

BEFORE HEARING COMMISSIONERS

UNDER the Resource Management Act 1991
(‘RMA’)

IN THE MATTER OF the Proposed Waikato
District Plan (‘PWDP’), Hearing 9: Business and
Business Town Centre

STATEMENT OF EVIDENCE OF AARON JAMES GREY (PLANNING)
ON BEHALF OF
HUGH GREEN LIMITED

24 JANUARY 2020



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1. Introduction

Qualifications and Experience

- 1.1 My full name is Aaron James Grey. I hold a Bachelor of Planning with Honours from the University of Auckland and I am an Intermediate Member of the New Zealand Planning Institute.
- 1.2 I have had six years' experience covering a wide range of land use and subdivision planning matters on behalf of private and public entities in New Zealand. During that time, I have been involved with many aspects of resource management including preparation and lodgement of resource consent applications, resource consent hearings, submissions, and presentation of evidence in respect of plan changes.
- 1.3 I currently hold the position of Senior Planner with CivilPlan Consultants Limited, which I have held for the past year, and I previously held the position of Planner from April 2016. For the two years prior, I held the position of Planner with Baseline Group Limited in Christchurch.

Expert Witness Code of Conduct

- 1.4 I have read the Code of Conduct for Expert Witnesses contained in the Environment Court's Practice Note 2014. I have read and agree to comply with that Code.
- 1.5 I have complied with the Code of Conduct in preparing this evidence and agree to comply with it while giving oral evidence before the Hearing Commissioners, as if this were a hearing before the Environment Court. I have considered all material facts that I am aware of that might alter or detract from the opinions that I express. This evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.

My Role

- 1.6 I have been engaged by Hugh Green Limited ('HGL' or 'the submitter') to provide strategic planning advice, inputs and assistance in relation to the PWDP processes as it concerns the property interests of HGL within the Waikato District.
- 1.7 The submitter's interests in the PWDP include the planning provisions applying to their landholdings at Saleyard Road, Te Kauwhata, listed in their submission on the PWDP ('the submitter's land').

Material Reviewed

- 1.8 In preparing my evidence I have specifically reviewed the following material:
- (a) The relevant sections of the PWDP (notified version), primarily being:
 - (i) Chapters 1 (Introduction), 4 (Urban Environment), 13 (Definitions), 17 (Business Zone) and 18 (Business Town Centre Zone);
 - (ii) Appendices 03.3 (Town Centre Guidelines) and 10.5 (Te Kauwhata Town Centre Character Statement); and
 - (iii) The planning maps;
 - (b) The Section 32 Report for Business and Business Town Centre;
 - (c) The reporting officer's report ('42A report') for Hearing 9, prepared by Alan Matheson;
 - (d) Section 3.62 of the reporting officer's report for Hearing 5 (Definitions), prepared by Anita Copplestone and Megan Yardley; and
 - (e) Section 4.1.14 of the Statement of Rebuttal Evidence for Hearing 5 (Definitions), prepared by Anita Copplestone and Megan Yardley.

Scope of Evidence

- 1.9 My evidence addresses the provisions of the Business Town Centre and Business zones ('BTCZ' and 'BZ', respectively), with specific regard to the appropriateness of these provisions for the submitter's landholdings at Saleyard Road, Te Kauwhata.
- 1.10 The PWDP has zoned the submitter's land BTCZ. However, HGL submitted that this zone is inappropriate and sought that this land and neighbouring land be BZ instead, alongside a variety of changes to the provisions of that zone. In case the rezoning was not accepted, a variety of changes to the provisions of the BTCZ were also sought.
- 1.11 The Waikato District Council has opted to hear submissions on zone provisions separate and prior to hearing submissions on zoning. As the merits of rezoning is to be considered by another hearing, this is unfortunately outside the scope of the evidence. Therefore, my evidence cannot be prepared with the knowledge of whether the sought rezoning is accepted or not. My evidence is therefore prepared on the basis that either of the zones may apply to the submitter's land and the neighbouring land. I intend to provide evidence in support of rezoning the land at that later hearing.

2. Executive Summary

- 2.1 This evidence relates to the suitability of the Business Town Centre zone ('BTCZ') provisions to provide for the efficient development of all land subject to that zone, with specific consideration to the land owned by the submitter at Saleyard Road, Te Kauwhata.
- 2.2 This evidence also relates to the suitability of the Business Zone ('BZ') provisions to provide for the efficient development of the submitter's land at Saleyard Road, Te Kauwhata should that be determined to be the more appropriate zone (which I will provide evidence in regard of at a future hearing).
- 2.3 The submitter's land and neighbouring land at Saleyard Road consists of 9.1 ha of vacant or undeveloped land within the BTCZ that is three times larger than the area of the existing town centre of Te Kauwhata. I consider that the provisions of the BTCZ need to account for the unique characteristics of this land (in comparison to other land in the zone) by enabling the extension of suitable activities adjacent to existing development while also protecting the character of that existing development.

Broad application of provisions in the Business Town Centre Zone

- 2.4 I consider that it is most appropriate for the provisions of the BTCZ to prioritise the streetscape of each town's 'main street', which would be identified by on the planning maps (e.g. verandah lines), and for restrictions for developments that do not affect that streetscape to be relaxed. This includes:
- (a) Providing for, as a permitted activity, buildings that do not front a 'main street' on sites not covered by the town's Character Statement and not be subject to frontage controls (such as building up to the street boundary and requiring display windows);
 - (b) Providing for, as a permitted activity, large scale commercial activities that have limited frontage to a 'main street' and integrate with existing or proposed small scale activities; and
 - (c) Providing for, as a permitted activity, offices and residential activities at ground floor level on sites that do not front a 'main street'.
- 2.5 The current broad application of streetscape appearance to all streets within the Town Centre restricts the existing functional use of 'backs' and 'sides' of town centres for servicing requirements (including parking) and also has the potential to dilute the focus of town centres on existing 'main streets', especially where the BTCZ consists of a land area of land (such as at Te Kauwhata).

Plan provisions' ability to enable resource consent approval of non-permitted activities in specific circumstances

- 2.6 I consider that the objectives, policies and activity statuses proposed by the PWDP can be interpreted by the reader to bluntly exclude activities in the BZ and BTCZ that would still be appropriate in certain circumstances. The appropriateness of these activities in these zones in certain circumstances has even been recognised by Council's reporting (section 32 and 42A reports). This includes large scale retail activities (including supermarkets), offices at ground floor level and residential activities at ground floor level.
- 2.7 Council's reporting officer suggests that suitable instances of these activities can be provided for through the resource consent process. However, I consider that the current PWDP provisions would not enable a Council consenting officer to determine such an activity to be consistent with plan provisions.
- 2.8 In this regard, I consider it necessary for the plan provisions (through changes to policies and increased use of restricted discretionary activities and matters of discretion) to identify the circumstances that these activities should be enabled, while ensuring that the strategic outcomes from these zones are still met.
- 2.9 I also consider that any activity that is deemed to be suitable in certain circumstances should not be a non-complying activity and instead be a restricted discretionary activity with matters of discretion focused on allowing activities in those circumstances (or otherwise a discretionary activity, but only if the circumstances under which that activity would be suitable cannot be appropriately qualified or are wide ranging).

Inefficiencies and unintended consequences created by necessitating resource consent for some activities

- 2.10 I consider it necessary to recognise the economic cost and the discouragement of development (including those with positive effects) that results from a rule requiring an activity to obtain resource consent. In this regard, I consider that:
- (a) The provisions related to the gross leasable floor area of commercial activities in the BZ and BTCZ should not result in certain tenancy sizes not being provided for as a permitted activity in either zone, or not being provided for as a permitted activity within whole townships; and
 - (b) Town Centre Guidelines and Character Statements should be used to develop a series of standards that enables developments that are consistent with these outcomes to be a permitted activity, and allow for resource consent applications that do not comply with one or more of these provisions to have a reduced scope of matters requiring consideration.

