial and industrial development).</i>	
<i>Aspire for improvements in the quality of water (and state of water-bodies) in the lower Waikato River catchment to drinkable, swimmable and fishable standard,</i>	
<i>Seek support to restore wetlands and water-bodies in the lower Waikato River catchment that are unable to properly sustain life</i>	
<i>Consider beneficial re-use and on-site management of stormwater and wastewater</i>	
<i>Protection of wetlands from farm drainage systems, or the removal of wetland margin/riparian vegetation, unnaturally high sediment (and nutrient) loads, and the introduction of noxious/pest plant and animal species.</i>	
<i>Access to tuna and other hauaanga kai habitats ,</i>	
<i>Restoration projects to improve tuna and other hauaanga kai habitats</i>	
<i>Environmental enhancement actions / activities pertaining to restoring mauri of taonga (land, water, lakes, sites of significance, and wetlands) Planting indigenous vegetation, and if possible, locally sourced indigenous vegetation are preferred.</i>	

²⁴ Para. 217.

<p><i>Avoiding further clearance/degradation of indigenous vegetation and disturbance of land prone to heavy erosion.</i></p>	<p>There is no indigenous vegetation located on the site and the site is relatively flat and not prone to erosion.</p>
<p><i>Continued and or enhanced access to traditional areas for customary cultural activities</i></p> <p><i>Avoid sites of significance being altered or lost, therefore protect waahi tapu and waahi tuupuna for the benefit of future generations</i></p>	<p>Currently there is no public access to the site. The Wetland park to be created will provide for public access. If the TWGG identifies areas for customary or cultural activities on the site access can be considered. Opportunities exist for increased access to Lake Rotokawau via the provision of open space adjacent to the Reserve. This is subject to further engagement with key stakeholders.</p>
<p><i>Management measures and practices to protect and preserve taonga, cultural/customary practices, and sites and activities of significance to Mana Whenua.</i></p> <p><i>Management measures and practices to protect and preserve:</i></p> <p>a) <i>Taonga, cultural/customary practices, and concealed kooiwi of Waikato-Tainui tupuna/ancestors, in wetlands.</i></p> <p>b) <i>Sites and activities of significance to Mana Whenua</i></p>	<p>If Mana Whenua identify any taonga or sites of significance on the site methods of protection can be developed in partnership with APL as required.</p>
<p><i>Protection and preservation of important sites, areas and/or resources to Mana Whenua</i></p>	
<p><i>That the development seeks to restore the capacity of the local ecosystem, especially ecosystems that function without human intervention:</i></p> <p>a) <i>By incorporating in the design of the development, the inclusion of an area of land/wetland (e.g constructed wetlands) towards the restoration of taonga, and</i></p> <p>b) <i>Financially supporting projects that seek to restore taonga in the immediate vicinity of the development area, and</i></p> <p>c) <i>The prevention and/or mitigation of potential contaminants in run-off water from impervious surfaces (paved areas), reaching open water bodies (drains, streams etc)</i></p>	<p>Mr Wadan outlined that constructed wetlands will form part of the stormwater/open space design in the central park/wetland park area. The restoration of 55ha of open space/wetlands on the site, and opening them up to public access is a significant project for APL. As outlined by Mr Wadan, the stormwater management plan prepared for the project includes a best practice treatment train approach that includes treatment devices and wetlands. Implementation will mainly be through subsequent regional resource consents for stormwater disposal.</p>
<p><i>In the design processes for the Sleepyhead Estate, weaving Mana Whenua narratives and values (maatauranga Maaori) into the development will enhance and deepen the sense of place/identity and connectivity between people and place.</i></p>	<p>APL wishes to work with Mana Whenua to incorporate narratives and values into the design, particularly in key public spaces in the commercial area and the Wetland Park.</p>
<p><i>Mana Whenua wish to engage with APL to discuss opportunities in:</i></p>	<p>Papakainga housing is included in the proposed plan provisions²⁵ as part of the</p>

²⁵ Proposed plan provision 16.6.2 RD1.

