

Before an Independent Hearings Panel

The Proposed Waikato District Plan (Stage 1)

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

IN THE MATTER OF hearing submissions and further submissions on the Proposed
Waikato District Plan (Stage 1):
Topic 25 – Zone Extents

**LEGAL SUBMISSIONS
ON BEHALF OF TATA VALLEY LIMITED**

12 MAY 2021

BUDDLE FINDLAY

Barristers and Solicitors
Auckland

Solicitor Acting: **Vanessa Evitt / Mathew Gribben**

Email: vanessa.evitt@buddlefindlay.com / mathew.gribben@buddlefindlay.com

Tel 64-9-358 2555 PO Box 1433 DX CP24024 Auckland 1140

MAY IT PLEASE THE COMMISSIONERS

1. INTRODUCTION AND OVERVIEW

- 1.1 The vision of TaTa Valley Limited (**TaTa Valley**) is to develop its site at 242 Bluff Road¹ and 35 Trig Road, Pokeno (**Site**) into a location for tourism and recreation activities that showcases rural New Zealand.
- 1.2 The TaTa Valley Resort will include a hotel with a conference and event space, camping and glamping throughout the Site, a ferry service to Mercer, a 'New Zealand Made Hub' to showcase rural New Zealand and other recreational activities (**the Resort**). When completed it will be a significant tourism and recreation asset for the District, generate significant economic benefits, and enable new access to the Waikato River for the community.
- 1.3 The Site is ideally located and lends itself to development, with its rural countryside location and views out to the Waikato River. It is located within a highly modified 'working' environment and contains a number of natural landscape features and elements that will assist in integrating and/or screening future development from the surrounding environment.² The surrounding land is a working rural landscape which provides an ideal backdrop for the Resort. The Resort will showcase the values of the rural environment and the Waikato River, and provide opportunities to strengthen the local community's connection to the environment, particularly the Waikato River.³
- 1.4 The Site is also located proximate to Auckland International Airport and on the road to and from tourist destinations in the Waikato and Bay of Plenty, and is also within the "Golden Triangle" of Auckland, Hamilton and Tauranga.⁴ While providing a tourist destination, it is located close enough to the Pokeno township to allow ease of access for locals, but within a rural setting that will be preserved into the future.
- 1.5 To realise TaTa Valley's vision, changes to the Proposed Waikato District Plan (**Proposed Plan**) are required. TaTa Valley therefore lodged a submission seeking changes to the Proposed Plan, including a special purpose zoning (**the Rezoning**), referred to in these submissions as the '**Resort Zone**'.
- 1.6 The Rezoning is intended to complement the consent packages that are underway and ensure the continued development and successful operation of the Resort. Over time,

¹ Also known as 42B Potter Road.

² Paragraph 1.4, Highlights Package of Mr Pryor.

³ Paragraph 11.5, Statement of Primary Evidence of Mr Scrafton.

⁴ Refer to Karl Ye's Primary Evidence which discusses the context of the Site in detail.

the Resort will provide for a range of accommodation and tourist related activities. TaTa Valley will transform the Site into a unique experience where visitors can stay, relax, explore and be entertained with a variety of attractions, while showcasing NZ products. This will have a number of positive benefits for the wider Pokeno community, including job creation and increased visitors in the area.

- 1.7 The Rezoning will deliver significant economic and employment benefits for the district, a conclusion which Mr Wyeth agrees with.⁵ These benefits are outlined in Tata Valley's evidence⁶ and acknowledged by the Council's s42A Reporting Officer (**Reporting Officer**). These benefits include 40-60 FTEs per annum from construction, 220 FTEs per annum from operation of the Resort and a net present value of \$163M – \$382.8M.⁷
- 1.8 The Reporting Officer concludes that the Resort Zone *"will help enable the Site to be developed and managed in a manner that delivers substantial economic and employment benefits to the District while also achieving positive environmental outcomes."*⁸ Overall, there is a high degree of alignment between TaTa Valley's expert team and the Council's Reporting Team as to the benefits of the Rezoning.⁹ All experts agree that the Rezoning is appropriate and should be approved, with only some minor outstanding matters still to be resolved.
- 1.9 The potential effects of the Proposal and the plan changes TaTa Valley seeks have been considered and assessed by TaTa Valley's experts. The Site has therefore been subject to detailed investigations and analysis, which identified various environmental features and constraints at the Site. The Resort Zone provisions respond to, and appropriately manage, effects on these features and constraints.
- 1.10 The Reporting Officer agrees with Mr Scrafton that the proposed Resort Zone is generally consistent with the relevant statutory requirements. Consistent with the evidence of TaTa Valley's experts, the Reporting Officer also concluded that the proposed Resort Zone will be adequate to manage effects of the activities and development enabled under those provisions.¹⁰
- 1.11 In light of the support expressed by the Reporting Officer, these legal submissions focus on the key outstanding issues, following the exchange of evidence and the

⁵ Paragraph 68, Section 42A Report: TaTa Valley Resort Zone. See also paragraphs 139, 145 and 151, Section 42A Report: TaTa Valley Resort Zone.

⁶ Paragraph 11.2 to 11.6, Statement of Primary evidence of Mr Scrafton and paragraph 11.1, Statement of Primary evidence of Mr Thompson.

⁷ Paragraphs 11.1 and 12.1, Statement of Primary evidence of Mr Thompson.

⁸ Paragraph 125, Section 42A Report: TaTa Valley Resort Zone.

⁹ Paragraph 3.1, Statement of Rebuttal evidence of Mr Scrafton.

¹⁰ Refer to the Section 42A Report: TaTa Valley Resort Zone, at paragraphs 149 – 154 in particular, which sets out the Reporting Officer's conclusions.

Council's section 42A Report. These submissions summarise and provide cross-references to matters relevant to these issues, to assist the Commissioner's decision-making.