Consistency between similar provisions

2.11 I also consider that the consistency of provisions proposed within the PWDP should be ensured, including:

- (a) Recognising that “retail activity” and “commercial services” are both subtypes of “commercial activity” regardless of the zone, and that contradictions should not arise between provisions applying to the ‘parent’ and ‘child’ activities; and
- (b) Providing for exceptions to restrictions on activities at ground floor levels (such as allowing for lobbies, staircases and lifts) to apply to all activities subject to this restriction and across both zones.

Specific rules for the land at Saleyard Road

2.12 The provisions of the operative Waikato District Plan (Waikato Section) that apply to the land at Saleyard Road, anticipate a mixed-use outcome (including areas solely for residential activities), which I consider to be an appropriate form of development for this land. I consider that, as alternative relief to that directly sought by the submitter, provisions similar to those in the operative plan could be ‘rolled over’ to the proposed plan through introducing rules specifically applying to this land (similar to the Lakeside Te Kauwhata Precinct).

2.13 However, I do not support the requirement currently in the operative plan for a comprehensive development plan to be applied for (as a resource consent) prior to any development occurring, as I consider this requirement to be a detriment to any development occurring to date, as well as *ultra-vires*.

2.14 I also consider that any ‘specific’ rules for this land should not be any more onerous than the provisions of the land’s underlying zone (whether that be BTCZ or BZ), which can also deter development.

3. Characteristics of the Land at Saleyard Road

3.1 HGL’s landholdings at Saleyard Road, Te Kauwhata, referred to in my evidence as ‘the submitter’s land’ is listed in section 1.1 of their primary submission. This consists of five contiguous parcels of land held in eleven Records of Title that have a collective area of 1.5 ha. All of this land is vacant. The land fronts the eastern side of Saleyard Road (the western side being the railway line) for a length of approximately 150 m, for a depth of approximately 100 m. The land is to the north of properties that front (on their southern boundaries) Main Road, which is the main commercial centre of Te Kauwhata.

- 3.2 HGL's primary submission also considered additional sites adjacent to their land with similar characteristics, listed in paragraph 1.2.9 of that submission. These are four parcels, each in their own Record of Title and under separate ownership, to the north and east of the submitter's land, that have a collective area of 7.6 ha. Three of these sites (3.2 ha, 2.0 ha and 1.6 ha in area) contain only a single dwelling and accessory buildings. The fourth site (8,094 m² in area) is vacant. These sites are referred to in my evidence as 'the neighbouring land'.
- 3.3 The submitter's land and the neighbouring land is collectively referred to in my evidence as 'the land at Saleyard Road'. Together, this land is 9.1 ha of vacant or underdeveloped (rural in nature) land directly adjacent to the existing 'main street' of Te Kauwhata. All of this land is proposed to be zoned BTCZ under the PWDP.
- 3.4 For comparison, the cumulative area of sites in the Te Kauwhata Town Centre zone that contain existing urban development is approximately 3 ha, a third of the area of the land at Saleyard Road.
- 3.5 As discussed above, the appropriateness of the BTCZ for the submitter's land and the neighbouring land and whether this should instead be zoned Business is not within the scope of this evidence.¹
- 3.6 I consider that this significant area of land can be developed in a manner unique to any other land zoned BTCZ in the Waikato District. Of the other towns in the district that contain the BTCZ, I consider that only Pokeno includes any significant vacant land, although in that case those sites front Great South Road (the 'main street' in that town). The land at Saleyard Road does not have frontage to any 'main street'.
- 3.7 Therefore, I consider that the provisions of the BTCZ need to be robust enough to account for the unique characteristics of this land in comparison to other land in the zone. Alternatively, I consider these unique characteristics to be justification for specific provisions to be provided for this land.

¹ However, I welcome any questions the panel may have regarding my opinion on the zoning that it deems necessary to consider as part of this hearing on zone provisions.

3.8 Another characteristic of the submitter's land that should be taken into account is its location directly adjacent to the currently unused Te Kauwhata train station. With train services commencing between Hamilton and Papakura this year (albeit without a stop at Te Kauwhata) and the population of Te Kauwhata contributing to growing, I consider there to be increased probability that the Te Kauwhata train station will reopen. The reopening of the Te Kauwhata train station provides the opportunity for a transit orientated development to occur at adjacent sites, including the submitter's land, consisting of a mix of uses including residential dwellings at higher densities. Therefore, the provisions of the PWDP should not preclude development of that type occurring.

4. Common Themes Relating to Multiple Provisions

4.1 The following comment themes were identified in preparation of this evidence and so are discussed prior to assessment of provisions related to specific activities.

Provisions applying to the full extent of the Business Town Centre Zone versus identified road frontages

4.2 The primary submission and further submissions of HGL sought and supported (respectively) relief that increased the reliance on the verandah lines identified on the planning maps in the BTCZ, including:

- (a) Offices, residential activities and multi-unit development only be required to be above ground floor level if a site is subject to a verandah line (elsewhere, these activities are permitted at any floor); and
- (b) The requirement for buildings to not be set back from the road boundary and provide display windows for 50% of the façade apply only to frontages to a verandah line.

4.3 Verandah lines have been identified on the planning maps where continuous shop frontages have historically established or are expected to be continued and apply to most, but not all, frontages of sites within the BTCZ, defining the 'main streets' of each town.²

4.4 Verandah lines have not been applied to secondary or side streets in BTCZ. I observe that such streets are not characterised by continuous street frontages and often provide service access or parking areas that support the activities fronting the 'main streets' (and should not be discouraged through provisions of the PWDP). These secondary or side streets can also contain residential activities, often with properties on the opposite side of the road within the Residential Zone, and so amenity conflicts between business and residential land have the potential to occur.

² George Street in Tuakau, Great South Road in Pokeno, Main Road in Te Kauwhata, Main Street in Huntly, Jesmond Street and Great South Road in Ngaruawahia and Main Road in Raglan.

- 4.5 The PWDP applies the same expectations of streetscape (other than the provision of verandahs) to all frontages of sites within the BTCZ. I do not consider that this achieves the sought outcome of enhancing the viability of existing town centres, as this has the potential to dilute the concentration of activities in the town centre along 'main streets', especially in towns with large areas of land within the BTCZ (such as Te Kauwhata).
- 4.6 I also consider that the broad application of streetscape rules would have the potential to:
- (a) prevent the establishment of activities or construction of development adjacent to main streets but within the BTCZ that would benefit the town centre; or
 - (b) result in elongated processes for obtaining resource consent for activities that do not comply with the PWDP rules but would be generally anticipated to be provided for by the general public (an example being the proposed Countdown supermarket in Pokeno).
- 4.7 The section 42A report does not appear to give any serious consideration to the approach of rules in the BTCZ applying only to (or applying differently to) roads identified on the planning maps similar to the approach already proposed for verandahs, as was sought by the submission of HGL.
- 4.8 My evidence considers this approach to be a suitable method to achieve the objectives and policies of the PWDP (including recommended amendments) and is relied upon multiple times in the subsequent sections.

Reliance upon the resource consent process to enable 'suitable' discretionary or non-complying activities

- 4.9 The section 42A repeatedly references the ability of the resource consent process to enable suitable outcomes not provided for by the provisions of the PWDP as justification to not support relief sought in relation to large scale commercial activities (including supermarkets),³ offices at ground floor level⁴ and residential activities at ground floor level.⁵ In each case, the section 42A report accepts that there are circumstances where such activities would be suitable within the BTCZ.
- 4.10 I note that developments that have a tenancy gross floor leasable area greater than 500 m² or include residential activities at ground floor level are proposed to be a non-complying activity. Therefore, any application for resource consent would need to satisfy that the development passes the section 104D threshold test.⁶

³ At paragraph 525.

