BEFORE THE WAIPĀ DISTRICT COUNCIL

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of Proposed Plan Change 20 – Airport Northern Precinct Extension to the Operative Waipā District Plan

---

OPENING LEGAL SUBMISSIONS ON BEHALF OF TITANIUM PARK LTD AND RUKUHIA PROPERTIES LIMITED

15 March 2023

Counsel Acting:
Jason Welsh
ChanceryGreen
223 Ponsonby Road
Ponsonby
Auckland 1011

TABLE OF CONTENTS

1.	INTRODUCTION	2
2.	TPL AND RPL	4
3.	TPL/RPL'S EVIDENCE	5
4.	PC20 "SNAPSHOT"	6
5.	PROCEDURAL CONTEXT	11
6.	STATUTORY CONTEXT	15
7.	PLANNING / POLICY FRAMEWORK	18
8.	KEY ISSUES	23
9.	OTHER ISSUES RAISED IN SUBMISSIONS OR THE S42A REPORT	56
10.	ISSUES RAISED: SUMMARY	60
11.	PRINCIPAL SUBMISSION	60

1. INTRODUCTION

1.1. These submissions are in support of Plan Change 20 ("PC20" or the "Proposal") to the Waipā District Plan (the "District Plan") that was requested by joint-applicants Titanium Park Limited ("TPL") and Rukuhia Properties Limited ("RPL") (the "Applicants"). PC20 proposes to:

(a) extend the Northern Precinct of the District Plan's Airport Business Zone to the northwest by approximately 89ha; and

(b) establish the planning framework for the quality urbanisation of the Northern Precinct, for business activities.[1]

1.2. PC20 will enable a logical and coordinated extension to the Northern Precinct of the Airport Business Zone, facilitating the delivery of much needed business land in a strategic location. It will provide for an expansion of the highly successful Titanium Park Business Park.

1.3. The Proposal is founded on rigorous expert assessment following an extensive master planning process. The evidence demonstrates that PC20 will achieve important benefits for Waipā and the wider region, and that all potential adverse effects can be appropriately managed through the carefully designed PC20 provisions.

1.4. Mr Grala and Mr Inger conclude that PC20 meets the relevant statutory tests for a proposed plan change under Part 2 of Schedule 1 to the Resource Management Act 1991 ("RMA"). PC20 is supported by a comprehensive s32 (and s32AA) analysis and supporting evidence which demonstrates that it:

(a) is the most appropriate (i.e. optimal) way to achieve the purpose of the RMA and objectives of the District Plan; and

(b) will give effect to all higher order planning documents, including the Waikato Regional Policy Statement ("RPS"), the Vision and Strategy for the Waikato River, and the National Policy Statement on Urban Development ("NPS:UD") and National Policy Statement for Highly Productive Land ("NPS:HPL").

1.5. The s42A Report concurs with this assessment, and there is a very high degree of agreement between TPL/RPL's experts and Waipā District Council's (the "Council")

[1] Including through amendments to the following parts of the District Plan: the Airport Business Structure Plan contained in Appendix S10; the Airport Business Zone (Titanium Park) provisions contained in Section 10; the infrastructure, Hazards, Development and Subdivision provisions contained in Section 15; and the Assessment Criteria and information requirements contained within Section 21.

experts. The s42A report recommends that PC20 be approved, with relatively minor modifications. Having directed relevant subject matter peer reviews the author of the s42A Report concludes:

> *7.1.8. The District Plan, and any changes, must give effect to higher order planning documents, including the Waikato Regional Policy Statement and National Policy Statements. Having reviewed the application, I consider the purpose and contents of the plan change are consistent with the purpose of a district plan pursuant to Section 76 of the Act.*
>
> *…*
>
> *10.1.4. In my opinion, the provisions as amended and set out in Appendix 1 to this report are appropriate and are in accordance with the objective and policy framework of the WDP…*
>
> *10.1.5. I agree with the Section 32 evaluation provided by the applicant in respect of these provisions and recommend that the Hearings Panel accepts, with modification, the wording of the proposed provisions…*

1.6. Those conclusions align with the expert evidence filed on behalf of TPL/RPL.

1.7. Our overarching submission is that the Panel can justifiably conclude that PC20 satisfies the relevant provisions of the RMA[2] and that it should be approved.

Scope of submissions

1.8. The purpose of these submissions is to contextualise the large body of information before the Panel in order to assist the Panel to make findings on the issues. These submissions:

(a) briefly introduce TPL and RPL and their witnesses (sections 2 and 3);

(b) provide an overview of PC20 (section 4);

(c) set out the procedural context and key issues in contention (section 5).

(d) outline the statutory framework applying to PC20 (section 6);

(e) summarise the PC20 policy framework (section 7);

(f) address key issues (section 8):

(i) the NPS-HPL “pathway”;

---

2 Refer in particular to Part 2 of Schedule 1 of the RMA.

(ii) long-tailed bats (“bats”);

(iii) retail provision and effects;

(iv) transport infrastructure provision and effects;

(g) comment on other issues raised by submitters or the s42A officer (section 9); and

(h) set out our overarching submission in support of PC20 (section 10).

2. TPL AND RPL

2.1. The Applicants are described in detail in the evidence of Mr Morgan (TPL) and Messrs Yates and Richards (RPL). Part of the PC20 land is owned by TPL, and part is owned by RPL. For context, we briefly outline the applicant entities below.

2.2. The corporate entities and personalities behind both Applicants are long-time members of the local community. Both entities intend to have long-term involvement with the PC20 site, and they share a commitment to delivering a quality enduring “legacy” project that they, and the region, can be proud of.

TPL

2.3. TPL is a wholly owned subsidiary of Waikato Regional Airport Limited. It has delivered the highly successful Titanium Park – a high quality master planned business park adjacent to the Hamilton Airport. PC20 is proposed as an extension to the Northern Precinct of Titanium Park. Very high demand has meant that land within the Southern, Central, and Raynes Precincts of Titanium Park has either already been developed or has largely been purchased for development.[3]

RPL

2.4. The 29ha RPL site is located between State Highway 3 and Middle Road.[4] The RPL site is currently occupied by a major plant research and development facility run by Genetic Technologies Limited, the producer-distributor of Pioneer brand seeds in New Zealand.[5]

---

3 Evidence of Mark Morgan.

4 3463 Ohaupo Road.

5 Mr Yates confirms in his evidence that if PC20 is approves, the intention is for Genetic Technologies Limited to continue to occupy the RPL site for its ongoing research facilities/programme.

2.5. The RPL site is subject to a land use consent[6] that authorises a significant research and development facility, including a large distribution centre (4,250m^2), cool storage (3,000m^2) and offices (990m^2).

Summary

2.6. TPL and RPL both have longstanding local connections, and a track record of positive development and wider contribution to the social, cultural, and economic wellbeing of the communities in which they are based. They have approached PC20 in a practical, mature and consistent fashion by working together, including sharing witnesses. Both Applicants are committed to the coordinated delivery of a quality Northern Precinct under PC20. That approach has the benefit of ensuring integrated management, both in terms of development design and management of effects.

3. TPL/RPL'S EVIDENCE

3.1. 15 expert witnesses have prepared a comprehensive suite of pre-circulated evidence in chief, and reply evidence, that fully describes PC20 and addresses all relevant issues under the RMA. The evidence is the culmination of several years of detailed assessment by a range of highly experienced independent experts, who collectively possess a wealth of practical experience in the design and assessment of large developments and plan changes.