2. THE RESORT ZONE

2.1 TaTa Valley is seeking to introduce the 'Resort Zone', as a special purpose zone. It will therefore replace the Rural Zone in its entirety at the Site, although the Resort Zone will utilise the Rural Zone provisions for specific activities, including earthworks, vegetation clearance storage of hazardous substances and subdivision.¹¹ The SAL overlay will also apply in addition to the Resort Zone, in its reduced size, as will the Proposed Plan provisions relating to flooding. TaTa Valley had previously proposed provisions within the Resort Zone to manage SNAs, but now considers it is appropriate to apply the Proposed Plan approach, so that they are managed in line with how SNAs are managed across the district.¹²

2.2 The Resort Zone will include:¹³

- (a) Zone specific objectives and policies that have been crafted to enable the development of the Resort's¹⁴ primary and accessory activities. These provisions recognise the Resort may result in a greater scale of development than typically found in the rural environment, whilst managing the adverse effects of the Resort (including having regard to rural amenity and character and protecting and restoring the values of the Waikato River);
- (b) Within the rules there are specified activities that are permitted,¹⁵ restricted discretionary or discretionary. Permitted activities are proposed where they align with policy direction, are deemed acceptable in the Resort Zone and where the effects of an activity are understood and, if required, suitably controlled via standards; and
- (c) A concept plan that shows the Site,¹⁶ the Hotel Precinct, a Maaori site of significance (paa site),¹⁷ Significant Natural Areas (**SNA**),¹⁸ areas identified by Dr Martin as areas of significant indigenous biodiversity value, and the

¹¹ These have been highlighted green in Mr Scrafton's Rebuttal evidence, Appendix 1.

¹² Refer to paragraph 8.2(b), Statement of Primary Evidence of Mr Scrafton.

¹³ Refer to section 7, Statement of Primary Evidence of Mr Scrafton which describes the changes TaTa Valley seeks to the Proposed Plan.

¹⁴ Under the definition of "Visitor Accommodation".

¹⁵ Subject to permitted standards.

¹⁶ Being 242 Bluff Road/42B Potter and 35 Trig Road, Pokeno, to be zoned as TVR Zone.

¹⁷ On 242 Bluff Road, also known as 42B Bluff Road.

¹⁸ As identified in the Proposed Plan.

Significant Amenity Landscapes (**SAL**) overlay. The Concept Plan is attached to these submissions as **Appendix A**.¹⁹

2.3 Many of the rules proposed by TaTa Valley are based on the Reporting Officer's final recommendations for the Rural Zone²⁰ which is a deliberate approach to recognise the functional relationship between the proposed development of the Site and the rural environment. This includes rules with respect to SALs and SNAs. Key differences in the rules proposed for the Resort Zone compared to the Rural Zone include:

- (a) The use of a Hotel Precinct to provide for a large scale hotel (as a restricted discretionary activity) and a more enabling approach to visitor accommodation outside the Precinct for smaller scale accommodation;
- (b) New, specified activities²¹ which provide for a limited number of events that exceed the Rural Zone's standard noise limits;
- (c) A higher level of permitted building coverage whilst still retaining open space over a large extent of the Resort Zone; and
- (d) Unlimited temporary events as long as permitted standards are met.

Updates to the consent package

2.4 The rezoning sought by TaTa Valley is proposed to support the resource consent applications that have also been lodged for the Resort. These consents were lodged in December 2018, and in late 2019, TaTa Valley paused a number of its consent processing timeframes to allow for a tāngata whenua working group to be formed and developed.²² During this time, TaTa Valley has continued to refine its Proposal, including the provisions sought as part of the Rezoning. Matters have also been progressed with tāngata whenua, which is discussed later in these submissions.

2.5 The refinements that TaTa Valley has made to its Rezoning Proposal since it lodged its original submissions include:

- (a) Updates to the Concept Plan to simplify zone / precinct overlays and to better align to National Planning Standard methods and terminology. The Concept

¹⁹ The extent of the SAL was discussed at Hearing 21B: Landscapes and TaTa Valley accepted the Reporting Officer's recommendation in the s42A Report to reduce the extent of the SAL overlay on the TaTa Valley Site (which is what is shown on the concept plan) as originally proposed in TaTa Valley's submission. This is referred to in the evidence of Mr Pryor.

²⁰ Refer to s42A Report Closing Statement: Hearing 18 Rural Zone Land use, 23 October 2020.

²¹ Including helicopter take off/landings and special noise events.

²² Paragraph 4.11, Primary Evidence of Karl Ye.

Plan was also updated in response to the new National Policy Statement: Freshwater Management (**NPS:FM**); and

- (b) Updates to mapping, and the approach to management of indigenous biodiversity on the Site.²³

2.6 Following the Council's s42A Report and the exchange of evidence, TaTa Valley has made further refinements to the provisions it proposes. These provisions are described in Mr Scafton's rebuttal evidence, and include:²⁴

- (a) Amending objectives and policies by further highlighting key environmental effects to that need to be considered, to ensure better management of effects;
- (b) Requiring buildings within the setback of the Waikato River to have a functional or operational need to be located in this area²⁵, in order to clarify what buildings might be appropriate there; and
- (c) New matters of discretion with respect to activities within a maaori site of significance and subdivision; and
- (d) Incorporating the subdivision rules from the Rural Zone to the Resort Zone, with additional assessment criteria.

2.7 The changes sought by TaTa Valley are attached to Mr Scafton's rebuttal evidence as **Appendix 1**. Where relevant, some of these changes are discussed further in these submissions.

2.8 Mr Wyeth has commented on the most recent changes proposed by TaTa Valley²⁶, in his Rebuttal Report. Mr Wyeth generally agrees with the changes TaTa Valley has proposed, subject to a few remaining outstanding matters regarding the mapping of natural inland wetlands, and the appropriate policy protection for the overlays that have been identified within TaTa Valley's Concept Plan, and for rural character and amenity. Mr Scafton will continue to liaise with Mr Wyeth regarding these matters and will provide a further update on TaTa Valley's position at the hearing.²⁷

²³ These changes were made as a result of further ecological assessment and considering the implications of the NPS:FM. As noted above, in light of the implications of the NPS:FM and associated changes to Site design, it is proposed to adopt the district-wide approach to SNAs and the management of identified indigenous biodiversity values.