⁴ At paragraph 524.

⁵ At paragraph 333.

⁶ This test requires that either the adverse effects of the proposal are deemed to be no more than minor or that the activity is deemed not be contrary to the objectives and policies of a plan and any proposed plan.

- 4.11 The first limb is not directly related to the provisions in the PWDP as it depends on the assessment of effects on a case by case basis. However, I note that activities deemed to be 'suitable' that are anticipated to obtain resource consent may or may not pass this limb of the threshold test, as adverse effects that are more than minor can be appropriately mitigated or offset.
- 4.12 The ability for 'suitable' non-complying activities to pass the second threshold test depends solely on the wording of the applicable objectives and policies. In this case, I have observed that the proposed policies direct certain developments to be "discouraged" or "avoided" without any exceptions, even though the section 42A report recognises that developments of these types may be suitable in the BTCZ. The inclusion of these terms would, in my opinion, make such activities unable to pass this limb of the threshold test and potentially unable to obtain resource consent under section 104D,⁷ even if Council would have made a decision under section 104 of the RMA (after weighing up all applicable matters) to grant resource consent.
- 4.13 Similarly, without objectives and policies outlining the characteristics of 'suitable' occurrences for both discretionary activities (such as offices at ground floor level) and non-complying activities (as described above), resource consent can be declined in relation to the regard needed to be given to the provisions of a plan under section 104(1)(b)(vi) of the RMA.
- 4.14 Therefore, I consider it important that the policies of the PWDP are amended to clearly identify the instances where activities that do not comply with a rule should be granted resource consent, particularly for non-complying activities.⁸
- 4.15 Further to this, I consider that non-complying activity statuses are generally interpreted by a reader of a district plan to apply to activities that, in almost all circumstances, Council would not support granting resource consent for. Restricted discretionary and discretionary activity status are instead interpreted by a reader of a district plan that Council wants to limit the establishment of but would be accepted in certain circumstances.⁹
- 4.16 Considering this, my view is that if the reasons for preventing an activity from establishing can be qualified, which has occurred in the section 42A report,¹⁰ then the appropriate status of that activity should be restricted discretionary, and the matters of discretion be based on those qualified reasons. Only if all reasons cannot be appropriate qualified or the reasons are wide-ranging should the appropriate status of an activity be discretionary.

⁷ I note that any activity that Council considers necessary to publicly notify (due to adverse effects on the environment potentially being more than minor) would be unable to pass the section 104D threshold test, as the same test applies to the first limb (and the policies to not enable the second limb to be passed).

⁸ Such as the relief sought by submission points 558.3 and 749.7 (each supported by HGL in its further submission).

⁹ For restricted discretionary activity, the matters of discretion clearly identify these circumstances.

¹⁰ As identified in subsequent sections of my evidence.

4.17 Potential relief to ensure an appropriate outcome is achieved that enable 'suitable' activities to obtain resource consent is discussed in relation to each of these activities in the subsequent sections of my evidence.

5. Provisions Related to Commercial Activities

5.1 HGL's primary submission sought the following relief in relation to commercial activities (including offices) in the BZ and BTCZ:

- (a) In the BZ, where "Commercial activity" is already a permitted activity, that "Retail activity" is also listed as a permitted activity;¹¹
- (b) That the permitted activity requirement for offices in the BTCZ to be above ground floor level apply only to 'main streets' with a verandah line;¹² and
- (c) That restrictions on gross leasable floor area of individual tenancies in the BTCZ is relaxed through removal of the non-complying activity status.¹³

5.2 HGL's further submissions also supported relief that "key commercial activities" such as supermarkets be encouraged in the BTCZ by amending Policy 4.5.10.¹⁴

"Commercial activity" versus "Retail activity"

5.3 Section 47 of the section 42A report¹⁵ rejects the inclusion of "Retail activity" as a permitted activity in Rule 17.1.2, on the basis that this "*would be contrary to the policy direction (such as Policy 4.5.2(a)(i)), that seeks to direct retail activity to the Business Town Centre*".

5.4 However, the section 42A report fails to recognise that, since Rule 17.1.2 already lists "Commercial activity" as a permitted activity (and the section 42A report does not suggest deletion of this)¹⁶ retail activities are already permitted pursuant to that provision.

5.5 This is because Chapter 13 of the PWDP provides the following definition for "commercial activity": "*Means activities involving the sale or distribution of goods and services*". Given the direct reference to the sale of goods and services, I consider that this would include retail activities (which is defined in Chapter 13 as "*the sale or hire of goods or services or equipment directly to the public*").

¹¹ In Rule 17.1.2.

¹² By adding "if the site is subject to a verandah line identified on the planning maps" to the activity-specific conditions for Rule 18.1.2 P8.

¹³ By deleting "and no greater than 500 m²" from Rule 18.3.3 D1 and deleting Rule 18.3.3 NC1.

¹⁴ Submission point 588.33.

¹⁵ Specifically, paragraph 313.

¹⁶ Although a minimum tenancy size is recommended to be introduced.

- 5.6 I also note that the section 42A report for Hearing 5, for Definitions, recommends amendment of the definition of “commercial activity” to match the definition provided within the National Planning Standards,¹⁷ alongside deletion of the definitions of “commercial services” and “retail activity”, given that these are both captured by the definition of “commercial activity”.¹⁸ Rebuttal evidence for this hearing by the reporting officers retains this recommendation but notes that subsequent hearings may necessitate revised definitions of “commercial services” and “retail activity”.¹⁹
- 5.7 The outcome sought for Rule 17.1.2 is, in my view, one of clarity and consistency. If a definition for “retail activity” is being retained, then this should be listed as a separate permitted activity, as has already been proposed in Rule 18.1.2. If the definitions for “retail activity” and “commercial services” are being deleted, then “retail activity” should be deleted from Rule 18.1.2 and “commercial services” should be deleted from both Rules 17.1.2 and 18.1.2, resulting in sole reliance on “commercial activity”.
- 5.8 In addition, I consider that inclusion of retail activity as a permitted activity would not be contrary to Policy 4.5.2(a)(i), as this policy refers to retail activities and commercial services equally (and the reporting officer has not suggested the removal of commercial services as a permitted activity in Rule 17.1.2). Greater consistency with Policy 4.5.2(a)(i) can be achieved through the introduction of activity-specific conditions, such as has already been proposed with the minimum tenancy size for commercial activities.²⁰

Tenancy areas

- 5.9 Various submissions have sought relief to the restrictions on tenancy floor areas.
- 5.10 The section 42A report recognises²¹ that the policies of the PWDP anticipate a differentiation in the scale of commercial activities between the BZ and BTCZ,²² but that the standards that directly provide for this outcome are insufficient. To alleviate this, a minimum gross floor area per tenancy of 500 m² has been recommended for commercial activities in the BZ, while the provisions of Rule 18.3.3 (controlling gross leasable floor areas of tenancies) are retained for all activities in the BTCZ.

¹⁷ “means any activity trading in goods, equipment or services. It includes any ancillary activity to the commercial activity (for example administrative or head offices).”

¹⁸ Refer to section 3.62 of that hearing’s 42A report.

¹⁹ Refer to section 4.1.14 of that rebuttal evidence.

²⁰ Refer to paragraphs 312, 318 and 320 of this hearing’s 42A report.

²¹ At paragraph 312.

²² Specifically, that Policy 4.5.2(a)(ii) seeks to provide for larger-scale commercial activities in the BZ.