3.2. The following witnesses have prepared evidence on behalf of the Applicants:

(1) **Mark Morgan**, TPL (*corporate - TPL)*

(2) **William Yates,** RPL (*corporate - RPL)*

(3) **Nigel Richards,** RPL *(corporate - RPL)*

(4) **Sam Coles,** Harrison Grierson (*urban design)*

(5) **Lisa Jack,** Harrison Grierson *(landscape, visual)*

(6) **Scott King,** Harrison Grierson (*infrastructure)*

(7) **Kori Lentfer,** CMW Geosciences (geotechnica*l)*

(8) **Cameron Inder,** BBO (*transport)*

6 LU/0112/13.01

(9) **Matthew Gainsford,** W. Gumbley *(heritage)*

(10) **James Bell-Booth,** Marshall Day (*acoustic)*

(11) **Josh Markham,** Tonkin + Taylor (*ecology)*

(12) **Georgia Cummings,** Tonkin Taylor (*ecology - bats)*

(13) **John Mckensey,** LDP (lighting*)*

(14) **Ben Inger,** Monocle (planning - ecolog*y)*

(15) **Norman Hill,** Te Hira Consultants (*cultural)*

(16) **Jeremy Hunt**, AgFirst (*agricultural use)*

(17) **Fraser Colegrave**, Insight Economics *(economics)*

(18) **Nick Grala,** Harrison Grierson *(planning, except for ecology)*

3.3. You will hear from all the witnesses other than Messrs Bell-Booth (acoustic), Lentfer (geotechnical), and Gainsford (archaeology) whose evidence is to be received and taken as read but whom the Panel have excused from attending.

4. PC20 "SNAPSHOT"

4.1. The AEE[7] and evidence comprehensively detail the Proposal. We do not repeat that; instead we set out a summary of the essential PC20 features below:

(a) The PC20 site is approximately 130ha consisting of:

(i) approximately 41ha of land already zoned Airport Business;[8] and

(ii) approximately 89ha of land currently zoned Rural under the District Plan.

(b) PC20 includes a suite of proposed changes to the District Plan, including to:

(i) rezone the 89ha of Rural land to Airport Business Zone so that the total Northern Precinct of Titanium Park is approximately 130ha (and associated mapping changes);

---

7 Section 5 (Proposal).

8 The PC20 site includes 41ha land already zoned Airport Business (Northern Precinct) so as to consolidate the provisions applying throughout the existing and proposed Northern Precinct. Provisions applying to issues such as bats for example would not otherwise apply to the 41ha of existing Airport Business Zone. Adopting such an integrated approach to PC20 is in our submission consistent with the purpose and principles of the RMA and demonstrates a mature and responsible attitude.

(ii) amend the Airport Business Structure Plan ("Structure Plan") in Appendix S10 of the District Plan and enable development of the Northern Precinct in line with the updated Structure Plan; and

(iii) amend several other chapters of the District Plan to facilitate the proposed development, including:

- Section 10 (Airport Business Zone);
- Section 15 (Infrastructure, Hazards, Development and Subdivision); and
- Section 21 (Assessment Criteria).

(c) Hamilton Airport and/or the Northern Precinct of Titanium Park (including an expanded Northern Precinct) is identified for future urban development in a wide range of documents and strategies. The RPS identifies Hamilton Airport/Southern Links as a strategic industrial node, including in proposed Change 1.[9] The District Plan identifies a "Possible Future Airport Growth Area" in the currently Rural zoned land adjacent to the existing Northern Precinct.[10] A range of other strategy documents also identify the area for future business development, including: The updated Future Proof Strategy 2022;[11] the Hamilton - Auckland ("H2A") Corridor Plan;[12] and the Hamilton-Waikato Metropolitan Spatial Plan (MSP).[13] The rezoning proposed by PC20 is therefore clearly signposted in the statutory and non-statutory planning documents; albeit the Northern Precinct extension to be effected by PC20 is being proposed earlier than previously anticipated by some documents (a point we address below). This is due, in large part, to the very high demand for business land, including the current Titanium Park offering.

(d) The PC20 land is in a highly accessible and highly-connected location. It has immediate access to Hamilton airport and the local and state highway network. It is centrally located with respect to Hamilton, Cambridge, and Te Awamutu. At a

9 RPS Appendix 12, Table 35. Refer the Bat JWS, para 3.1.1.
10 Hamilton Airport Strategic Node: Hamilton Airport Growth Map: Appendix S1 ("Future Growth Cells") of the District Plan.
11 Future Proof (Table 2) identifies identifies Hamilton Airport / Southern Links as a strategic industrial node.
12 The H2A Corridor Plan identifies the Airport as a "main future housing and employment growth cluster" (Map: Wahi mahi & Wahi noho, page 12), and identifies the Northern Precinct for future urban development. It also identifies completing the Northern Precinct structure plans at the Airport as being a key initiative and priority development area of the southern corridor (page 26).
13 The MSP categorises the airport as a current business centre (page 27) and key employment node (page 33). It identifies that the airport is home to a significant industrial precinct which has a logistics focus, and that there are further stages of land to be developed in the area. The MSP Urban Growth Programme identifies that completing the Airport Northern Precinct structure plan is a priority development area as part of the Tier One Implementation Initiatives (Table 8, page 41).

courser scale, it is at a central junction between the major centres of Auckland, Tauranga, New Plymouth, Taupo and Rotorua.

(e) PC20 will help to meet the district and region's future demand for business land. As identified in the s42A Report, Mr Colegrave's economic assessment and evidence *"…shows that there is a shortage of industrial land to meet projected demand in the short-to-medium term and long-term, and the proposed expansion will bridge some of the gap".*[14]

(f) PC20 represents a logical and coordinated expansion. It is not a typical Greenfields development. Rather, PC20 will provide for an extension of what is already a thriving Business Park equipped with high quality business infrastructure, in an area already signposted for business rezoning.

(g) Non-ancillary retail will be enabled and consolidated within the hub and the proposed Retail Area shown on the proposed Structure Plan. A non-ancillary retail GFA cap for the Northern Precinct of 5,000m^2 is proposed, including to manage impacts on retail centres.

(h) Detailed, prescriptive and clear rules/triggers and provisions on the development of the Northern Precinct in accordance with significant transportation network upgrades.

4.2. However, it is important to note that PC20 is not a comprehensive rewrite of the Airport Business Zone or the scheduling of significant natural areas. That is important to remember when considering some of the submissions received. Nor self-evidently is PC20 a resource consent application – the relief sought by a number of parties have in our submissions lost sight of that.

Key benefits of PC20

4.3. While some submissions in opposition naturally focus on perceived shortcomings with PC20, we submit that it is important not to lose sight of the range of significant economic, employment, and social benefits of the Proposal. Therefore, at the outset of these submissions, we provide a summary of key positive features enabled by the Proposal:[15]

---

[14] S42A Report, para 9.2.4.

[15] Refer to the evidence of Mr Grala for a summary of the positive effects of the proposal.

(a) A range of significant and enduring **economic benefits**, including:[16]

(i) **Regional economic stimulus through construction:**

- a one-time boost in **regional GDP** of $130 million;
- creation of **employment** for 1,440 people-years; and
- boosting to **household incomes** by $70 million.