²⁴ These changes are summarised in Mr Scafton's Highlights Package, dated 12 May 2021.

²⁵ This amendment arose through feedback from tangata whenua consultation as outlined in paragraph 5.2(a) of Mr Scafton's rebuttal statement (dated 3 May 2021)

²⁶ As contained in Mr Scafton's rebuttal evidence, Appendix 1.

²⁷ Paragraph 1.3, Highlights Package of Mr Scafton.

Expert assessment of the Rezoning

- 2.9 In addition to corporate evidence from Mr Ye, director of TaTa Valley, a series of experts have provided evidence on the potential effects of the Rezoning, including:
- (a) Mr Adam Thompson, Director of Urban Economics Limited – Economic;
 - (b) Mr Rob Pryor, Director of LA4, Landscape Architects - Landscape and visual;
 - (c) Mr Leo Hills, Director of Commute, specialist traffic and transportation engineer - Transport;
 - (d) Dr Tim Martin, Principal Ecologist at Wildland Consultants - Ecology;
 - (e) Mr Chris Edwards, Senior Engineering Geologist at Lander Geotechnical Consultants - Geotechnical evidence;
 - (f) Mr Ryan Pitkethley, Civil Engineer and Engineering Manager at CivilPlan Consultants Limited - Infrastructure, stormwater and flooding; and
 - (g) Mr Chris Scrafton, Technical Director – Planning at Beca - Planning evidence, with reference to the effects identified by the specialists and the relevant planning provisions and statutory framework.

3. SCOPE OF SUBMISSIONS

- 3.1 These submissions will address:
- (a) The legal framework that applies to consideration of TaTa Valley's Proposed Plan submission;
 - (b) The relevant planning documents;
 - (c) Benefits and management of effects;
 - (d) Efficiency and effectiveness of the Resort Zone including why a special purpose zone is most appropriate;
 - (e) Outstanding s42A issues / issues raised in evidence; and
 - (f) Conclusion.

4. LEGAL FRAMEWORK

- 4.1 The relevant legal framework and statutory tests were discussed at length at the pre-hearing conference on 12 March 2021 and TaTa Valley's position was outlined in its memorandum of counsel dated 9 March 2021. In summary, TaTa Valley considers that the relevant tests are outlined in Appendix 1 to the Opening Legal Submissions by Counsel for the Waikato District Council, dated 23 September 2019, with the addition of reference to section 31(1)(aa). TaTa Valley agrees with and adopts the Minutes and Directions from the Hearing Commissioners, dated 15 March 2021, issued following that pre-hearing conference.
- 4.2 There are no significant or controversial legal issues in relation to the Rezoning and the Panel's consideration will involve applying the standard legal tests for plan making in light of the assessment of the Rezoning against the relevant planning documents and the findings about effects, costs and benefits.

5. RELEVANT PLANNING DOCUMENTS

- 5.1 Mr Scrafton and the Reporting Officer both agree as to the relevant statutory framework for the Rezoning, and have provided a comprehensive analysis of the Rezoning against the relevant statutory provisions. Both Mr Scrafton and the Reporting Officer conclude that the Resort Zone is consistent with the relevant statutory requirements for district plans and gives effect to higher order planning documents.²⁸ In reaching this conclusion, the following statutory documents were considered:
- (a) The NPS:FM;
 - (b) National Planning Standards;
 - (c) The Waikato Regional Policy Statement (**WRPS**);
 - (d) The Vision and Strategy for the Waikato River (**Vision and Strategy**);
 - (e) The Waikato-Tainui Environmental Management Plan;
 - (f) Strategic regional documents, being the Future Proof Growth Strategy 2017 and the Waikato 2070 Growth and Urban Development Strategy; and
 - (g) The Proposed Plan policy direction.

²⁸ Paragraph 150, Section 42A Report: TaTa Valley Resort Zone.

- 5.2 In terms of the statutory assessment required against these documents, the Rezoning has been classified and assessed against the statutory documents as a rural activity by TaTa Valley's experts.²⁹ Mr Wyeth agrees that the Resort Zone is intended to be predominantly 'rural' in character rather than 'urban'. This is relevant to the policy framework by which the Rezoning is to be assessed and the appropriateness of the provisions to manage potential effects. In terms of the relevant policy framework:
- (a) A number of the planning documents contain policies geared towards urban activities (including the WRPS, the Proposed Plan and the Future Proof Growth Strategy) which are not considered applicable in the context of the Rezoning;³⁰
 - (b) The National Policy Statement on Urban Development 2020 (NPS:UD) only applies to local authorities that have 'urban environments' in their district and to planning decisions that affect 'urban environments'. Mr Wyeth agrees that the Resort Zone does not meet the NPS:UD definition of urban environment.³¹
- 5.3 Mr Scrafton's conclusions that the Rezoning gives effect to / is consistent with the relevant planning documents are consistent with those reached by the Reporting Officer. While these submissions do not repeat the statutory assessment provided by Mr Scrafton or the Reporting Officer, we provide a summary of some particularly relevant matters under the Vision and Strategy and the NPS:FM.

Vision and Strategy for the Waikato River

- 5.4 TaTa Valley considers that the proposed Resort Zone is consistent with the provisions of the Vision and Strategy. The Vision and Strategy aims to restore and protect the health of the Waikato River, and contains a number of objectives to support this aim and the overarching vision of the Vision and Strategy.³²
- 5.5 TaTa Valley considers a number of these objectives are relevant to the Resort Zone, and that the proposed Resort Zone is consistent with these objectives because:
- (a) The Proposal has been developed following engagement with Waikato-Tainui and Waikato River iwi. A number of concerns have been raised through this engagement, and TaTa Valley has been, and will continue to work with iwi to

²⁹ See for example paragraph 12.7, Primary evidence of Mr Scrafton in relation to the NPS:UD.