- 5.11 Upon further review of all documents, I consider that the enforcement of a minimum gross leasable floor area per tenancy for commercial activities in the BZ²³ is appropriate as a method to ensure that the BTCZ remains the primary retail, administration, commercial service and civic centre for each town that contains a BTCZ.²⁴ However, I consider that this may not be suitable for the BZ in settlements that do not contain a BTCZ,²⁵ as there would then be no ability for a commercial activity less than 500 m² to establish anywhere in that settlement as a permitted activity.
- 5.12 In this regard, I consider it necessary for the metrics of the gross leasable floor area restrictions in the BZ and BTCZ be devised with respect to each other in order to avoid creating ‘gaps’ where commercial activities of a certain size are not permitted in any zone.
- 5.13 The minimum area of 500 m² recommended to apply in the BZ would result in commercial activities with a GLFA between 350 m² and 500 m² being discretionary activities in both the BZ²⁶ and the BTCZ.²⁷ I consider that provisions that do not permit commercial activities between 350 m² and 500 m² in any zone indicated to the reader of the plan that commercial tenancies of this size are not welcome in the Waikato District, contrary to strategic policies. I expect that the requirement for resource consent for these activities would frustrate developers and may lead to inefficient outcomes that attempt to circumvent this restriction.
- 5.14 I consider that an overlap in permitted tenancy areas should occur, whereby an area range would be permitted in both zones, in order to avoid these issues. Using the figures of 350 m² and 500 m² already provided in the PWDP,²⁸ a minimum of 350 m² in the BZ and a maximum of 500 m² in the BTCZ would achieve this.

Business Zone rule infringements

- 5.15 I note that commercial tenancies less than 500 m² in GLFA is to be a discretionary activity. With regard to my earlier comments in paragraph 4.15 of this evidence, if the reason for the proposed activity-specific condition is to prevent adverse effects upon the function of the BTCZ as the primary retail, administration, commercial service and civic centre for each town,²⁹ then I consider that infringement of this standard should be a restricted discretionary activity, with discretion limited to effects on the viability of the town centre. If there are no other adverse effects being managed by this standard, then there is no need for any other matters to be considered and therefore an activity status of discretionary is inappropriate.

²³ As well as applying to the activity of “commercial activity”, this would also need to apply to “commercial services” and “retail activity”, if retained and inserted, respectively.

²⁴ Such as Te Kauwhata, and therefore the application of this provision on the land at Saleyard Road is supported.

²⁵ Including Mercer, Rangariri and Taupiri.

²⁶ Under Rule 17.1.4 D2, as a result of the recommended activity-specific condition.

²⁷ Under Rule 18.3.3 D1.

²⁸ Any metrics deemed appropriate for each zone as a result of this hearing can alternatively be used.

²⁹ As appears to be the case when reading the justification in paragraph 312 of the section 42A report.

5.16 Furthermore, although not currently proposed,³⁰ I consider that a non-complying activity status would be inappropriate as the policy framework does not include any provisions seeking that small scale commercial activities be minimised or avoided in the BZ (only that large scale activities be provided for). There are also instances where small-scale commercial activities such as local food and beverage outlets would be beneficial for inclusion within a BZ without adversely affecting the viability of the town centre, which a non-complying activity status would likely prevent from establishing.

Business Town Centre Zone rule infringements

5.17 Paragraph 629 of the section 42A report states that “activities requiring larger floor areas and/or needing to be accessed by vehicles due to the nature of the products provided”³¹ are provided for in the BZ and therefore there is no need for the BTCZ provisions – which result in large scale retail being a non-complying activity (and therefore unlikely to be approved resource consent) – to be changed.

5.18 However, I consider that this statement is inconsistent with the assessment within the Section 32 report for the BZ and BTCZ, rejecting the approach of defining a zone or overlay for large scale retail activities (Table 14, Option 1). The rejection of this option recognised that “*there are a number of factors that determine where large scale retail can viably locate*” and that “*This provides less flexibility for the future to respond to changing needs*”.

5.19 The Section 32 report also recognises that if large scale retail is not appropriately provided for within business zones, then these are likely to establish in industrial areas and detract from the approach taken to establish a hierarchy of centres (suggesting that these activities are most appropriately located within or directly adjacent to town centres). In recognition of these matters, I consider that the BTCZ provisions should not bluntly preclude any large scale retail activities from occurring in town centres.

5.20 Paragraph 629 of the section 42A report also specifies that the metrics and activity statuses related to tenancy areas in the BTCZ “*have been deliberately chosen to give effect to the policy direction of supporting smaller-scale commercial activities to the Business Town Centre, and creating a pedestrian-attractive centre to the towns*”.

5.21 The reliance of controls on tenancies areas to achieve the policy direction appears to assume, in my opinion, that the BTCZ applies only to established town centres along one or two ‘main streets’ containing allotments approximately 50 m deep. With this environment in mind, I consider that preventing enabling large-scale retail activities is justifiable, as they have the potential to dominate the streetscape of the town centre.

³⁰ I provide these comments in case this outcome is considered.

³¹ Which I interpreted to include large scale retail.

- 5.22 However, for land that is vacant and/or does not front an established ‘main street’ (such as the land at Saleyard Road), I consider that a non-complying activity status minimises the flexibility of this land to provide for commercial activities that support the established ‘main street’, which may include large scale retail activities.
- 5.23 Considering all of this, I consider that the goals of supporting small scale commercial activities and a pedestrian-attractive centre to the towns can still be achieved without precluding any and all large scale retail activities from being established in the zone. Specifically, I consider that large scale retail activities should be provided for when they do not dominate the streetscape and do not prevent the establishment or continuation of small scale retail activities within the town centre.
- 5.24 I consider an appropriate method to achieve this to be to link all provisions related to town centre streetscape and viability – including a maximum gross floor area per tenancy – to specifically identified street frontages within the town centre, drawing on the earlier discussion in paragraphs 4.2 to 4.8 of this evidence. The existing verandah lines on the planning maps could be used for this purpose or else a new set of lines be included on the planning maps.
- 5.25 This would result in Rule 18.3.3 being amended so that the maximum gross floor area only applies to tenancies that front roads subject to a verandah line (or similar line), with allowance for large scale commercial activities to have a limited frontage to these roads.
- 5.26 A revised version of Rule 18.3.3 that I consider achieves this is set out as follows:³²

<i>P1</i>	<p><i>(a) Any individual tenancy within a building on land with a verandah line identified on the planning maps must have a gross leasable floor area of no more than 500 m², unless:</i></p> <p><i>(i) The individual tenancy is not within that part of the building at ground floor level that adjoins the verandah line identified on the planning maps; or</i></p> <p><i>(ii) The frontage of the individual tenancy (including any entrance) that adjoins the verandah line identified on the planning maps does not exceed 10 m, and tenancies to either side at ground floor level each have a gross leasable floor area of no more than 500 m².</i></p>
<i>D1</i>	<i>Any individual tenancy that does not comply with Rule 18.3.3 P1.</i>

³² This replaced the entirety of Rule 18.3.3, so tracked changes are not shown.

5.27 I consider that such a provision would still result in small-scale commercial activities being the dominant activity along ‘main streets’, while allowing for a wider variety of commercial activities to the rear of these or along other streets in the BTCZ (as determined by market forces), enhancing the viability of the town centre as a whole.

Supermarkets in the Business Town Centre Zone

5.28 Paragraph 525 of the section 42A report states the following:

“While it is accepted that supermarkets could be a suitable activity to be located in the Business Town Centre Zone, the design, layout, access and other aspects of the activity mean they should be assessed as to their suitability through a resource consent application process.”

5.29 However, I consider that the proposed provisions do not achieve this. The PWDP makes any tenancy greater than 500 m² in the BTCZ a non-complying activity. The policies applying to the BTCZ do not, in my opinion, encourage supermarkets regardless of whether their “design, layout, access and other aspects” are suitable.³³ I consider that a reader of the plan would interpret from these provisions that supermarkets are not a suitable activity within the BTCZ. Under these provisions, I expect that any resource consent application can easily be refused on the basis that the supermarket would be contrary to objectives and policies applying to large scale commercial activities in the BTCZ.