(ii) Boosting the **supply of business land** to meet demand (in a way that achieves a well-functioning urban environment), which will realise:

- increased **land market competition**; and
- material **synergies/agglomeration benefits and efficiencies** through expansion of an existing urban area. The clustering of business activities proposed by PC20 will reduce transport costs and lift productivity of firms.

(iii) **Ongoing regional economic benefits:**

- Material additional **job creation** and **employment opportunities** within the region (PC20 is estimated to create employment equating to 2,210 FTEs[17] annually, with annual wages/salaries of $154 million).
- Contributing $279 million to **annual GDP**, with **output/revenue** of $787 million annually.

(b) A range of aspects providing **other positive environmental outcomes**, including the following:

(i) Significant (and costly) **ecological management measures**, including a nearly 5ha BHA and related controls to protect and enhance bat habitat and provide for connectivity through the site; comprehensive EMP requirements; requirements for offsetting/compensation of more than minor residual effects on bat habitat values; plus a range of other mechanisms such as controls on lighting, vegetation trimming, pruning, and removal, and building setbacks; and bespoke ecological assessment criteria.[18]

---

16 Refer the EIC of Mr Grala and Mr Colegrave.

17 FTE means full-time equivalent.

18 All of these are comprehensively detailed and assessed in the evidence of Mr Inger.

(ii) PC20's proposed Structure Plan, which has been updated iteratively in response to input from experts and submitters, and associated plan provisions direct an **urban form** that is a considerable improvement over the urban form contemplated by the Operative Structure Plan and operative District Plan. For example:

- PC20 includes **access points and indicative roading pattern** that will provide for safe and efficient movement of vehicles and pedestrians within and through the site. Specific transport upgrades are required to be delivered before certain stages of development can be developed.

- PC20 includes a range of **landscape, character, and urban design enhancement** opportunities. These include landscape/yard requirements, and the identification of important walking and cycling connections between the Northern and Southern Precincts, and the Northern Precinct and Peacocke.

- PC20 includes the **"Hub",** which is proposed as a high amenity space. It will provide limited retail to support the convenience needs of people working nearby. It will offer a high amenity environment adjacent to the BHA.

- PC20 will enable a **reduction in commuter distances** through the creation of employment opportunities close to the Peacocke growth cell and Tamahere. This will be further enhanced through the proposed walking and cycling connectivity.

(iii) The adoption of **best practice stormwater management** will result in an overall improvement in the quality of stormwater leaving the site and entering receiving water bodies compared to the site's current rural use.[19]

(iv) The development proposed to be enabled by PC20 incorporates a range of **cultural initiatives** that have been shaped through engagement with mana whenua, including:

[19] Statement of Mr King, paragraph 46.

- **Retention of view shafts to key maunga** (including Pirongia) including enabling a roading pattern that will retain important views to surrounding maunga.[20]

- **Stormwater management** to achieve best practice outcomes.

- A range of **design initiatives**, such as artworks, cultural markers, and landscape features.

- **Accidental discovery protocols** for future development.

- Providing for **extensive use of local native vegetation** where appropriate, with a particular focus on and improving indigenous biodiversity.

- A **naming strategy** that includes opportunities for mana whenua input into naming for specific spaces, features and roads.

4.4. Finally, PC20 removes references to "comprehensive development plans" in the Airport Business Zone, which are problematic and may be ultra vires following Court decisions since the District Plan became operative. [21]

Summary

4.5. Overall, the Proposal is for an attractive and functional urban development which will be a valuable resource, enabling the community to provide for its social, cultural, and economic wellbeing.

4.6. The Proposal has been carefully crafted not only from a technical (effects) point of view, but also to efficiently utilise the available land resource to create a thriving business and community space – in short, to deliver a sustainable outcome for the locality and region.

5. PROCEDURAL CONTEXT

5.1. Below we summarise the procedural background to PC20 and set out the main issues in contention, drawing on the useful summary in the s42A Report.[22]

---

[20] As noted above, a range of opportunities for cultural expression as part of the PC20 development have also been identified.

[21] *Queenstown Airport Corporation v Queenstown Lakes District Council* [2014] NZEnvC 93; and *Re Auckland Council* [2016] NZEnvC 56, (2016) 19 ELRNZ 425.

[22] Refer also section 4 (Background) and 6 (Stakeholder engagement and consultation) of the AEE.

Consultation

5.2. At all stages of the PC20 process, TPL/RPL have made a concerted effort to engage constructively with key stakeholders and parties potentially interested in PC20. That process continues.

5.3. As Mr Morgan outlines, the Applicants have been – and are – committed to a meaningful consultation process for the PC20 development. As part of its commitment to environmental management and the local community, the PC20 team and its advisors have, over several years, engaged in good faith with a wide range of parties – including mana whenua, the Council, institutional stakeholders, and the local community – and have genuinely sought to address concerns.

5.4. The Applicants have endeavoured to resolve or narrow as many issues as possible before the hearing. To that end, they have continued to proactively engage with submitters in the period leading up to the hearing, including through expert conferencing, addressed below.

Submissions on PC20

5.5. PC20 was publicly notified in September 2022, including direct notification of residents within a very large geographic area of Waipā District and Hamilton City. Only 26 submissions were received, with a number (10) in support, support in part, or silent as to the ultimate decision sought on PC20 in its totality. Some submitters are opposed to the expansion of the Northern Precinct, while others sought to expand the extent of the Northern Precinct further. A dozen further submissions were also received. The issues raised in submissions are neatly summarised in the s42A Report.[23]

5.6. Although the RMA is not a 'numbers-game', the low numbers of submitters in opposition indicates that there is not widespread community opposition to the Proposal.

5.7. We submit that, the end result is a plan change proposal that appropriately addresses all issues raised in submissions.

Expert conferencing

5.8. Following submissions, the Panel directed expert conferencing. Conferencing was undertaken on several topics facilitated by the highly experienced and former Environment Court Commissioner Ms Marlene Oliver, resulting in the production of the following Joint Witness Statements:

---

[23] Section 8.

(a) Ecology and bat habitat, 8 February 2023 ("Bat JWS")

(b) Economics and retailing, 9 February 2023 ("Economics JWS")

(c) Transport and planning, 10 February 2023; and 15 February 2023.

5.9. The conferencing was effective in narrowing and, in some cases, resolving issues raised between parties. The updated PC20 provisions, the most recent version of which is attached to Mr Grala's rebuttal statement, incorporate several matters agreed at the conferencing.

5.10. TPL/RPL are grateful to both the Panel for directing the conferencing, and Ms Oliver for facilitating the sessions.

5.11. Without wishing to overplay the issue, it is unfortunate that Mr Akehurst, who is presenting economic evidence for Hamilton City Council ("HCC"), was unable to attend conferencing (instead, Ms Fairgray and Ms Ashby participated in economics conferencing on behalf of HCC – neither of whom have filed evidence). It is also unfortunate that Mr Akehurst has attributed to Mr Colegrave purported statements made during the expert conference which are not recorded in the Economics JWS.[24] We are advised Mr Colegrave has no recollection of making such statements.[25]

5.12. Also unfortunate is that Forest and Bird's planner, Ms Hammonds, did not attend conferencing at all and has not followed the Panel's directions to file evidence in advance. This has hampered the efficient narrowing of the issues.