³⁰ Refer to paragraphs 46, 56 and 57, Section 42A Report: Tata Valley Resort Zone, which discusses why the WRPS and Proposed Plan provisions regarding urban/urban development/urban growth are not relevant to the Rezoning.

³¹ Paragraph 38, Section 42A Report: Tata Valley Resort Zone.

³² Refer to paragraph 12.17, Statement of Primary Evidence of Mr Scrafton which describes the Vision of the Vision and Strategy.

address concerns raised.³³ To date, the matters raised by iwi during engagement have been addressed through:³⁴

- (i) A proposed policy in the Resort Zone that references values of the Waikato River;
 - (ii) Adopting the Rural Zone approach to provisions regarding identified indigenous biodiversity values and SALs, including building setbacks from the Waikato River and rules regarding vegetation clearance;
 - (iii) Provisions with respect to the paa site (which is a Maaori site of significance in the Proposed Plan),
- (b) The Proposal will also showcase the Waikato River and enable greater access to the River itself. This access to the River will be a significant improvement from the current situation which is currently a large private rural land holding;³⁵
- (c) The provisions of the Resort Zone have been developed with careful consideration as to what activities are identified as appropriate for a "permitted status". Activities that do not comply with permitted activity standards will require a resource consent. This will allow these activities to be managed through either permitted activity standards or a resource consent process;³⁶ and
- (d) There is an available and feasible stormwater design that will improve the quality of water discharged from the Site.³⁷ The Proposal will therefore contribute to improving water quality in the Waikato River.

5.6 Mr Wyeth's assessment of the Vision and Strategy is generally done by reference to their WRPS assessment.³⁸ Mr Wyeth was satisfied that, subject to his recommended amendments to TaTa Valley's proposed provisions, there are processes in place to ensure development of the Site and the proposed Resort Zone gives effect to the Vision and Strategy.³⁹

5.7 In particular, Mr Wyeth recommended that the policies included direction to protect areas of natural value, including the Waikato River. In respect of these amendments:

³³ Paragraph 12.19, Statement of Primary Evidence of Mr Scrafton. Refer more generally to section 6 which describes the engagement process undertaken with iwi.

³⁴ Paragraph 12.19, Statement of Primary Evidence of Mr Scrafton.

³⁵ Paragraph 12.19, Statement of Primary Evidence of Mr Scrafton.

³⁶ Paragraph 12.19, Statement of Primary Evidence of Mr Scrafton.

³⁷ Paragraph 1.4, Statement of Primary Evidence of Mr Pitkethley.

³⁸ Paragraphs 71 and 72, Section 42A Report: Tata Valley Resort Zone. Specifically, Mr Wyeth reported that "the same conclusions apply here", which, in respect of the WRPS were that the Resort Zone gives effect to the WRPS.

³⁹ Paragraph 74, Section 42A Report: Tata Valley Resort Zone.

- (a) TaTa Valley supports the amendments proposed to Policy 29.2(P4)(a), and agrees these changes will strengthen alignment with the WRPS and the Vision and Strategy;⁴⁰ however,
- (b) TaTa Valley does not consider amendments to Policy 29.3(P3)(c) are necessary. The Resort Zone has adopted a district wide approach to management of SNAs and Maaori Sites of Significance, so it is more appropriate for those district wide provisions to apply.⁴¹

5.8 Since the submission of its primary evidence, TaTa Valley has been engaging with tangata whenua regarding the Proposal. Tangata whenua provided feedback regarding amendments to strengthen Policy 29.2(P6), to provide greater certainty and guidance regarding building setbacks from the Waikato River. TaTa Valley has amended this policy in light of that feedback.⁴²

5.9 Tangata whenua also asked for consideration to be made to applying the Cultural Management Plan (**CMP**) to the provisions. While the CMP is still in draft form, Mr Scrafton has summarised the contents of that plan, noting that given its wide ranging nature, it is not appropriate to include it in the Proposed Plan, but that relevant matters or outcomes within the CMP can (and have been) incorporated or reflected in the provisions.⁴³

National Policy Statement: Freshwater Management

5.10 TaTa Valley considers that the proposed Resort Zone and the development it will enable is consistent with the NPS:FM. In particular:

- (a) The proposed stormwater solution will improve the quality of stormwater discharged from the Site; and
- (b) Any areas that have been identified as natural wetland areas will be protected under the relevant standard national environment standards and appropriately managed under that regime.⁴⁴

5.11 The Reporting Officer agrees that the proposed Resort Zone gives effect to the NPS:FM as it will help to provide for integrated management of the Site, and the proposed Concept Plan will help protect natural inland wetlands. Some amendments to the Resort Zone policies are proposed by the Reporting Officer to better give effect to

⁴⁰ Paragraph 3.23, Statement of Rebuttal evidence of Mr Scrafton.

⁴¹ Paragraph 3.24, Statement of Rebuttal evidence of Mr Scrafton.

⁴² Section 5, Statement of Rebuttal evidence of Mr Scrafton.

⁴³ Paragraph 5.2(b) – (d), Statement of Rebuttal Evidence of Mr Scrafton.

⁴⁴ Paragraph 12.5, Statement of Primary Evidence of Mr Scrafton.

Policy 6 and 7 of the NPS:FM.⁴⁵ These amendments are discussed in relation to the Vision and Strategy, so are not repeated here.