5.30 With regard to my earlier comments in paragraph 4.15 of this evidence, if the statement made in paragraph 525 was reflected in the provisions of the PWDP, I consider that supermarkets would be a restricted discretionary activity in the BTCZ, with matters of discretion limited to “design, layout, access and other aspects”,³⁴ indicating to the reader that supermarkets could be suitable within the BTCZ in certain circumstances. I consider that a non-complying activity status would not indicate this.

5.31 Drawing on the earlier discussion in paragraphs 4.9 to 4.17 of this evidence, if a non-complying activity status for supermarkets is to be retained whilst these still being ‘accepted’ in certain circumstances, then I consider that amendments to objectives and policies are required.³⁵

5.32 Amendments to Policy 4.5.10 were sought by Woolworths NZ Ltd,³⁶ which were supported by HGL’s further submission. However, these were rejected by the reporting officer due to the term used – “key commercial activity” – not being a defined term, and there not being any defined terms related to the scale or importance of commercial activities.

³³ For example, Policy 4.5.10(a) specifically discourages large scale activities from establishing in the BTCZ without any exception.

³⁴ If the “other aspects” are unable to be appropriately qualified as matters of discretion, then the activity status would instead be discretionary.

³⁵ In order to ensure that resource consent applications for ‘suitable’ supermarkets pass the threshold test.

³⁶ Submission point 588.33.

- 5.33 As such terms would only be used in policies and not in rules, I do not consider it necessary (only beneficial) for a term to require a definition. While rules require certainty of terms in order to determine the activity status of a proposal, including whether standards are complied with or not,³⁷ the application of policies in relation to a proposal are always applied on a case by case basis.³⁸
- 5.34 I note that the policies repeatedly refer to “small scale” and “large scale” commercial activities, without either of these terms being subject to a definition in the PWDP, and expect that whether an activity is “small scale” or “large scale” will be determined by Council’s consent processing team on a case by case basis.
- 5.35 I agree with the reporting officer that “key commercial activity” by itself is a loose term and open to a variety of interpretations, and so it should not be used in a policy. However, this does not mean that the intention of this term cannot be further defined and included as part of Policy 4.5.10. In this regard, it is my observation that it is best practice to only include a definition of a term if it is used on multiple locations throughout a plan, whereas in this case, what is meant by “key commercial activity” can be specified within this specific policy.
- 5.36 I consider that aspects of a large scale commercial activity that would deem it to be necessary to being located within the BTCZ include whether the activity encourages frequent trips to the town centre (therefore enhancing its viability) and whether the activity cannot be provided for directly adjacent to the BTCZ (i.e. within a suitably located BZ). Large scale commercial activities within the BTCZ should also respect the intention for small scale activities to be primarily located within this zone by ensuring that the development is integrated with small scale activities and does not significantly adversely affect the ability for small scale activities to be provided within this zone in the future. I accept that there are other factors that could also be considered that may be addressed by other submitters or the reporting officer.
- 5.37 I consider appropriate amendments to Policy 4.5.10, considering all of the above, to be as follows:
- (a) *Locate small scale retail activities within the Business Town Centre Zone ~~and discourage large scale activities from establishing within the Business Town Centre Zone.~~*
 - (b) *Locate large scale retail and commercial activities ~~to~~ primarily within the Business Zone.*
 - (c) *Discourage large scale activities from establishing within the Business Town Centre Zone, other than when:*
 - (i) *The activity provides an anchor tenant role that encourages frequent trips to the town centre (e.g. supermarkets);*

³⁷ In order for the correct sections of the RMA to be applied to the processing of the consent.

³⁸ Although I recognise the impact of case law and precedent effect in ‘firming up’ the interpretation of policies.

(ii) It is not feasible for the activity to be provided for within any Business Zone that is directly adjacent to the Business Town Centre Zone;

(iii) Establishment of the activity does not require (or has not required) the significant reduction of small scale activities within the Business Town Centre Zone; and

(iv) The activity is of a scale, design and layout that is integrated with small scale activities or does not impede the continued development of small scale activities within the Business Town Centre zone.

5.38 I consider that this revised policy retains the intent of providing for small scale activities within the BTCZ and large scale activities within the BZ, while providing a framework for when large scale activities such as supermarkets could be appropriate within the BTCZ.

5.39 I deem that consideration of the availability of adjacent BZ land is specifically relevant in the case of Te Kauwhata, where there is no such land adjacent to the BTCZ that is a sufficient size to enable a supermarket or similar tenancy to establish. In this regard, I note that HGL considers that the land at Saleyard Road is suitable for a supermarket and/or other large format retail tenancies as an extension to the existing commercial activities along Main Road.

Locations that supermarkets are likely to be established at

5.40 In paragraph 183 of the section 42A report, the reporting officer reflects upon the provision of newly-built supermarkets in the Canterbury and Waikato regions, concluding that as these have established outside of town centres and not within town centres, that there is no need for the provisions of the BTCZ to specifically provide for the establishment of supermarkets. While I expect that supermarket operators would be in a better position to speak to the rationale for the location of new supermarkets, including the impact that zone provisions have on this,³⁹ I find this to be a flawed conclusion.

5.41 Having worked in the Canterbury region shortly after the earthquakes, and having knowledge of the provisions of the Selwyn District Plan that applied to the Rolleston township, both supermarkets⁴⁰ are located in the Core Retail Precinct of the Business 1 zone, where supermarkets are a permitted activity. Therefore, the supermarkets are *within* the Rolleston town centre and this location is supported by the District Plan provisions. This is equivalent to the PWDP BTCZ including supermarkets as a permitted activity.

³⁹ Especially as Woolworths NZ Ltd is a submitter for this topic and is likely to appear at the hearing.

⁴⁰ I note that New World was established prior to the earthquakes and Countdown was located after the earthquakes.

- 5.42 I also note that the new Ormiston town centre in Auckland includes two supermarkets within its Town Centre zoning, with these being permitted by the Auckland Unitary Plan provisions, being a Pak ‘n’ Save⁴¹ and a New World⁴². In addition, a Countdown has also obtained resource consent to establish nearby in an industrial zone, although consent was approved on the basis that there was no longer sufficient land within the Town Centre zone available (with evidence for the application outlining that zone as its preferred location). This all suggests, in my opinion, that if supermarkets are able to be part of a town centre, they would choose to do so.
- 5.43 Therefore, I consider that the BTCZ provisions should not preclude supermarkets from establishing on the basis that the reporting planner has concluded that supermarket operators would not want to establish supermarkets within a town centre from observations⁴³ that some new supermarkets have been established outside of town centres.

Offices

- 5.44 Paragraph 524 of the section 42A report rejects the relief sought by HGL to relax the requirement for offices to be located above ground floor level on the basis that such activities would have *“the potential to create blank lengths to the shopping frontage that can be a disincentive for pedestrians to walk further along the street”*, and that the suitability of such activities can be considered through the resource consent process.
- 5.45 Drawing on the earlier discussion in paragraphs 4.9 to 4.17 of this evidence, I consider that if reliance on the resource consent process is to be used to enable ‘suitable’ occurrences of offices at ground floor level to be established, then the plan provisions need to be prepared in a manner that would allow for such activity to be granted resource consent. I do not consider that a discretionary activity status without any direct guidance within the policies clearly enables this.
- 5.46 Given that the primary (and only) concern identified in the section 42A report is the creation of blank façades on the streetscape and pedestrian amenity, I consider that the most appropriate activity status for offices at ground floor level should be restricted discretionary, with the matter of discretion being adverse effects on the streetscape and pedestrian amenity.

⁴¹ Which was the first store opened in the centre.

⁴² Currently under construction.

⁴³ That are not always correct.