S42A report

5.13. The s42A report prepared by Mr Williamson concludes that PC20 gives effect to the appliable higher order planning documents and is appropriate in that context. Mr Williamson recommends a few relatively minor changes to PC20 provisions in the text of the s42A Report, however, the PC20 provisions attached to the Report do not include any "track change" or other amendments reflecting the recommendations.

5.14. TPL/RPL have carefully considered the PC20 amendments recommended in the s42A Report, and the Applicants' experts respond comprehensively to Mr Williamson's recommended changes in their statements of evidence. TPL/RPL and its expert team largely agree with the s42A Report's recommendations, with only very small number of

24 See Akehurst EIC para 31.
25 Colegrave Rebuttal, paragraph 19 and footnote 2.

relatively minor outstanding issues remaining as between the Applicants and the Council.

5.15. The primary outstanding issues relate to Mr Williamson's recommendations for increased/additional protection for trees,[26] and additional controls on wet industry that can be established prior to the Northern Precinct connecting to the Southern Metro Wastewater Treatment Plant.[27] These are characterised as amendments to provision wording relating to narrow issues as opposed to material (or wholesale) changes. The Applicants' experts, including Mr Grala, outline in detail why these s42A Report recommendations are not appropriate or justified.[28]

Post-notification changes

5.16. Since notification, TPL/RPL have carefully considered all feedback received, including issues raised in submissions and through conferencing, and have sought to respond constructively. The Applicants have proposed a number of amendments to PC20, which are detailed in Mr Grala's evidence, including the latest "track change" version of the plan change that is annexed to his rebuttal statement. Changes include:[29]

(a) Significant improvements to the ecology/bat provisions for the Northern Precinct, which strengthen the provisions applying to ecological effects management through the introduction of avoidance mechanisms (a BHA shown on the proposed Structure Plan) and more prescriptive requirements for matters including habitat enhancement; building setbacks; lighting; vegetation trimming, pruning, and removal; ecological management plans; and assessment criteria.[30] The proposed provisions draw on the provisions recently endorsed by the Hearing Commissioners for HCC's PC5 (Peacocke). They represent a significantly more onerous, certain and robust regime for managing effects on bats than those proposed with the PC20 request as notified; one which the Applicants endorse. The provisions also bring an element of consistency and 'regionality' to the approach of responding to bats.

(b) Amendments to the transport provisions to provide a policy framework and consenting pathway for departing from the transport upgrades specified within Rule 10.4.2.13A and other changes following the transport JWSs such as building

---

26 S42A Report, recommendation for Sub-Topic 3.1.
27 S42A Report, recommendation for Sub-Topic 2.6.
28 Mr Grala statement of evidence, paragraphs 92-99.
29 Given the broad submissions received on PC20, we submit that all proposed amendments are within the scope of submissions and within the Panel's jurisdiction to make. This is not challenged by any party.
30 Proposed changes to ecology/bat provisions span the Structure Plan, and Sections 10, 15, and 21 and Appendix S10 of the District Plan.

into the Rule 10.4.2.13A an ability to deliver a suitable alternative walking and cycling shared path connecting to Peacockes Road.

(c) Introduction of a rule that requires buildings within the Northern Precinct to be designed in accordance with NZ Fire Service Fire-Fighting Water Supply Code of Practice (SNZ PAS 4509:2008). This was to respond to the submission of Fire and Emergency NZ.

5.17. Several of the proposed changes proposed by the Applicants, for example the provisions requiring extensive bat corridors and other bat controls/ enhancements, will come at a very significant cost to TPL/RPL.

5.18. Further changes to the PC20 wording have been proposed by the Applicants' expert team in response to submitter evidence and/or expert conferencing, as identified in the PC20 text attached to Mr Grala's rebuttal statement.

5.19. The proposed changes demonstrate the good faith nature in which the Applicants have willingly responded to legitimate issues raised through the plan change process, and they have further honed PC20 as representing the most appropriate planning framework.

Issues remaining in contention

5.20. As a result of the engagement and conferencing undertaken, outstanding issues fall largely within the following:

(a) Application of the NPS-UD;

(b) Long-tailed bats;

(c) Retail controls; and

(d) Transport.

5.21. We address these issues in sections 8 and 9 below.

6. STATUTORY CONTEXT

6.1. PC20 was accepted by the Council on 23 August 2022. It therefore falls to be considered under Part 2 of Schedule 1 to the RMA. This also means that it was notified prior to when the Emissions Reduction Plan and National Adaption Plan came into effect on 30 November 2022. As PC20 was notified prior to 30 November 2022, in accordance with clauses 26(3) and (4) of the 12th Schedule to the RMA, the plan change must be

determined as if those 'climate change amendments' had not been enacted. Notwithstanding we asked some witnesses to consider the Emissions Reduction Plan and National Adaption Plan (for example Messrs Grala and Lentfer confirmed PC20's consistency with those documents). To be clear however, your determination of PC20 does not require consideration of those plans.

6.2. It is well established that the approach to the assessment of proposed plan provisions is as set out in *Long Bay,*[31] and subsequently updated by the Environment Court.[32] In line with the accepted approach, the key RMA provisions applying to the Panel's consideration of PC20 are s72-76.[33] As the Panel will be aware, these provisions set out purpose of district plans[34], matters to be considered by the territorial authority in preparing and changing its district plan,[35] and the content of district plans.[36] Essentially, the Panel needs to determine whether PC20 is the most appropriate means of achieving the RMA's purpose.

The Panel's/Council's jurisdiction

6.3. Distilling the key matters, the Panel must be satisfied that PC20:

(a) is in accordance with:[37]

(i) the Council's functions set out in s31 of the RMA;

(ii) the purpose and principles in Part 2 of the RMA; and

(iii) the Council's obligations under s32 of the RMA.[38]

(b) gives effect to:[39]

(i) all relevant national policy statements, namely the NPS:UD and the NPS:HPL;

---

31 *Long Bay-Okura Great Park Soc Inc v North Shore City Council* EnvC A078/08.

32 *Colonial Vineyards Ltd v Marlborough District Council* [2014] NZEnvC 55 (see in particular paragraph 17). See also the recent decision of *Middle Hill Limited v Auckland Council* [2022] NZEnvC 162 at [27]-[31].

33 S72 (purpose of district plans); s73 (preparation and change of district plans); s74 (matters to be considered by territorial authority); s75 (contents of district plans); and s76 (district rules).

34 S72.

35 S74.

36 S75.

37 S74(1).

38 S32 of the RMA requires an evaluation of the extent to which the proposed PC20 objectives are the most "most appropriate" way to achieve the purpose of the RMA, and whether the PC20 provisions are the "most appropriate" way to achieve the objectives (see in particular s32(1)-(2)). Section 32AA requires a further evaluation of changes made to PC20 following notification. Comprehensive s32 and s32AA analyses are provided with the application, in the evidence of Mr Grala, and in the S42A Report.

39 S75(3).

(ii) the National Planning Standards (to the extent required); and

(iii) the RPS.

(c) is not inconsistent with any Waikato Regional Plan with respect to the functions of regional councils.[40]

6.4. The Panel must also have regard to relevant management plans and strategies prepared under other Acts, the extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities.[41] In addition, it must take into account any relevant planning document recognised by an iwi authority.[42] The Waikato-Tainui Raupatu Claims Settlement Act 2010 ("Settlement Act"), addressed below, is also relevant.

6.5. After considering PC20 and undertaking a further evaluation under s32AA, the Council may approve PC20, approve it with modifications, or decline it.