6. SERVICING AND ACCESS

6.1 Mr Pitkethley has provided engineering and infrastructure evidence regarding the potential effects of the Proposal, including effects on water supply and wastewater, and access to the site.⁴⁶ Mr Pitkethley concludes that:

(a) There is sufficient provision for the growth proposed by TaTa Valley to be accommodated into existing and planned wastewater and water supply.⁴⁷ Mr Wyeth agrees and concludes that based on this, the Site can be serviced by the necessary infrastructure, subject to extension of bulk water supply and wastewater infrastructure to the Site.⁴⁸

(b) In conjunction with the evidence presented by Mr Hills, Mr Pitkethley found that the Site can be serviced, with an access road between the Site and Yashili Drive to be funded by the developer.⁴⁹ Mr Hills has assessed the operation of this new road access and although constrained by one way lanes in places, can still operate safely and efficiently in order service the Resort.⁵⁰

6.2 Mr Wyeth agrees that the proposed Resort Zone provisions will be sufficient to manage transport related effects, and also noted the findings of Waka Kotahi's experts that the proposal is unlikely to have a detrimental effect on State Highway 1.⁵¹

6.3 Mr Pitkethley concluded that that there is no infrastructure or engineering reason not to rezone the Site as part of the Proposed Plan.

7. COSTS, BENEFITS AND EFFECTS

7.1 The potential effects of the Rezoning have been comprehensively assessed by TaTa Valley's experts. The Reporting Officer generally agrees with the conclusions they reached, and therefore, the effects of the Rezoning are not in dispute. However, we have briefly summarised these effects here for completeness and to assist the Commissioners.

⁴⁵ Paragraphs 67 and 134, Section 42A Report: Tata Valley Resort Zone.

⁴⁶ Paragraph 11.2, Statement of Evidence of Mr Pitkethley.

⁴⁷ Paragraphs 8.69 and 8.87, Statement of Evidence of Mr Pitkethley.

⁴⁸ Paragraph 112, Section 42A Report: Tata Valley Resort Zone.

⁴⁹ Paragraph 1.3, Statement of Evidence of Mr Pitkethley.

⁵⁰ Paragraph 1.6(a), Statement of Primary Evidence of Mr Hills.

⁵¹ Paragraphs 102 - 106, Section 42A Report: TaTa Valley Resort Zone.

Benefits and management of effects of the Rezoning

7.2 The Rezoning will result in numerous benefits and positive effects, which are outlined in TaTa Valley's expert evidence. The positive effects of the Rezoning are also acknowledged in the Council's s42A Report. Importantly, the Reporting Officer noted it will *"help enable the Site to be developed and managed in a manner that delivers substantial economic and employment benefits to the District while also achieving positive environmental outcomes."*⁵²

7.3 The key positive effects and benefits of the Rezoning are:

- (a) The Resort will have significant positive social and economic effects including the creation of around 220 FTE jobs per year, and 3,960 FTE jobs over 20 years;⁵³
- (b) The proposal would result in the construction of 49,000m² – 71,000m² of facility floorspace over five years, at an estimated total cost of \$198.0 - \$282.0 million. This translates to a value added per annum figure of \$11.6 - \$16.5 million to the construction industry or a present value (PV) of \$30.7 - \$43.7 million;⁵⁴
- (c) The PV of the benefits of the proposal is \$167.6 - \$387.4 million and the PV of the costs of the proposal is \$4.6 million. The net PV of the proposal is \$163.0 - \$382.8 million;⁵⁵
- (d) The Resort will provide additional social benefits for the community by providing a number of social, recreational and cultural facilities that can provide for events;⁵⁶
- (e) The Resort will showcase the values of the rural environment and the Waikato River, providing opportunities to strengthen the local community's connection to the environment and in particular, the Waikato River;⁵⁷
- (f) The proposed stormwater design will result in stormwater discharges from the Site being improved compared to current discharges;⁵⁸ and
- (g) Various measures are proposed to mitigate flood effects including improvements to the existing stop bank, culvert flood gates to protect the valley

⁵² Paragraph 125, Section 42A Report: TaTa Valley Resort Zone.

⁵³ Paragraphs 10.19 and 11.1, Statement of Evidence of Mr Thompson.

⁵⁴ Paragraphs 12.1, Statement of Evidence of Mr Thompson.

⁵⁵ Paragraphs 12.1, Statement of Evidence of Mr Thompson.

⁵⁶ Paragraph 11.4, Statement of Primary Evidence of Mr Scrafton.

⁵⁷ Paragraph 11.5, Statement of Primary Evidence of Mr Scrafton.

⁵⁸ Paragraph 1.5 Statement of Evidence of Mr Pitkethley.

from inundation by the Waikato River, and installation of a pump and weir system as part of the wetland, culvert and stop bank restorations.⁵⁹ The roads have also been designed above the maximum 1% AEP flood event level.⁶⁰

Management of effects

7.4 TaTa Valley's experts have identified and have assessed a range of potential effects and the Resort Zone provisions have been designed to manage any residential effects through the Concept Plan, Resort Zone plan provisions and subsequent resource consent processes. We summarise these effects as follows.

Landscape effects

7.5 Mr Pryor provided evidence considering the potential landscape and visual effects of the Proposal. The increased scale of development enabled under the proposed Resort Zone will have landscape and visual effects on the surrounding environment, particularly within the proposed Hotel Precinct. Overall however, Mr Pryor concluded that the development enabled by the Rezoning can be visually accommodated within the landscape, without adversely affecting the character, aesthetic value and integrity of the Site and surrounding environment.⁶¹ He concluded that any adverse landscape and visual effects will be acceptable within the surrounding landscape context, and effectively managed through the proposed Resort Zone provisions.⁶²

Cultural effects

7.6 Mr Wyeth recommends some amendments to the Resort Zone provisions, to include a new matter of discretion about effects on cultural values.⁶³ TaTa Valley agrees with the Reporting Officer's suggestion to include a new matter of discretion for cultural effects, and has amended the proposed TaTa Valley provisions accordingly.⁶⁴

7.7 No evidence opposing the Resort Zone has been received from mana whenua.

Transport effects

7.8 The Resort will generate increased traffic movements through increased visitors to the Site compared to the existing farming land use, especially during temporary events. Mr Hills' evidence assesses the potential effects of additional traffic travelling to/from the

⁵⁹ Paragraph 1.6, 9.1 - 9.4, Statement of Evidence of Mr Pitkethley. The latter works require a resource consent from WRC – this is currently lodged and on s92 hold.