5.47 Furthermore, if this is the only adverse effects needing to be managed, then I am of the opinion that offices at ground floor level that do not result in blank façades should not require resource consent and instead be a permitted activity, which could be achieved by either:

- (a) allowing offices at ground floor level that do not have street frontage (e.g. to the rear of other tenancies) to be a permitted activity; or
- (b) providing for all offices to be a permitted activity, subject to compliance with:⁴⁴
 - (i) glazing requirements at ground floor level (such as those in Rule 18.3.4);
 - (ii) those parts of the tenancy fronting the streetscape being solely for public interaction, such as reception areas; and/or
 - (iii) a maximum frontage of the tenancy.

5.48 I also note that the activity-specific condition of “located above ground floor level” for offices also applies to residential activities. For residential activities, submission point 602.14 sought that the requirement for residential activities to be above ground floor to exclude any entrance lobby, stairwell or lift related to that activity, with this amendment recommended by the section 42A report. Therefore, I consider that a similar amendment should be made to the identical activity-specific condition for offices, in order to provide for consistency between similar provisions.

5.49 The primary submission of HGL sought that the rule preventing offices at ground floor level only apply to sites where a verandah line has been identified on the planning maps. The section 42A report rejected this relief without any detailed reasoning as to why offices should not be located at ground floor level where they would not affect identified streetscapes of a town centre. Drawing on the earlier discussion in paragraphs 4.2 to 4.8 of this evidence, I consider the relief sought to be appropriate as they would not adversely affect the viability of the town centres’ ‘main streets’.

⁴⁴ Or similar provisions.

6. Provisions Related to Residential Activities

6.1 HGL's primary submission sought the following relief in relation to residential activities (including dwellings and multi-unit development) in the BZ and BTCZ:

- (a) That the permitted activity requirement for residential activities in the BZ to be above ground floor level be deleted;⁴⁵
- (b) That the permitted activity requirement for residential activities in the BTCZ to be above ground floor level apply only to 'main streets' with a verandah line;⁴⁶
- (c) That the restricted discretionary activity requirement for multi-unit development in the BZ to be above ground floor level be deleted;⁴⁷ and
- (d) That the requirement for multi-unit development in the BTCZ to be above ground floor level apply only to 'main streets' with a verandah line.⁴⁸

6.2 HGL's further submissions also supported the following relief:

- (a) That the BTCZ provides for residential activities by amending Policy 4.5.3;⁴⁹ and
- (b) That residential activity at ground floor should not be avoided on a blanket basis by amending Policy 4.5.11.⁵⁰

Inclusion of residential activities in Policy 4.5.3

6.3 The section 42A report does not recommend any changes to Policy 4.5.3, deeming that Policies 4.1.5(a) and 4.5.11 already sufficiently provide for residential activities.

6.4 I disagree with the position that these two policies robustly cover provision of residential activities within the BZ and BTCZ and I consider that changes to policies are still necessary.

6.5 While Policy 4.5.3 focuses on the primary commercial purpose of the BTCZ, clause (a)(iii) lists activities provided for within the zone, which are not limited to commercial activities, with community activities and facilities also included. I consider that a reader could interpret this to be an exhaustive list of activities that should be provided for within the BTCZ and interpret that residential activities within this zone would not support its commercial purpose.

⁴⁵ By deleting the activity-specific condition for Rule 17.1.2 P4 (replaced with "Nil"), deleting Rule 17.1.5 NC1 and 17.1.5 NC2, deleting condition (a)(i) of Rule 17.3.6 P1 and deleting Rule 17.3.6 NC1.

⁴⁶ By inserting "if the site is subject to a verandah line identified on the planning maps" to the activity-specific conditions for Rule 18.1.2 P2, Rule 18.1.5 NC2 and condition (a)(i) of Rule 18.3.8 P1.

⁴⁷ By deleting condition (a)(iii) of Rule 17.1.3 RD1 and deleting 17.1.5 NC2.

⁴⁸ By inserting "if the site is subject to a verandah line identified on the planning maps" to the activity-specific conditions for condition (b) of Rule 18.1.3 RD1 and Rule 18.1.5 NC3.

⁴⁹ Submission point 749.6.

⁵⁰ Submission points 679.3 and 749.7.

6.6 Policy 4.5.11 is then drafted in a manner that does not directly support residential activities. No part of this policy states that residential activities should be provided for in these zones in order to support their commercial viability. I consider that, if the purpose of this Policy is to recognise and enable residential activities within these zones⁵¹ and to support the permitted activity status for residential activities in these zones, then Policy 4.5.11 should be rewritten in line with the following:⁵²

(a) Further to Policies 4.5.3 and 4.5.4, provide for residential activities in the Business Town Centre Zone and Business Zone as part of mixed-use developments that:

(i) Maintain the commercial viability of the Business Town Centre Zone and Business Zone while:

~~(i) Providing for mixed use developments, ensuring residential activities are located above ground floor; and~~

(ii) ~~Avoiding residential activity located at ground floor level.~~

6.7 Furthermore, I consider that Policy 4.1.5(a) is drafted in a manner that allows a reader to conclude that residential activities should not be supported in the BTCZ (and potentially also the BZ). This includes the statement that higher density housing be “located near to” commercial centres (and therefore not necessarily *within*). Without a clear expectation of residential activities occurring within the BTCZ within Policy 4.5.3 and/or 4.5.11, I consider that reliance on Policy 4.1.5(a) to enable high density residential development within the BTCZ is not sufficient, and amendments to Policy 4.5.3 and/or 4.5.11, such as those in submission point 749.6 and/or above are necessary in order to ensure that this intent is clear.

Residential activities at ground floor

6.8 The relief sought by HGL in their primary submission was for the requirement for residential activities to be above ground floor level to be removed in the BZ and apply only to sites subject to a verandah line identified on the planning maps in the BTCZ. The section 42A report⁵³ rejects this relief on the basis that “*providing for residential activities as a permitted activity on the ground floor has the potential for the zone to developed [sic] essentially as a residential zone, which is contrary to the purpose of the zone*”. I recognise the potential for this to occur and therefore agree with that statement.

⁵¹ As alluded to in the section 42A report.

⁵² Please note that these amendments do not address the concerns I am about to raise about the use of “avoid” in subsection (ii).

⁵³ At paragraphs 308 and 525.

- 6.9 While I agree with the reporting officer that residential activities at ground floor should not be a permitted activity, I do not agree with the statement that *“the activity status of non-complying provides the level of assessment necessary for such activities against the objectives and policies of the district plan, as they have the potential to fundamentally challenge the outcome sought for [the Zone]”*.⁵⁴
- 6.10 An expansive development of residential activities at ground floor level is likely to, in my opinion, fundamentally challenge the outcome sought for either the BZ or the BTCZ, but I note that this can still be refused consent by Council if the activity status is restricted discretionary or discretionary, with reliance on appropriate matters of discretion and/or objectives and policies.⁵⁵
- 6.11 However, I expect that residential activities at ground floor level as part of a mixed-use development would have significantly fewer adverse effects upon the availability of land for commercial activities and in these cases consider that a non-complying activity status would be overzealous and it may be difficult to obtain resource consent.⁵⁶ Again, I consider that a restricted discretionary activity status would be most appropriate.
- 6.12 Paragraph 113 of the section 42A report, which rejects changes to the provisions restricting residential activities at ground floor states that *“Where there are unique situations applying to justify residential development at ground floor, then that can be assessed through the resource consent process, taking into consideration all the relevant objectives and policies”*. A similar argument is made in paragraph 333 in relation to the consideration of ground floor residential development adjoining a residential zone. If reliance on the resource consent process is to be used to enable ‘suitable’ occurrences of residential activities at ground floor level to be established, then the plan provisions need to be prepared in a manner that would allow for such activity to be granted resource consent.⁵⁷
- 6.13 In this case, the relevant policy controlling residential activities within the BZ and BTCZ is Policy 4.5.11. This policy seeks to maintain the commercial viability of the zones, while *“**Avoiding** residential activity located at ground floor”*,⁵⁸ without any exceptions. With recognition to the King Salmon decision,⁵⁹ which held that ‘avoid’ has its ordinary meaning of “not allow” or “prevent the occurrence of”, I consider that Policy 4.5.11 would have the effect of any residential activity located at ground floor level, regardless of its merits, being contrary to the objectives and policies of a plan and therefore would be unable to pass that limb of the section 104D threshold test⁶⁰ or unduly give Council cause to decline resource consent.