RMA provisions

6.6. **Annexure A** sets out the key relevant statutory provisions identified above, being s31, 72-76; and s32.

Section 32

6.7. Section 32 requires an evaluation of the extent to which the relevant objectives are the **most appropriate** way to achieve the RMA's purpose; and whether the PC20 provisions are the most appropriate way to achieve the objectives. The latter inquiry requires the identification of other reasonably practicable options for achieving the objectives, and assessment of efficiency and effectiveness of the provisions in achieving the objectives. Assessment of efficiency and effectiveness in turn requires assessment of the benefits and costs of anticipated effects, including the opportunities for economic growth and employment, and assessment of the risk of acting or not acting.

6.8. A comprehensive s32 evaluation was provided with the PC20 application documents. The Panel must have particular regard to the s32 evaluation.[43] A s32AA evaluation has also been undertaken for the post-notification changes to PC20, which the Panel must also have regard to.[44]

---

40 S75(4). S75 cross-refers to the functions of regional councils in s30(1) of the RMA.
41 S74(2)(b)(i), (c), (d).
42 S74(2A).
43 S74(1)(c).
44 RMA Schedule 1, cl 29(4).

Part 2

6.9. Despite s74(1)(b) requiring that plans must be prepared in accordance with the provisions of Part 2, the Supreme Court in *King Salmon* made it clear that unless there is invalidity, incomplete coverage, or uncertainty of meaning in the statutory planning documents, decision-makers need not refer back to Part 2 when determining a plan change.[45]

6.10. We submit that none of the caveats identified in *King Salmon* apply, and direct recourse to Part 2 is not required. However, out of an abundance of caution, Part 2 in the context of PC20 is addressed in detail the AEE. Mr Gooding for the Director-General of Conservation refers back to Part 2 and s6(c) in particular, although he does not address in detail the reasons for doing so as outlined in *King Salmon.*

6.11. We submit – that whatever approach is taken with respect to Part 2, the outcome is the same; that is, PC20 is the most appropriate framework and should be approved. PC20 will enable both present and future communities to provide for their social, economic and cultural wellbeing,[46] including through the efficient use of resources,[47] while establishing a framework for the appropriate management of effects.[48]

Legal principles for assessing PC20: the *Long Bay* test

6.12. As identified above, the approach to the assessment of proposed plan provisions has been laid out in a series of courts decisions, notably *Long Bay,*[49] followed by *Colonial Vineyards*.[50]

6.13. We set out at **Annexure B** the accepted summary from *Colonial Vineyards*.[51] This is on all fours with the analysis adopted in these submissions.

7. PLANNING / POLICY FRAMEWORK

7.1. The relevant planning documents are carefully analysed in the application documents, the s42A report, and the comprehensive planning evidence of Mr Grala and Mr Inger. There is no material disagreement regarding the applicable planning framework as between s42A Officer and Messrs Grala and Inger. They agree on the relevant planning

---

45 *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] NZSC 38 at [85] and [88].
46 S5(2).
47 S7(b).
48 S5(2)(c).
49 *Long Bay-Okura Great Park Soc Inc v North Shore City Council* EnvC A078/08.
50 *Colonial Vineyards Ltd v Marlborough District Council* [2014] NZEnvC 55 (see in particular paragraph 17). See also the recent decision of *Middle Hill Limited v Auckland Council* [2022] NZEnvC 162 at [27]-[31]
51 *Colonial Vineyards Ltd v Marlborough District Council* [2014] NZEnvC 55 at [17].

documents, and that PC20 gives effect to them. Therefore, we only address below certain matters in relation to which we consider additional comment will assist the Panel.

Te Ture Whaimana - the Vision and Strategy for the Waikato River

7.2. As recorded in the District Plan:[52]

> *Te Ture Whaimana o Te Awa o Waikato - The Vision and Strategy for the Waikato River arises from the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and the Ngāti Tūwharetoa, Raukawa and Te Arawa River Iwi Waikato River Act 2010 (Upper River Act). These Acts establish the Vision and Strategy as the primary direction setting document for the Waikato River and activities within its catchments affecting the Waikato River.[[53]] The Vision and Strategy recognises the protection and enhancement of flora and fauna as an Objective for the Waikato River.*

7.3. The primacy of Te Ture Whaimana is reinforced in the Settlement Act which sets out where it sits in the RMA planning document hierarchy and how it is to be given effect to in planning decisions such as plan change requests.[54] In summary, Te Ture Whaimana is deemed to be part of the Waikato Regional Policy Statement.[55] The Regional Policy Statement must remain consistent with it,[56] and in the event of any inconsistency with the RPS or other RMA planning documents, Te Ture Whaimana will prevail.[57] In addition, every person carrying out functions or exercising powers under the RMA must have particular regard to the Vision and Strategy.[58]

7.4. Essentially, PC20 must give effect to Te Ture Whaimana, and the Panel must have particular regard to it. We submit that the evidence demonstrates PC20 gives effect to Te Ture Whaimana.[59] The s42A Report agrees.[60]

The NPS-UD

7.5. The NPS-UD recognises the national significance of:[61]

---

52 Section 24 – Indigenous Biodiversity: 24.1.3.

53 S5 of the Settlement Act.

54 Refer also to the 2021 Watercare Board of Inquiry into additional water takes from the Waikato River, which noted: *"The provisions of the River Settlement Act are clear in requiring the Board to have particular regard to Te Ture Whaimana as the primary direction-setting document for the Waikato River and activities which affect it, ahead of any other subordinate legislation or planning documents under the Resource Management Act."*

55 S11.

56 S11(3).

57 S11(4) and 12.

58 S17.

59 The s42A Report identified no issues associated with Te Ture Whaimana (see the s42A Report sections 7.7 and 7.8).

60 S42A report section 7.7. At section 7.8 the s42A Report addresses the relevant iwi Joint Management Plans.

61 https://environment.govt.nz/acts-and-regulations/national-policy-statements/national-policy-statement-urban-development/

(a) having well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future

(b) providing sufficient development capacity to meet the different needs of people and communities.

7.6. The Council is currently undergoing planning processes to give effect to the NPS-UD and the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 ("Amendment Act").[62]

7.7. The NPS-UD is addressed in detail in the AEE, the s42A Report, and the planning evidence of Mr Grala. PC20 roundly gives effect to the NPS-UD. It will assist with providing the development capacity to meet demand for business land, and with achieving well-functioning urban environments.

7.8. There may be some debate over the full extent to which the NPS-UD applies to private plan changes (i.e. which provisions PC20 is required to give effect to, including the otherwise highly relevant Policy 8 which directs local authority decisions affecting urban environments to be responsive to plan changes that would add significant development capacity and contribute to well-functioning urban environments, even if the development capacity is unanticipated by RMA plans or out of sequence with planned land release).[63] However, we submit this is not material to the Panel's decision because:

(a) PC20 is the most appropriate planning framework irrespective of which provisions of the NPS-UD strictly apply to it. PC20's appropriateness is not dependent on the application or otherwise of the NPS-UD. PC20 gives effect to the relevant provisions of the RPS in any event.

(b) There is nothing inconsistent between PC20 and the changes the Council is required to make by to its plan by the NPS-UD and the Amendment Act.

7.9. Finally, achieving PC20 provisions that achieve both the objectives set by Te Ture Whaimana and the directives of the NPS-UD is key. There is a clear tension between

---

62 Waipā District Council Plan Change 26 and 21. Waipā District Council is a "Tier One" local authority under the NPS-UD.