⁶⁰ As noted at paragraph 11.21, Statement of Primary Evidence of Mr Scafton.

⁶¹ Paragraph 10.3, Statement of Evidence of Mr Pryor.

⁶² Paragraph 11.10, Statement of Evidence of Mr Pryor.

⁶³ Paragraph 135, Section 42A Report: TaTa Valley Resort Zone.

⁶⁴ Paragraph 3.33, Statement of Rebuttal Evidence of Mr Scafton.

Site, and how this will be mitigated. He concludes that the Resort Zone will have no discernible impact on the operation of the of the key local intersections.⁶⁵ In his rebuttal evidence Mr Hills confirms that he assessed the potential effects from both the Resort Zone and the proposed rezoning of Havelock for residential development and his conclusions remain valid.⁶⁶

- 7.9 Mitigation includes permitted standards with respect to capacity of temporary events and onsite parking requirements. TaTa Valley considers that there is no traffic engineering or transport planning reason to preclude the proposed Resort Zone, as any potential transport effects will be suitably managed.⁶⁷
- 7.10 Mr Wyeth generally agrees that the proposed Resort Zone provisions will be sufficient to manage transport related effects. However, further changes to the Resort Zone provisions were proposed, including an additional rule for special noise events and additions to provide more clarity around Temporary Traffic Management Plans.⁶⁸ While TaTa Valley does not consider that a new rule for special noise events is necessary (as Mr Scrafton explains, this would be repetitive of other proposed rules that also apply),⁶⁹ TaTa Valley agrees that the amendments proposed regarding TTMP are appropriate.⁷⁰ These are shown in Appendix 1 of Mr Scrafton's rebuttal evidence.

Ecology effects

- 7.11 Mr Martin provided a comprehensive assessment of the potential ecological effects of the Project, and the changes TaTa Valley has made to the proposed approach to manage indigenous biodiversity and SNAs on the Site. In particular, TaTa Valley is no longer proposing bespoke provisions to managing SNAs, and will adopt the district-wide approach. Mr Wyeth supports this change in approach, noting it is more aligned with the relevant planning documents.⁷¹
- 7.12 TaTa Valley has also updated its Concept Plan to include 50 additional areas of "significant indigenous biodiversity", with mapping of habitats within the Site that meet the criteria of an SNA.⁷² The Reporting Officer also supported the identification of these additional areas, and considers mapping the most effective and certain method to ensure they are protected.⁷³

⁶⁵ Paragraph 1.6(c), Statement of Primary Evidence of Mr Hills.

⁶⁶ Section 3, Statement of Rebuttal Evidence of Mr Hills

⁶⁷ Paragraph 11.13, Statement of Primary Evidence of Mr Scrafton, discussing Mr Hills' evidence.

⁶⁸ Paragraphs 104 and 105, Section 42A Report: TaTa Valley Resort Zone.

⁶⁹ Paragraph 3.29, Statement of Rebuttal Evidence of Mr Scrafton.

⁷⁰ Paragraph 3.30, Statement of Rebuttal Evidence of Mr Scrafton.

⁷¹ Paragraph 86, Section 42A Report: TaTa Valley Resort Zone.

⁷² As described in Appendix A, Statement of Primary Evidence of Mr Scrafton.

⁷³ Paragraph 88, Section 42A Report: TaTa Valley Resort Zone.

- 7.13 Overall, the Reporting Officer considers that the proposed Resort Zone in combination with the Proposed Plan district-wide provisions relating to SNAs⁷⁴ will adequately manage effects on indigenous biodiversity within the Site.⁷⁵
- 7.14 However, Mr Wyeth recommends that natural inland wetlands⁷⁶ are identified in the proposed Concept Plan, which TaTa Valley opposes.⁷⁷
- 7.15 TaTa Valley opposes this recommendation because district councils are not required to identify and map these areas within the District Plan.⁷⁸ Mapping these areas is a regional council function, in addition to applying the NES itself.⁷⁹ The NES will also apply, regardless of what the district plan provisions provide, so there is little value in mapping these areas now, particularly as the NES adequately manages effects on natural wetlands irrespective of whether they are mapped in the District Plan. This has to be dealt with as a matter of consenting and that is the appropriate forum to do so.
- 7.16 Further to this, the MfE is in the process of clarifying the definitions of 'natural wetlands' and 'natural inland wetlands', so it is possible the nature of the wetland may also change as this develops. In these circumstances, it is more appropriate to assess the area at the time that development is being sought rather than include it in the Concept Plan.⁸⁰

Geotechnical effects

- 7.17 Mr Edwards considered the geotechnical effects of the Proposal and concluded that with appropriate engineering design, the Site is suitable for rezoning.⁸¹ Any geotechnical constraints can be managed through the subsequent resource consent process.

Flooding/stormwater effects

- 7.18 Mr Pitkethley also provided evidence regarding the potential stormwater effects of the Proposal, concluding that the stormwater design for the development of the Site will be in accordance with the relevant guidelines and Council's requirements. He concluded that overall, this should improve the overall quality of discharges from the Site.⁸² Mr Wyeth agrees that the Site can adequately be adequately serviced by the necessary

⁷⁴ Along with any relevant national direction.

⁷⁵ Paragraph 91, Section 42A Report: TaTa Valley Resort Zone.

⁷⁶ As defined by the NPS/NES Freshwater .

⁷⁷ Paragraph 66(b), Section 42A Report: TaTa Valley Resort Zone.

⁷⁸ Paragraph 3.31(a), Statement of Rebuttal Evidence of Mr Scrafton.

⁷⁹ Policy 3.23 of the National Policy Statement: Freshwater Management 2020.

⁸⁰ Paragraph 3.31(b), Statement of Rebuttal Evidence of Mr Scrafton

⁸¹ Paragraph 9.3 and 9.4, Statement of Evidence of Mr Edwards.