<p>a) <i>Providing for papakainga housing within the identified residential housing precinct of the Sleepyhead Estate development,</i></p> <p>b) <i>The employment of local people (particularly Maaori), and business and cultural enterprise, within the Sleepyhead Estate development,</i></p> <p>c) <i>Reclaiming any residue and developed land within the Sleepyhead Estate development by establishing a RFR mechanism between Mana Whenua and APL (or the New Zealand Comfort Group) before lands are offered to the open market.</i></p>	<p>residential zone and APL is open on how it could be incorporated into the residential development.</p> <p>This issue is outside the scope of the rezoning but APL is willing to enter into an agreement in relation to employment of Mana Whenua. Mr Gaze has outlined the potential for such programmes to be implemented.</p> <p>APL is willing to enter into a MoU that establishes a Right of First Refusal for land that is to be sold. Suggested timeframe is 14 days in which the RFR is to be acted on.</p>
<p><i>The eradication, control and management of introduced flora and fauna species that have proven to be harmful to the health of people, air, land and water bodies, with special emphasis on koi carp and other noxious pests,</i></p>	<p>The Environmental Rehabilitation and Mitigation Plan (ERMP) and Landscape Concept Plan required by the District Plan provisions requires eradication and control of introduced pest species from the site.</p>
<p><i>Acknowledge the sacrifices of tupuna (ancestors) through commemorative measures (e.g pou or tomokanga).</i></p>	<p>APL is open to commemorative measures being included in the design.</p>
<p><i>Work with APL that is consistent with the purpose, principles and objectives of the Memorandum of Understanding between the parties in disclosing, where applicable, the exact locations of sites of significance.</i></p>	<p>Disclosing locations by agreement will be helpful in determining how they can be protected or acknowledged.</p>
<p><i>The ability to undertake customary/cultural activities around existing or constructed wetlands.</i></p>	<p>There will be public access to the constructed wetlands in the wetland park so subject to the details, this should allow for customary/ cultural activities.</p>
<p><i>Include objectives in the District Plan provisions that reflects the Vision and Strategy for the Waikato River (p43 of KEVA) and other mana whenua objectives (p44 of KEVA).</i></p>	<p>Mr Olliver has accounted for this in the proposed plan provisions.</p>

6. COMMENT ON ISSUES RAISED IN FURTHER SUBMISSIONS

- 6.1 This section of my evidence will provide a response to issues raised by further submitters that did not participate in the expert conferencing.
- 6.2 I acknowledge Chloe Trenouth's s42A report²⁶ in summarising the further submission process and the position of each submitter. I provide a response to those submissions in opposition and the matters raised as follows.

²⁶ Para. 93.

The Ralph Estates

- 6.3 This submission is opposed to the proposed rezoning as if successful, the rezoning would effectively sterilise mineral interests held by the Ralph Estates and would place restrictions on the ability to mine adjacent sites due to reverse sensitivity effects. Further, the Ralph Estates submit that if the land is developed as per the zonings sought, the Ralph Estates would not be able to enter the land and mine the minerals beneath the surface.
- 6.4 Putting aside any approvals to access the land (and any adjoining land), the ability to extract resources from the ground is subject to resource consenting requirements under both regional and district plans and for the most part are both subject to the higher order statutory tests of Part 2 considerations, having to give effect to the Waikato Regional Policy Statement and the Vision and Strategy for the Waikato River.
- 6.5 It is my opinion that while there may be rights held by the Ralph Estates to any minerals below the surface of the land, any attempt to extract such minerals would result in significant adverse environmental effects with the result that, under the current regulatory framework, it is my opinion that the likelihood of resource consents being granted for such an activity would be very low.
- 6.6 Mr Lines has provided expert advice with respect to the mineral resource that is likely to exist on, under and adjacent to the site and methods that could be employed to extract or exploit the resource. Mr Lines also addresses the environmental effects that could be anticipated as a result of each method.
- 6.7 I refer to the evidence of Mr Lines and note the following aspects of his assessment:
- (a) The coal resource underlying the site has been known about for many years, however a mine has never been developed to extract the coal.
 - (b) The demand for coal has fallen over recent years due to the availability of relatively low-cost natural gas and an increasing focus on renewable energy and concerns over carbon emissions.
 - (c) Exploiting the coal at Ohinewai (at the site and its surrounds) by traditional means is expected to be challenging from a technical aspect. Key issues include:

Open Cast mine

- (i) Unstable ground, leading to the removal of Lakes Rotokawau and Ohinewai in order to manage that instability.
- (ii) Groundwater inflows into any mine pit present a risk of widespread ground settlement due to dewatering of the underlying soils.
- (iii) The excavation of material to mine the coal requires a very large area to be available for disposal.

Underground mine

- (iv) The high cost of access shafts.
 - (v) Shaft stability given weakness of surrounding rock.
 - (vi) Managing groundwater inflows and surface settlement.
 - (vii) High capital start up costs and high ongoing operational costs set against anticipated low production rates is expected to result in an uneconomic mine.
- (d) There are other technologies available to mine the coal, however these pose challenges, including:
- (i) Burning the coal underground leading to gas production which would then be tapped via above ground wells.
 - (ii) Significant surface settlement.

6.8 Given the effects of any extraction anticipated by Mr Lines, it is my opinion that the activity would be inconsistent with the following higher order statutory requirements (notwithstanding the Regional and District Plan requirements):

- (a) Part 2. Including, s.5(2)(b), s.5(2)(c), s.6(a)-(e), s.6(h), s.7(b)-(g), (i).
- (b) The Waikato Regional Policy Statement, in particular Chapter 2, the Vision & Strategy. Including, being contrary to the Vision for the Waikato River and also a number of the Objectives that seek amongst other things, the restoration and protection of the health and well being of the River, including its catchments.

6.9 I also note that such extraction methods and resultant effects as outlined above, could also provide for cultural effects upon the Mana Whenua of the area.

6.10 In summary, it is my opinion that the likelihood of resource consent being granted to exploit the coal resource is very low and the Ralph Estate's submission that the APL rezoning will sterilise the resource should be seen in this light. In other words, it does not actually sterilise the resource as the likelihood of accessing it (regardless of zoning) is so small as to be negligible.

Suzanne Stow

6.11 Suzanne Stow lives at 81 Lumsden Road, directly across from the proposed Industrial zone and Sleepyhead Factory. The submission was in opposition and raised concerns regarding loss of rural outlook, traffic, noise and concerns that her rates may rise.

6.12 I acknowledge these concerns and note the following:

(a) Mr Graham has provided a recommendation for a 15m wide planted buffer along Lumsden Road to provide for screening of the Lumsden Road residential properties. This has been accounted for in the proposed plan provisions²⁷.

(b) Mr Inder has assessed that the effects on the road network can be appropriately mitigated. Mr Inder considers that there will be a significant improvement in terms of safety and attractiveness for walking and cycling along Lumsden Road, with an improved urban cross section and segregated walking and cycling pathways.

(c) Mr Lawrence has assessed the existing and proposed noise environment as a result of the rezoning and considers it to be appropriate. This is mainly as a result of the existing high noise environment present in this area as a result of the North Island Main Trunk Railway and the Waikato Expressway (SH1).

(d) I am not in a position to comment specifically on whether rates will rise for Suzanne Stow as a result of the development. I note she is located in an un-serviced Village zone of medium to low density. There could be a potential for rates to increase if she was to take advantage of municipal water and wastewater connections that are likely to become available as a result of the development, however

²⁷ Plan provisions 20.6.2 RD4

that would presumably be her choice to take advantage of those connections.