⁵⁴ At paragraphs 349 and 554.

⁵⁵ As per sections 104B and 104C, respectively, of the RMA.

⁵⁶ Refer to the earlier discussion in paragraphs 4.5 to 4.13 of this evidence.

⁵⁷ A non-complying activity invokes strict circumstances under which resource consent for such activities can be granted – refer to the earlier discussion in paragraphs 4.5 to 4.13 of this evidence.

⁵⁸ Emphasis added.

⁵⁹ [2014] NZSC 38.

⁶⁰ Which may result in Council unable to grant resource consent for the activity, regardless of whether it is ‘suitable’.

- 6.14 Therefore, I do not consider a non-complying activity status to be the most appropriate activity status for residential activities at ground floor level. However, I consider that a non-complying activity status could be appropriate for residential activities at ground floor level where the frontage road is subject to a verandah line identified on the planning maps.
- 6.15 Regardless of the activity status applying, if the resource consent process is to be relied upon for 'suitable' residential activities at ground floor to be established, then I consider that Policy 4.5.11 should be amended to specify the instances that residential activities at ground floor level should be allowed or the effects of residential activities at ground floor level that should be avoided.
- 6.16 Otherwise, I note that submission point 602.14 sought that the requirement for residential activities to be above ground floor in the BTCZ to exclude any entrance lobby, stairwell or lift related to that activity, and this amendment was recommended by the section 42A report. I consider that a similar amendment should also be made to the identical activity-specific condition for residential activities in the BZ, in order to provide for consistency between similar provisions.

7. Provisions Related to Building Design and Appearance

- 7.1 HGL's further submissions supported the following relief in relation to building design and appearance in the BZ and BTCZ:
- (a) That the permitted activity requirement in the BTCZ for buildings to not be set back from the road boundary and for display windows to comprise at least 50% of the building façade (Rule 18.3.4) either:
- (i) be deleted,⁶¹ although the further submission considered that this should still apply to sites subject to a verandah line identified on the planning maps;
 - (ii) not apply to multi-unit development,⁶² although the further submission considered that this should still apply to sites subject to a verandah line identified on the planning maps;
 - (iii) apply only to building facades at ground floor level that adjoin roads,⁶³ although the further submission considered that this should only apply to sites subject to a verandah line identified on the planning maps; and
 - (iv) have an activity status when infringed of restricted discretionary activity, rather than a discretionary activity;⁶⁴

⁶¹ Submission point 403.11.

⁶² Submission point 749.137.

⁶³ Submission point 602.23.

⁶⁴ Submission point 588.22.

- (b) That the specific provision for active street frontages in the BTCZ be removed by amending Policy 4.5.17⁶⁵ and deleting Policy 4.5.20,⁶⁶ although the further submission considered that Policy 4.5.20 should still apply to specific sites, to be identified by a verandah line on the planning maps; and
- (c) That repetition between policies related to the building form of town centres is minimised through amending Policy 4.5.17;⁶⁷ and
- (d) That the requirement for buildings in the BZ be consistent with the Waikato District Council Urban Design Guidelines Town Centres be removed by deleting Policy 4.5.29.⁶⁸

Business Town Centre Zone

- 7.2 The submitter supported the above relief with direct consideration to the land at Saleyard Road, which is currently vacant (or undeveloped).
- 7.3 I consider that the provisions related to building design and appearance are appropriate for existing ‘main streets’, in order to protect and enhance the existing built-form, as well as identified extensions to provide for continuation of these frontages. However, I do not consider the blanket approach included in the PWDP (with the provisions that apply to all road frontages) to be appropriate. I note that the section 42A report does not provide any commentary on the application of these provisions along roads that do not currently exist or as part of new development that is subject to these provisions on all boundaries.
- 7.4 In this regard, I consider the approach suggested in the submissions of HGL, relating the application of these provisions to identified frontages, as discussed in paragraphs 4.2 to 4.8 of this evidence, to be the more suitable solution.
- 7.5 I consider that such relief should also include the construction of a new building only being a restricted discretionary activity⁶⁹ where the building fronts or adjoins an identified frontage.⁷⁰ The applicable matters of discretion primarily concern adherence with the Town Centre guidelines, in order to achieve the outcomes sought by the relevant policies. I consider that buildings not on ‘main streets’ being a restricted discretionary activity imposes a requirement that may prevent development of vacant or undeveloped land that benefits the town centre or results in unnecessarily elongated processes for obtaining resource consent (with little benefit to show for it).

⁶⁵ Submission point 588.38.

⁶⁶ Submission point 588.41.

⁶⁷ Submission point 588.38. Submission 588 also sought deletion of Policies 4.5.20 to 4.5.29 for this same reason, although the further submission of HGL only supported the deletion of Policy 4.5.20.

⁶⁸ Submission point 697.549.

⁶⁹ Under Rule 18.1.3 RD2.

⁷⁰ While amendments to this rule were not included as specific relief sought by a submission on the PWDP, they are considered to be within scope of “any alternative, additional or consequential relief” to the rezoning of the land at Saleyard Road to be in the BZ, which would make the land not subject to this rule.

7.6 Vacant or underdeveloped land within the BTCZ is not unique to the land at Saleyard Road, Te Kauwhata. I have observed such land at Pokeno (between Cambridge and Wellington Streets), Tuakau (land fronting West Road) and Raglan (single dwelling sites along Wallis Street). Therefore, the relief sought would also benefit the development of other town centres in the district.

Business Zone

7.7 I agree with section 36 of the section 42A report, which considers Policy 4.5.29 should be deleted as it requires buildings in the BZ to be consistent with the Waikato District Council Urban Design Guidelines Town Centres, when this document should only apply to the BTCZ. This was supported by the further submission of HGL.

7.8 I note that a similar line of thinking can be taken regarding the requirement for the land at Saleyards Road to be consistent with the Te Kauwhata Town Centre Character Statement.⁷¹ These guidelines only relate to sites along Main Road and do not specify any outcomes sought for the land at Saleyard Road. Therefore, based on this logic, I consider that Rule 18.1.3 RD2 should not apply to the land at Saleyard Road.

The use of prescriptive rules

7.9 While not directly related to the submission points raised or supported by HGL, I consider it necessary to make comment on the options considered in the section 32 report for the control of built form in the BTCZ.

7.10 As part of the analysis of provisions that relate to urban design within town centres, and option ('Option 2')⁷² was discarded due to views that *"overly prescriptive nature may discourage development"* and that the *"standards would provide a lack of flexibility to apply to different environments and circumstances around the District"*.

7.11 The provisions that have been included in the PWDP (which were preferred in favour of Option 2) include all new buildings in the BTCZ being a restricted discretionary activity. This requires that all developments require resource consent, regardless of whether they are consistent with the outcomes sought by Council or not.

7.12 If Option 2 was implemented, there would be a pathway available for new development to be a permitted activity and not require resource consent. In my opinion, this would also provide clarity to applicants of the baseline that would be anticipated by Council at these sites, rather than reliance of Council officer's interpretation of Design Guides and Character Statements.

⁷¹ Which is a matter of discretion for new buildings in the BTCZ under Rule 18.1.3 RD2.

⁷² Of the "Options less or not as appropriate to achieve the objective".