⁸² Paragraphs 1.4 and 1.5, Statement of Evidence of Mr Pitkethley.

infrastructure.⁸³ He also noted the effectiveness of the proposed stormwater design will be subject to a robust assessment by WRC through regional consenting processes.⁸⁴

Noise effects

7.19 Mr Styles prepared a memorandum considering the potential noise effects of the Proposal. As part of that assessment, he proposed rules so that the noise management framework for the Resort Zone promotes an appropriate balance between enabling activities, and ensures that noise effects generated beyond the zone boundaries are reasonable.⁸⁵ In light of Mr Styles' advice, and the relatively comparability between the proposed Resort Zone and the Rural Zone noise provisions, the Reporting Officer is satisfied the noise effects can be suitably managed through the proposed provisions.⁸⁶

8. EFFICIENCY AND EFFECTIVENESS OF THE RESORT ZONE⁸⁷

8.1 TaTa Valley agrees with Mr Wyeth's conclusion that the proposed Resort Zone is the most effective and efficient way to achieve the objectives for the Site, and that the Rural Zone provisions do not provide the same level of efficiency and effectiveness for developing the Site as the Resort Zone.⁸⁸

8.2 One of the key areas explored through the exchange of evidence was the merits of a special purpose zoning at the Site.⁸⁹ TaTa Valley's experts provided evidence outlining why the proposed Resort Zone provisions represented an appropriate approach rather than retaining the Rural Zone and relying on resource consents for infringements of the Rural Zone rules. Mr Wyeth considered these reasons in his Rebuttal Report, noting that this analysis is helpful to highlight the potential uncertainties and inefficiencies associated with developing and operating the resort under the Rural Zone rules.⁹⁰

8.3 For completeness, we record the rationale and justification for the special purpose zoning as follows:⁹¹

⁸³ This conclusion was reached in relation to the three waters more broadly (i.e. water supply, wastewater and stormwater) but for the purpose of these submissions we have separated the analysis as between water supply/wastewater and stormwater (under 'Flooding').

⁸⁴ Paragraph 112, Section 42A Report: TaTa Valley Resort Zone.

⁸⁵ As recorded in Appendix D to Mr Scrafton's evidence (Noise and Archaeological Memo and Archaeology Report).

⁸⁶ Paragraph 110, Section 42A Report: TaTa Valley Resort Zone.

⁸⁷ The s32AA Report attached to Mr Scrafton's primary evidence includes an assessment of the efficiency and effectiveness of establishing a special purpose zone instead of applying the existing PWDP zones (focusing on the Rural Zone). This was undertaken in the 'original' s32AA report submitted with TaTa Valley's submission and is updated at Appendix B (adopting the most recent Rural zone provisions as recommended by the Reporting Officer(s) for Hearings 18 (Rural), 21A (SNA) and 21B (Landscapes) (whereas the 'original' s32AA report was based on the PWDP provisions as notified) of Mr Scrafton's primary evidence.

⁸⁸ Paragraph 11, Section 42A Report: Rebuttal Evidence, TaTa Valley Resort Zone.

⁸⁹ Paragraph 151, Section 42A Report: TaTa Valley Resort Zone.

⁹⁰ Paragraph 10, Section 42A Report: Rebuttal Evidence, TaTa Valley Resort Zone.

⁹¹ Paragraph 3.4, Statement of Rebuttal Evidence of Mr Scrafton.

- (a) The Rural Zone (as amended by the s42A Report) does not contemplate or enable TaTa Valley's vision for the Resort, which means multiple resource consents will be required to enable the development. The policy framework does not effectively provide for such development or signal a clear intention as to the Site's intended use. This creates uncertainty and risk as to whether the development can/will proceed;
- (b) A special purpose zone allows for a site specific policy framework. This will appropriately respond to the site's context and provide clear signals about the intent for future development of the site for TaTa Valley, the community and the Council. It also enables the efficient future operation of the Site. Development of the Resort Zone provisions has been informed by a number of technical assessment and expert recommendations. This has enabled the provisions to be refined and specific to the proposed development.⁹²;
- (c) Amending the Rural Zone to make the development 'fit' would reduce the effectiveness and integrity of the Rural Zone.

8.4 The Reporting Officer for the Rural Topic has recommended amendments to the Rural Zone, which if accepted by the Panel, would better enable the Resort with the Rural Zone. However, TaTa Valley still does not consider they will be appropriate for the Resort. Assuming those provisions are adopted:⁹³

- (a) The vision for the Site is not well aligned with the objectives and policies of the Rural Zone, which would make obtaining consents challenging. Mr Scrafton has provided specific examples of this misalignment;⁹⁴
- (b) 'Rural tourism' activities are provided for in the Rural Zone, but these are only typically provided for up to a certain size and scale. The type of activities proposed by TaTa Valley would generally exceed what is provided for in the Rural zone provisions. This could result in two potential adverse outcomes, in that TaTa Valley's consent applications are likely to be regularly declined; or if they are approved, this could set a precedent for the size and scale of activities acceptable in the zone;⁹⁵
- (c) Development of the Resort will be undertaken in stages, and would therefore be subject to ongoing resource consent applications as each stage progresses.

⁹² Paragraph 3.13, Statement of Rebuttal Evidence of Mr Scrafton.

⁹³ Paragraph 3.7, Statement of Rebuttal Evidence of Mr Scrafton. As described in paragraph 3.6 of Mr Scrafton's rebuttal evidence, there is no certainty the recommendations on the Rural Zone provisions will be accepted by the Panel.

⁹⁴ Paragraph 3.7(a), Statement of Rebuttal Evidence of Mr Scrafton.

⁹⁵ Paragraph 3.7(c), Statement of Rebuttal Evidence of Mr Scrafton.