63 See for example *Middle Hill Ltd v Auckland Council* [2022] NZEnvC 162 in which the Environment Court adopted a decision of a different division of the Court and held that only Objectives 2, 5 and 7 and Policies 1 and 6 were relevant to its decision on a private plan change request *(Eden-Epsom Residential Protection Society Inc v Auckland Council* [2021] NZEnvC 082), because these were the provisions concerning "planning decisions" for the purposes of the NPS-UD.

the two documents, one of which seeks the restoration and protection of the Waikato River, and the other which directs urbanisation. PC20 effectively navigates that tension.

The NPS-HPL

7.10. The NPS-HPL places restrictions on subdivision, use, and development on highly productive land ("HPL"). The objective of the NPS-HPL is:

> *Highly productive land is protected for use in land-based primary production, both now and for future generations.*

7.11. Proposed plan changes to rezone HPL to an urban zone, such as PC20, are *"where the NPS-HPL and NPS-UD directly interact."*[64]

7.12. The NPS-HPL was released in September 2022 (after PC20 was notified). It came into force in October 2022.[65] PC20 is therefore required to give effect to the NPS-HPL.

7.13. In January 2023, the Applicants provided a comprehensive assessment of PC20 against the NPS-HPL provisions (the "Addendum").[66] The s42A Report concludes:[67]

> *Based on the information provided and analysis undertaken by the applicant, I am satisfied that PPC20 gives effect to the NPS-HPL.*

7.14. Despite the conclusion in the s42A Report being on all fours with those of the Applicants' experts, we summarise the position in section 8 below. The below analysis is consistent with the MfE Implementation Guidance for the NPS-HPL.[68]

The RPS

7.15. The RPS provides an overview of the resource management issues in the Waikato region, and the ways in which integrated management of the region's natural and physical resources will be achieved.

7.16. The s42A Report concurs with Mr Grala and Mr Inger that PC20 gives effect to the RPS.[69] Key RPS provisions, for example those relating to biodiversity, are addressed in these submissions below in the context of the relevant issue.

---

64 Ministry for the Environment. 2022. *National Policy Statement for Highly Productive Land: Guide to implementation.* See page 39.
65 Cl 1.2(1). See also cl 4.1 "When this National Policy Statement takes effect".
66 Northern Precinct Private Plan change, PPC Request Addendum, January 2023.
67 Para 7.5.12. See also section 9.3 of the s42A Report.
68 Ministry for the Environment. 2022. *National Policy Statement for Highly Productive Land: Guide to implementation.*
69 S42A Report, para 7.6.6 and 9.1.5.

RPS Change 1

7.17. Proposed Change 1 was publicly notified in October 2022, with hearings proposed to commence in the coming months. Change 1 incorporates changes to meet the requirements of the NPS-UD and to reflect the updated Future Proof Strategy. Change 1 includes:

(a) An updated urban form and development chapter, to ensure that the RPS gives effect to the NPS-UD.

(b) Deleting the specific provisions relating to growth strategies prepared by territorial authorities outside of the Future Proof subregion. These have been replaced with generic provisions to guide preparation of, and give weight to, growth strategies.

(c) Updating the provisions that relate to the Future Proof subregion to reflect the updated Future Proof Strategy.[70]

7.18. TPL and RPL lodged a comprehensive joint submission on Change 1. A key aspect of that submission was that:

(a) TPL/RPL support the identification of the Airport and surrounding Airport Business Zone as a Strategic Industrial Node and Urban Enablement Area; however

(b) the Urban Enablement Area should extend to the full extent of the land covered by PC20 (identifying some land for short-medium term development; and some for long-term development).

7.19. The Applicants' submission is supported by robust expert planning and economic input.

7.20. As identified above, s74(1)(2)(a)(i) of the RMA requires a territorial authority changing a district plan to *have regard to*[71] any proposed regional policy statement. Change 1 was addressed in detail in the January 2023 Addendum provided by the Applicants.[72] The s42A Report agrees with Mr Grala and Mr Inger that PC20 gives effect to Change 1, including proposed amendments relating to "out of sequence" development.[73] Notwithstanding this, given that Change 1 is not yet at the hearing stage and has not

---

70 This includes the outcomes of the Hamilton to Auckland Corridor Plan, the Hamilton-Waikato Metro Spatial Plan (MSP), the MSP Transport Programme Business Case, and the Three Waters Sub-Regional Study.

71 The phrase "shall have regard to" means that a matter must be given material consideration, but the rules or policies that are in the specified document need not necessarily be followed *(Winstone Aggregates Ltd v Papakura District Council* ENC Auckland A096/98)

72 Change 1 was addressed in the January 2023 Addendum provided by the Applicants.

73 S42A Report, para 7.6.6. See for example proposed UFD-O1, P11, M48 and M49, and PR11. See also APP12, and APP13, and Maps 43 and 44.

been subject to independent testing, and in a context where robust and comprehensive submissions have been lodged on Change 1 (including from the Applicants), we submit the Panel can give limited weight to those aspects that are subject to submissions.[74] Ms Andrews for the WRC conflates the requirement of having regard to a document with the weight to be given to that document depending on its stage in the statutory process.[75] With respect, Mr Grala's analysis and evidence should be preferred.

Non statutory documents

7.21. A range of non-statutory documents are broadly relevant to PC20, including Future Proof,[76] Waipā 2050, and Hamilton-Waikato Metro Spatial Plan. The s42 Report outlines that PC20 is consistent with the range of non-statutory documents. We agree.

7.22. We address specific aspects of these documents are addressed in other sections of these submissions.

Summary

7.23. Given the evidence, we submit that the Panel can confidently conclude that PC20 complies with all requirements of and gives effect to (and is otherwise consistent with) all applicable planning documents.

8. KEY ISSUES

8.1. The full range of issues and potential effects associated with the Proposal are comprehensively addressed in the AEE and technical reports submitted with the application, and the evidence that is before the Panel. These submissions accordingly only comment briefly on key matters.

Application of the NPS-HPL

Part of the PC20 land is within the scope of the transitional definition of HPL

8.2. Until HPL has been mapped as part of the regional policy statement, the "transitional

---

74 See *Keystone Watch Group v Auckland City Council* EnvC Auckland A007/01, 11 January 2001, as affirmed by the High Court in *Keystone Ridge Ltd v Auckland City Council* HC Auckland AP24/01, 3 April 2001 at [16], [36] and [37] for a discussion on factors relevant weight to be given to proposed objectives and policies. In general, the closer a proposed plan comes to its final content, the more regard should be had to it.

75 Andrews, EIC para 57.

76 Future Proof Strategy is a 30 year growth management and implementation plan for the Hamilton, Waipā and Waikato sub-region; a region that is expected to experience significant growth over the next 30 years. It was updated in 2022.

definition" of HPL in cl 3.5(7) applies.[77] The PC20 land that is not currently within the Airport Business Zone comes within the "transitional definition" because:

(a) It is zoned Rural.

(b) It is classified as LUC 1, 2, or 3.