- 7.13 Concerns over the lack of flexibility as a result of prescriptive standards can, in my opinion, be alleviated through making infringement of these standards a restricted discretionary activity and setting appropriate matters of discretion that enables flexibility to be provided for during the consenting process. I consider that prescriptive standards would only be a deterrent to development if the Council strictly applied the rules (e.g. discretionary and non-complying activity statuses) and did not authorise any development that infringed them.
- 7.14 I consider that the same matters of discretion (and approach by Council to resource consent application) could be used for development that does not comply with the prescriptive rules as are already proposed to apply to new buildings in the BTCZ. If this were to occur, then an Option 2 solution should not change the approach proposed by the PWDP (which Council considers to be the most appropriate approach to enable and not stymie appropriately-designed development in town centres) other than to provide for an avenue for a specific type (or types) of development envisaged in the town centre to not require resource consent at all. In my opinion, the economic benefits of not requiring resource consent would outweigh any positive effects that a resource consent application process would expect to achieve in shaping already 'ideal' development.
- 7.15 I also consider that the creation of a permitted baseline would benefit the consenting process for development that does not comply with one or more of the 'prescriptive' standards, as it would allow for Council's consideration of the application to be focused only on those parts of the development that are not strictly provided for. I consider that this would provide a higher degree of certainty to the developer of the extent of changes that may be necessary in order to obtain consent. Currently, the restricted discretionary activity status for new buildings provides scope for Council to refuse resource consent or apply conditions in regards to almost any aspect of the design, which I view would not provide the level of certainty desirable to a developer that a resource consent application would be approved.
- 7.16 In regard to the above, I consider certainty to be a greater incentive to development than prescriptiveness.
- 7.17 I would also argue that such an outcome of prescriptive standards is already partially provided for by the implementation of Rules 18.3.4 (Display windows and building facades) and 18.3.5 (Verandahs) – even through these rules have the potential to discourage new development within the BTCZ⁷³ and do not provide any flexibility, Council has considered that approach to be the best practicable solution. I do note, however, that infringement of these standards is a discretionary activity, which does not provide certainty as to in what circumstances infringement of this standard would be acceptable – these circumstances are usually indicated within the matters of discretion for a restricted discretionary activity.

⁷³ Particularly at the land at Saleyard Road, for reasons discussed throughout this evidence.

8. Alternative Relief

- 8.1 While not specifically stated as relief sought in HGL’s primary submission (but within the scope of “any alternative, additional or consequential relief”), the concerns with the provisions of the BZ and BTCZ raised in my evidence could be alleviated through the introduction of specific rules (either with or without a ‘precinct’ applying) or through the introduction of a new zone⁷⁴ applying to the land at Saleyard Road.
- 8.2 The uniqueness of the land at Saleyard Road (being 9.1 ha of vacant and undeveloped land within the BTCZ), as discussed in section 3 of this evidence, would support the establishment of specific zone or precinct.
- 8.3 This is a potential solution if it is deemed that the concerns raised with the provisions applying to the land at Saleyard Road cannot be alleviated through amendments to the zone provisions.
- 8.4 I note that HGL supported, as part of their further submission, submission point 403.13, which sought that the Mixed Use Policy Area provisions of the operative Waikato District Plan (Waikato Section) be retained for a property part of the land at Saleyard Road. The method to do this would be to apply specific rules (such as has been proposed for the Lakeside Te Kauwhata Precinct).
- 8.5 I note that a key part of the Mixed Use Policy Area at Te Kauwhata is that at least 3 ha of this land is dedicated for medium density residential development, and that residential activities were promoted throughout the area.
- 8.6 However, all development in the Mixed Use Policy Area was subject to the requirement for a comprehensive development plan to be developed prior to applying for resource consents. I consider that this requirement has been a detriment to development of this land, and the details sought to be determined as part of the comprehensive development plan should have been either included as part of plan provisions at the time that the Mixed Use Policy Area was introduced, or otherwise inform rules or matters of discretion applying to restricted discretionary activities. The use of resource consents to establish a rule framework outside of a plan has also been determined by the Courts to be *ultra-vires*.⁷⁵ I do not support rolling over such a provision into the PWDP.

⁷⁴ Other than the BZ.

⁷⁵ In relation to rules for ‘framework plans’ in the Proposed Auckland Unitary Plan.

- 8.7 If specific rules were to apply to the land at Saleyard Road in order to recognise the uniqueness of the land and to still provide for the outcome sought by the operative Mixed Use Policy Area, such relief would include:
- (a) All activities that are not permitted activities (e.g. commercial activities exceeding the maximum tenancy size, office activities at ground floor level, residential activities at ground floor level, buildings set back from the road boundary) being a restricted discretionary activity, with Council's discretion including the effects on providing for a mixed use outcome for the town centre and integration with the surrounding environment; and
 - (b) Amending the matters of discretion for general subdivision to include the ability for the subdivision to provide for a mixed use outcome for the town centre.
- 8.8 Otherwise, I consider that the application of specific rules for the land at Saleyard Road could also be provided for through the introduction of a new zone (such as the Business Zone Tamahere). It is assumed that such an outcome would be within the scope of the future hearing on zoning, and so I have not considered that relief further in this evidence.

9. Conclusion

- 9.1 I consider that the provisions proposed for the BZ and BTCZ are onerous on the establishment of new activities and that a series of changes should be made to the zone provisions to avoid the adverse effects that arise from this. I consider the necessity to enable new development in these zones to be of importance given that they contain significant areas of vacant and underdeveloped land, including 9 ha of land at Saleyard Road, Te Kauwhata.
- 9.2 I would recommend that provisions related to appearance of the streetscape, the character of buildings and activities at ground floor level relate only to road frontages identified on the planning maps, such as has that already provided for by the verandah line. In addition, restrictions on tenancy sizes should instead become restrictions on a tenancy's frontage length to these identified roads. This will ensure that the character of each town's 'main street' is protected while enabling for a wider variety of activities to establish in the zone, including activities that directly support the continued viability of existing small scale commercial activities along these 'main streets'.
- 9.3 I would also recommend that activities that are considered suitable to be located within the BZ and BTCZ in some circumstances (such as supermarkets and dwellings at ground floor level) not be non-complying activities, with a preference for these to instead be restricted discretionary activities. Appropriately structured matters of discretion would, in my opinion, give the public certainty as to the specific circumstances in which these activities would be granted resource consent, providing for efficient implementation of the PWDP.

- 9.4 I also consider that it is necessary for the objectives and policies controlling the type and form of activities in the BZ and BTCZ (including Policies 4.5.2, 4.5.10 and 4.5.11) to provide exceptions from directives to “avoid” or “discourage” activities in order to identify the circumstances that such activities would be suitable. I consider this to be of particular importance if non-complying activity statuses remain preferred, given that any ‘suitable’ activities would likely be unable to pass the section 104D threshold test.
- 9.5 I view that the proposed provisions and relief recommended by the reporting officer unnecessarily increases the likelihood of development requiring resource consent, with adverse effects resulting from the additional regulation not appropriate considered (for example, additional risk and transactional costs to developers). For example, I consider that the section 32 report too easily dismissed the option (which I prefer) of prescribing permitted activity standard rules (rather than relying on a blanket restricted discretionary activity status for all new buildings in the BTCZ), without recognising the positive effects that increased certainty provides to Council, developers and the community.
- 9.6 I have also brought to the attention of the Panel various inconsistencies between similar provisions and zones that I consider need to be remedied prior to decisions on the PWDP, including recognition that “retail activities” are a type of “commercial activity” and that exceptions to a rule should be applied to all instances of that rule.
- 9.7 Finally, I consider that specific provisions could apply to the land at Saleyard Road as alternative relief that enable the outcome sought by the operative Waikato District Plan (Waikato Section), but that rolling over these provisions would need to exclude the necessity for a comprehensive development plan. It would not be necessary to accept this relief if the changes above were made to the provisions of the BZ and BTCZ.

Aaron Grey

24 January 2020