This places a greater level of costs (preparing consent applications) and a greater level uncertainty for the developer in terms of consent outcomes;⁹⁶ and

- (d) The Resort Zone provides greater flexibility in the future development of the Site, since TaTa Valley will not be restricted to the scope of the resource consents. The zoning also means TaTa Valley is not required to give effect to a resource consent within a certain time period, and it will allow TaTa Valley to amend aspects of its proposal in the future.⁹⁷

- 8.5 TaTa Valley considers the Rural zone provisions⁹⁸ would not provide an appropriate policy platform for the development contemplated for the Site. Furthermore, relying on the Rural zone provisions⁹⁹ and resource consent processes to enable the Proposal will not provide sufficient certainty or visibility to the community or TaTa Valley as to how the Site is proposed to be developed. Additional amendments would be required to the Rural zone provisions to better provide for the Resort in this zone, which would risk enabling activities similar in function or scale throughout the Rural zone. This would be poor outcome,¹⁰⁰ and would make the Rural Zone provisions unwieldy for plan users. Mr Wyeth agrees with this risk.¹⁰¹
- 8.6 In contrast, the provisions of the Resort Zone will provide an effective framework for Council to use in their decision making and provide greater certainty in terms of outcomes, than if the Site was zoned Rural.
- 8.7 The Resort Zone provisions have been crafted in an integrated manner to ensure a target effects management regime that has been developed for the activities contemplated for the Zone, taking into account site constraints. This provides clear expectations as to the type of development considered appropriate, clarity regarding the consent process and ensures appropriate effects management.¹⁰² The Resort Zone is therefore considered to be a more effective and efficient approach to achieving the objectives.
- 8.8 In summary, TaTa Valley considers the use of a special purpose zone provides an appropriate framework to more appropriately guide and manage the principal activities proposed for the Site. The rural zoning, as currently proposed by the Council,¹⁰³ would

⁹⁶ Paragraph 3.7(d), Statement of Rebuttal Evidence of Mr Scrafton.

⁹⁷ Paragraph 3.7(e), Statement of Rebuttal Evidence of Mr Scrafton.

⁹⁸ As amended by the s42A Report for the Rural zone topic.

⁹⁹ As amended by the s42A Report for the Rural zone topic.

¹⁰⁰ Paragraphs 3.8 and 3.9, Statement of Rebuttal Evidence of Mr Scrafton.

¹⁰¹ Paragraph 124(c), Section 42A Report: TaTa Valley Resort Zone.

¹⁰² Paragraph 3.14, Statement of Rebuttal Evidence of Mr Scrafton.

¹⁰³ Refer to the Section 42A Report for the Rural Zone topic.

not provide for a holistic and integrated approach to the activities proposed.¹⁰⁴ It does not contemplate or enable TaTa Valley's vision, and the policy framework does not effectively provide for such development to occur.

9. OUTSTANDING S42A ISSUES / ISSUES RAISED IN EVIDENCE

9.1 Turning to the outstanding issues raised in the Council's s42A Report and in evidence received from submitters, TaTa Valley responds as follows.

Request to defer rezoning pending outcomes of the consent process

9.2 Rebuttal evidence filed on behalf of the Waikato Regional Council (**WRC**) opposed the Rezoning pending the outcomes of the resource consent process.¹⁰⁵ TaTa Valley disagrees with this view as:¹⁰⁶

- (a) There is no requirement within the RMA that requires resource consents to be confirmed in advance of rezoning land;
- (b) There is no certainty that the required resource consents will be approved. By contrast the proposed rezoning will provide certainty regarding the continued development and operation of the Site, and allow for the integrated management of the Resort;
- (c) It would be highly inefficient to require a future plan change process (either by the Council or by TaTa Valley) should the resource consent process prove unsuccessful;
- (d) The statutory tests and considerations under the RMA for a plan change are different to those for a consent process, and so are not interdependent on each other;
- (e) The information provided with the submission is adequate for the Commissioners' to make a decision on the Rezoning; and
- (f) There will likely be subsequent stages of development and ongoing operational requirements over and above that which would be enabled under the current consent application. The consent packages and rezoning applications were always intended to be complementary and work together to provide for the Resort development.

¹⁰⁴ And associated effects management.

¹⁰⁵ Paragraph 27.1, rebuttal evidence of Miffy Foley, 10 March 2021.

¹⁰⁶ Paragraph 4.2 – 4.4, Statement of Rebuttal Evidence of Mr Scrafton.

Maintenance of rural character and amenity

- 9.3 Mr Wyeth also recommended adding an additional objective and amending Policy 4 of the proposed Resort Zone provisions. Mr Wyeth considered the provisions proposed by TaTa Valley¹⁰⁷ were overly focused on enabling development and had insufficient focus on managing adverse visual and landscape effects from the Site.¹⁰⁸
- 9.4 TaTa Valley considers the Resort Zone policy framework strikes an appropriate balance between enabling development and effects management. However, TaTa Valley agrees that further recognition of rural character and amenity could be acknowledged but does not consider the Reporting Officer's suggested changes are wholly appropriate. TaTa Valley has therefore proposed some alternative text, to Objective 2 (as opposed to a new Objective 3 as suggested by the Reporting Officer) and Policy 4, as set out in Mr Scrafton's rebuttal evidence.¹⁰⁹

10. CONCLUSION

- 10.1 Based on all of the evidence presented there is a compelling case with clear evidence that the Resort Zone will align to realise TaTa Valley's vision for the Resort. Overall, TaTa Valley's rezoning proposal is the most appropriate resource management outcome for the Site, and the most efficient and effective in terms of costs and benefits. TaTa Valley requests that the Panel approve its request for rezoning.

¹⁰⁷ As attached to Mr Scrafton's Statement of Primary Evidence at Appendix A.

¹⁰⁸ Paragraph 95, Section 42A Report: TaTa Valley Resort Zone.

¹⁰⁹ Paragraphs 3.18 – 3.21, Statement of Rebuttal Evidence of Mr Scrafton.

APPENDIX A: TATA VALLEY CONCEPT PLAN