(c) It is not *"identified for future urban development"* as defined in the NPS-HPL.[78] This is because, while all the PC20 land is identified for future development, that land outside the current Airport Business Zone (the 89ha) is identified for development outside of the "next ten years" window required by the NPS-HPL.[79]

(d) It is not subject to a **council initiated**, or an **adopted**, notified plan change.[80]

PC20 satisfies the "urban rezoning pathway" tests (cl 3.6)

8.3. To align with the NPS-UD and the RMA functions for territorial authorities, the NPS-HPL provides a pathway for "urban rezoning" on HPL.[81] PC20 constitutes "urban rezoning to the extent it is rezoning rural land.[82]

8.4. The pathway provided in the NPS-HPL:

> *…recognises the need for HPL to be used in some circumstances to provide sufficient development capacity for housing and business land while also ensuring a robust assessment of alternatives is undertaken before this occurs."*[83]

---

77 Cl 3.5(7) provides: *"Until a regional policy statement containing maps of highly productive land in the region is operative, each relevant territorial authority and consent authority must apply this National Policy Statement as if references to highly productive land were references to land that, at the commencement date:*
(a) is
(i) zoned general rural or rural production; and
(ii) LUC 1, 2, or 3 land; but
(b) is not:
(i) identified for future urban development; or
(ii) subject to a Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle."

78 "Identified for future urban development" is defined in the NPSUD to mean: *"(a) identified in a published Future Development Strategy as land suitable for commencing urban development over the next 10 years; or (b) identified: (i) in a strategic planning document as an area suitable for commencing urban development over the next 10 years; and (ii) at a level of detail that makes the boundaries of the area identifiable in practice."* As noted elsewhere in these submissions the PC20 land is identified for future development in a number of statutory planning documents including the District Plan Appendix S1.

79 See Future Proof Strategy 2022; and Hamilton Airport Strategic Node: Hamilton Airport Growth Map: Appendix S1 ("Future Growth Cells") of the District Plan.

80 PC20 is a private plan change that was *accepted* by the Council.

81 As identified, Waipā District Council is a Tier 1 territorial Authority under the NPS-UD and the NPS-UD.

82 Cl 1.3 defines urban rezoning as: *"urban rezoning means changing from a general rural or rural production zone to an urban zone".*

83 Ministry for the Environment. 2022. *National Policy Statement for Highly Productive Land: Guide to implementation.* See page 39.

8.5. NPS-HPL Policy 5[84] and its associated "urban rezoning pathway" provided by cl 3.6 (restricting urban rezoning of HPL) restrict urban rezoning of HPL by requiring local authorities to avoid such rezoning unless the tests in cl 3.6 are met. Cl 3.6 is set out in full in **Annexure C.**

8.6. The Addendum provided by the Applicants contains 124 pages of carefully considered and comprehensive independent expert planning, economic, and agricultural analysis. The evidence of Messrs Hunt and Grala have provided additional analysis on a site adjacent to the Frankton Growth Cell. The analysis by Messrs Hunt, Grala and Colegrave demonstrates the tests in cl 3.6 of the NPS-HPL are met and that PC20 can therefore be approved by the Panel. In summary, cl 3.6 requires the following (with the Applicant's position outlined below each requirement):[85]

(a) *The urban rezoning is required to provide* ***sufficient development capacity*** *to meet demand for housing or business land to give effect to the NPS-UD.*[86]

The updated economic analysis accompanying the Addendum provided by the Applicants, and Mr Colegrave's evidence, demonstrates that the rezoning is clearly required to provide sufficient development capacity to meet demand for business land.[87] Mr Colegrave's assessment concludes there is a shortfall of business land supply, and that the full extent of rezoning sought under PC20 is required to meet demand over the short-medium term (i.e. the next ten years).[88]

Importantly, industrial activity has recently grown much faster than expected by Mr Colegrave and by the latest business capacity assessment ("BCA") for the sub-region, which was published after Mr Colegrave's initial assessment accompanying the AEE.[89] Mr Colegrave's evidence and the s42A Report highlight that the recent BCA identifies insufficient industrial capacity in the short to

---

84 Policy 5 is the key policy relating to urban rezoning: "*The urban rezoning of highly productive land is avoided, except as provided in this National Policy Statement.*"

85 The NPS-HPL, including the clauses below, uses a lot of terms defined in the NPS-UD. Clause 1.3(3) of the NPS-HPL confirms that terms defined in the NPS-UD have the same definition in the NPS-UD unless otherwise specified.

86 Cl 3.6(1)(a).

87 Under the NPS-UD cl 3.3, *"sufficient development capacity is for business land"* relates the short term (within three years), medium term (within 10 years), and long term (within 30 years), with "sufficient" also defined as being "plan-enabled" (see clause 3.4(1)) and "infrastructure-ready" (see clause 3.4(3)) among other things. The MfE Guide to Implementation states, however, that *"[t]he intent is the test could support the rezoning of HPL to an urban zone if needed to provide for short term (within next 3 years) and/or medium term (3–10 years) sufficient development capacity… Rezoning HPL to an urban zone to provide for long-term development capacity (10–30 years) would not meet this test"* (Ministry for the Environment. 2022. *National Policy Statement for Highly Productive Land: Guide to implementation,* page 39). The Addendum and evidence demonstrate that PC20 passes this test regardless of which interpretation is adopted.

88 Mr Colegrave EIC, para 13.

89 Mr Colegrave EOC, para 14.

medium term.[90] On the other hand, Mr Colegrave's evidence identifies a range of fundamental reasons why the latest BCA likely significantly overstates market supply and understates demand, especially over the short- to medium-term.[91] Several sources of updated information, including updated employment and supply data, evidence that the economic or supply/demand "case" (i.e. rationale) for PC20 is materially stronger than when the plan change request was first made.[92]

(b) *There are **no other reasonably practicable and feasible options** for providing at least sufficient development capacity within the same locality and market **while achieving a well-functioning urban environment.***[93]

The comprehensive assessment contained in the Applicants' Addendum and evidence demonstrates there are no other reasonably practicable and feasible options that would achieve a well-functioning urban environment, for a range of reasons.[94] While development capacity for business land could theoretically be located elsewhere, including possibly in locations identified in the Addendum, the analysis demonstrates that these locations would not achieve a well-functioning urban environment and/or include soils with lower (i.e. higher quality) LUC classifications and/or higher productive capacity, than the PC20 land.

Ms Andrews for WRC suggests in her evidence that further assessment of alternatives should be undertaken, including throughout the neighbouring districts of Waikato and Hamilton City.[95] However, while fully acknowledging it does not carry legal weight, the MfE Implementation Guidance stresses that while the analysis required is comprehensive, it does not need to be exhaustive.[96] What is required is a pragmatic and realistic assessment. We submit the information

---

90 S42A report, section 9.2; and Mr Colegrave's EIC, para 32.

91 Mr Colegrave EOC, paras 14; 35-36; and 47-63.

92 Mr Colegrave EIC, paras 37-61.

93 Cl 3.6(1)(b). *"Within the same locality and market"* is defined in cl 3.6(3).

94 Refer to footnote 146 below for a summary of the meaning of "practicable".

95 Ms Andrews EIC, paragraphs 42-44. Refer Mr Grala's rebuttal statement, paras 8-12.

96 It states: *"…an option that does not serve the same locality and market that is proposed for development (for example, a completely different part of the district or within a completely different and distinct part of a large urban city) is not a reasonably practicable option that needs to be assessed."…"…while Clause 3.6(2) sets out a minimum list of options that must be assessed, the requirement to assess 'reasonably practicable' options **does not require an exhaustive assessment of all possible options.** The use of the words 'reasonably practicable option' is intended to align with the assessment of reasonably practicable options in section 32(1)(b)(i) and ensure a **pragmatic assessment of realistic and achievable options** to provide the required development capacity is completed. It is also important to recognise there are often limitations on the ability to undertake a detailed assessment of other reasonably practicable options. For example, other options may involve constraints that are not readily apparent or cannot be easily identified by territorial authorities or private plan change applicants as part of the scoping and site selection process. **In the case of private plan changes proposing urban rezoning of HPL, there are often more limitations on the reasonably practicable options that can be assessed** – particularly as it is often not possible for a private landowner or developer to acquire a range of other landholdings for development."* (Ministry for the Environment. 2022. *National Policy Statement for Highly Productive Land: Guide to implementation,* page 44).

provided by the Applicant in the Addendum and evidence far exceeds the minimum standards required.