David and Tiffany Whyte

- 6.13 David and Tiffany Whyte are residents of the Ohinewai area and have not stated a position on the rezoning (neither oppose nor support). Topics of road safety at the existing Expressway Interchange and the density of housing were raised.
- 6.14 Mr Inder has addressed traffic safety at the Interchange and is of the opinion it is suitable for the proposed rezoning. Furthermore, a pedestrian and cyclist connection is proposed and this is embedded into plan provisions around staging.
- 6.15 Mr Broekhuysen has addressed the Whyte's submission directly in his evidence, and suggests the following:

The proposal promotes the use of higher density housing typologies in order to promote affordability, create community, improve land efficiency and allow for smaller high quality, warmer and healthier homes to be built for a lower price. A large amount of open space has been planned for which will assist in the creation of amenity for residents as will a network of walking and cycling trails, convenience retail, community facilities and employment areas²⁸.

Richard and Shanette Marsh

- 6.16 Richard and Shanette Marsh live at 75 Lumsden Road, directly across from the proposed Industrial land and Sleepyhead Factory. The submission was in opposition and raised concerns regarding noise, traffic, sewage and concerns of whether their rates will rise.
- 6.17 I acknowledge these concerns and note the following:
- (a) Mr Lawrence has assessed the existing and proposed noise environment as a result of the rezoning and considers it to be appropriate. This is mainly as a result of the existing high noise environment present in this area as a result of the North Island Main Trunk Railway and the Waikato Expressway (SH1).
 - (b) Mr Inder has assessed that the effects on the road network can be appropriately mitigated. Mr Inder considers that there will be a

²⁸ Para. 7.5.

significant improvement in terms of safety and attractiveness for walking and cycling along Lumsden Road, with an improved urban cross section and segregated walking and cycling pathways.

- (c) Mr White has addressed the servicing options available for wastewater for the site. In the medium and long term, municipal connections will be available to the development. In the short term, an existing on-site wastewater will service Stages 1 and 2 of the Factory. As expressed in the evidence of Mr Gaze, that system will be maintained in line with manufacturers specifications to ensure good working order.
- (d) I am not in a position to comment specifically on whether rates will rise for the Marshes as a result of the development. I note they are in an un-serviced Village zone of medium density. There could be a potential for rates to increase if they were to take advantage of municipal water and wastewater connections that are likely to become available to them as a result of the development, however that would presumably be their choice to take advantage of those connections.

Ohinewai Area Committee

- 6.18 This submission was neutral however raised questions of amenity and other matters on behalf of residents of Lumsden Road and the transition from a quiet village to that of an industry town.
- 6.19 In my view, these matters have been addressed comprehensively by Mr Broekhuysen in his evidence.

B Holmes

- 6.20 Mr Holmes generally opposes the submissions in Ohinewai on the basis of traffic noise, operational noise and effects on amenity. He generally seeks further information in relation to these effects.
- 6.21 Discussions are continuing between APL and Mr Holmes with respect to the provision of further information on the rezoning and the effects of the development on Mr Holmes' property.
- 6.22 In the event of the rezoning being successful and Mr Holmes deciding to remain in his property and not redevelop, it is my opinion that his amenity concerns have been addressed by the proposed noise provisions put forward

by Mr Ben Lawrence in his evidence and by the provision of landscaping to achieve screening as discussed in Mr Graham's evidence.

D & R Holmes

- 6.23 Mr and Mrs Holmes consider themselves to be directly affected by the proposed development and have requested more information in relation to amenities, rural lifestyle, traffic and operational noise.
- 6.24 Discussions are continuing with Mr and Mrs Holmes with respect to the provision of further information on the rezoning and the effects of the development on Mr and Mrs Holmes' property.
- 6.25 In the event of the rezoning being successful and Mr & Mrs Holmes deciding to remain in their property and not redevelop, it is my opinion that their amenity concerns have been addressed by the proposed noise provisions put forward by Mr Ben Lawrence in his evidence and by the provision of landscaping to achieve screening as discussed in Mr Graham's evidence.

7. PLAN PROVISIONS

- 7.1 In addition to the evidence of Mr Olliver with respect to plan provisions, to account for the staging of infrastructure and the management of effects enabled by the rezoning as outlined above, proposed plan provisions have been formulated to be incorporated into the District Plan. A summary of the provisions is set out below.

Transport infrastructure

- 7.2 Transport infrastructure improvements have been captured in the plan provisions as per the following:
- (a) Restriction of access to Tahuna Road – 16.6.3 RD1.
 - (b) Requirements for Integrated Transport Assessment for certain developments – 16.6.3 RD7, 17.6.3 RD5 and 20.6.2 RD6.
 - (c) Transport upgrades as per Tables 16.6.5.1, 17.6.5.1 and 20.6.4.1.

Wastewater and water supply infrastructure

- 7.3 Plan provisions restrict development within the OSP area until such time that servicing is available. This is captured within Tables 16.6.5.1, 17.6.5.1 and 20.6.4.1.

Ecological management matters

- 7.4 Ecological management requirements, including fish and bat management plans and predator control are captured in the plan provisions at 16.6.3 RD5, 16.6.5 RD6, 17.6.3 RD4, 17.6.5 RD6, 20.6.2 RD5 and 20.6.4 RD5.

Geotechnical matters

- 7.5 The requirement for development within the OSP area to be subject to site specific geotechnical assessments is set out in the plan provisions at 16.6.3 RD2, 17.6.3 RD1 and 20.6.2 RD1.

Stormwater management and flood risk

- 7.6 Stormwater management and flood risk is captured in the plan provisions as per the following:

- (a) Development must include provision for low impact design – 16.6.3 RD2, 17.6.3 RD2 and 20.6.2 RD2.
- (b) For subdivision, all lots within the OSP must have building platforms that are above 8.05m ground level – 16.6.5 RD2, 17.6.5 RD3 and 20.6.4 RD2.
- (c) For subdivision, all residential lots within Stage 8 must demonstrate they're not subject to flooding from the Tahuna Road drain – 16.6.5 RD5.
- (d) For subdivision, all applications must provide stormwater management plans – 16.6.5 RD8, 17.6.5 RD5 and 20.6.4 RD4.

Landscape effects

- 7.7 Landscape effects management has been captured in the plan provisions as per the following:

- (a) For the residential zone, building setbacks on Lumsden Road and on the interface of Residential and Rural – 16.6.4 RD1.
- (b) For the business zone, any activity on a lot that fronts Lumsden Road or Tahuna Road shall provide a landscaped buffer – 17.6.3 RD3. Building setback of 15m – 17.6.4 RD2.

- (c) For the industrial zone, any activity on a lot that fronts Lumsden Road or Balemi Road must provide a landscape strip – 20.6.2 RD4. Building setback of 15m from Lumsden Road – 20.6.3 RD3.

Noise effects

- (d) Noise effects management has been captured in the plan provisions as per the following:
- (e) For the residential zone, any habitable rooms which have an acoustic line of sight to the boundary of the Lake Rotokawau Reserve shall be provided with a means of maintaining an appropriate level of fresh air and thermal comfort while the windows are closed - Rule 20.6.2RD7 to address existing game bird hunting noise adjacent to the site.

8. CONCLUSIONS

- 8.1 In my evidence above I have addressed the key issues identified in the planning conferencing and having accounted for the expert evidence assessed that, in my opinion, there are no matters that preclude the rezoning as proposed by APL.
- 9. I have summarised where proposed plan provisions can address potential effects as a result of the rezoning and in my opinion, these provisions are sufficient to address concerns raised by submitters and the Council reporting officer.
 - 9.1 I acknowledge that there is some uncertainty with respect to the funding of wastewater and water supply infrastructure upgrades and transfer of allocation, however it is my opinion, after having accounted for the evidence of both Mr Turner and Mr Gaze that the proposed plan provisions provide sufficient control over the staging of development.
 - 9.2 Further, if the Panel is of a mind to require more certainty on funding matters, it is my opinion that these matters can be addressed sufficiently prior to, or at the hearing.

Stuart Matthew Penfold
9 July 2020

ⁱ Refer Section 5.3.4 (paras. 160-165).