(c) *The environmental, social, cultural and economic* ***benefits*** *of rezoning* ***outweigh*** *the long-term environmental, social, cultural and economic* ***costs*** *associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.*[97]

The cost-benefit analysis undertaken[98] carefully evaluates the environmental, social, cultural and economic benefits of PC20 with the costs of the loss of HPL its urbanisation will entail. That evaluation demonstrates that the benefits significantly outweigh the costs. Of note, Mr Hunt's evidence describes that the PC20 site's rural productive potential is compromised and limited for a range of practical reasons.

8.7. In addition, it has been demonstrated that cl3.6(5), which essentially requires the loss of HPL to be minimised, is also satisfied in the PC20 context.

Summary

8.8. In summary, PC20 satisfies the NPS-HPL cl 3.6 pathway and can be approved by the Panel.

PC20 timing ("out of sequence" development)

8.9. As identified above, the PC20 land is clearly signposted for future business development in numerus statutory and non-statutory documents. However, PC20 will enable development earlier than was previously anticipated in the planning documents. This includes the RPS,[99] the District Plan[100] and Future Proof.

8.10. This is not an uncommon situation, including in the context of the strong demand for business land that exists and the planning imperatives of the NPS-UD.

---

97 Cl 3.6(1)(c).

98 Addendum, section 2.2.3; MR Grala EIC and Mr Colegrave EIC.

99 As explained in Mr Grala's evidence, Table 35 within Appendix 12 of the RPS allocates a total of 124ha of industrial land to the Airport node, of which 74ha was allocated between 2010-2021 and 50ha between 2021-2040. No allocation is provided between 2041-2061. PC20 is seeking the Northern Precinct be extended from 41ha (which was presumably part of the 2021-2040 allocation) to approximately 130ha. This exceeds the 50ha that is allocated for 2021-2040.

100 Hamilton Airport Strategic Node: Hamilton Airport Growth Map: Appendix S1 ("Future Growth Cells") of the District Plan identified an expanded Northern Precinct for "beyond 2035".

8.11. The Applicants are very confident that the demand is there for the PC20 business land offering. In large part, to the very high demand for business land, including the current Titanium Park offering. This is confirmed in the economics evidence of Mr Colegrave.

8.12. In addition, Mr Grala and Mr Inger's evidence steps through how PC20 gives effect to both:

(a) the general built environment objectives and policies in the RPS;[101] and

(b) critically, the criteria in the RPS through which "out of sequence" developments such as PC20 can be demonstrated as being appropriate and justified.[102]

8.13. We submit that the Panel can confidently conclude that PC20 demonstrably gives effect to the provisions of the RPS relating to out of sequence developments.

8.14. Further, the NPS-UD provides additional concrete support for the notion that district councils must be responsive to out of sequence (as opposed to unanticipated) developments such as PC20, which can contribute to well-functioning urban environments.[103]

Long-tailed bats

Introduction

8.15. The management of the impacts of urbanisation on bat habitat is at the intersection of two key drivers in the applicable planning framework:[104]

(a) First, the need to deliver well-functioning urban environments, including providing for business land;[105] and

(b) Second, maintaining or enhancing indigenous biodiversity.[106]

8.16. Because bats are highly mobile fauna and are present throughout large parts of Waikato,[107] the bat issues before the Panel are not new – they have recently been

---

[101] UFD-01, paragraph 112-114 of Mr Grala's EIC.

[102] UFD-M49, which speak to UD-P11 and the indicative timings in Table 35 (APP12). See paragraphs 115-118 of Mr Grala's EIC.

[103] Policy 8; and Subpart 2 – *Responsive Planning:* cl 3.8 *Unanticipated or out-of-sequence developments.*

[104] This risk has significance: bats are *"Threatened – Nationally Critical"* under DOC's threat classification system. Ms Cummings identifies the potential effects of PC20 is her EIC (paras 69-82). They include physical and functional habitat removal; fragmentation of habitat in the surrounding landscape; and increased predator densities. The Bat JWS records that all ecologists who have considered ecology beyond bats agree *"…there are no freshwater values on the PPC20 site, and that all other ecological values are low (including birds and lizards)".*

[105] Refer, principally to the NPS-UD.

[106] Refer the RPS, addressed below.

[107] Ms Cummings EIC, para 15.

grappled with in the Waikato context by several hearings panels and the Environment Court. This includes HCC's PC5, which was approved by Hearings Commissioners last month. For PC5, the Director-General of Conservation ("DoC") raised very similar concerns, and ran very similar arguments, as it has for PC20. These were roundly rejected in the PC5 Decision.

8.17. Several of the Applicants' experts address bat issues:

(a) Ms Cummings' evidence addresses the values of the PC20 site and surrounding area for bat habitat, potential effects on bats, and how PC20 manages them.

(b) Mr Markham's evidence addresses PC20's framework for managing residual adverse effects, including compensation.

(c) Mr Inger's evidence provides a detailed planning analysis focussing on bats.

8.18. Taken together, the Applicants' evidence on bats in comprehensive, detailed, and carefully reasoned.

8.19. Ms Cumming's considered assessment – outlined in both her EIC and rebuttal statement – is that the PC20 site provides habitat for bats that is of low to moderate value, although there are some high-value habitats in the surrounding area (i.e. none of the PC20 bat habitat is "significant" under the RPS.)[108] Ms Thurley for DoC disagrees and considers that the entire PC20 site (except existing buildings) constitutes significant bat habitat.[109] By extension, under Ms Thurley's "blanket" approach whereby the presence of bats equates to a "significant" area under the RPS, large swathes of the Waikato, including existing urbanised areas of Hamilton City, would qualify.[110]

8.20. DoC also disagrees with the applicable policy and effects management framework governing PC20's management of effects on bats, which we address below, and ultimately on some of the bat provisions in PC20.

8.21. Despite there appearing to be some distance between the Applicants and DoC – and their respective experts – all parties and their experts agree that the management of effects on bat habitat, which the urbanisation enabled by PC20 has the potential to impact, is an important issue for PC20. The distance between Mr Inger and Mr Gooding is actually now very narrow and this is discussed in Mr Inger's rebuttal statement.

108 Refer to the RPS significance framework/criteria addressed below.
109 Ms Thurley EIC, paras 4.6, 9.2. and 13.1-3.
110 Ms Thurley rebuttal statement, para 22.

PC20's bat provisions

8.22. The notified version of PC20 incorporated a package of provisions aimed to appropriately manage potential adverse effects on bats.[111] However, as a result of further analysis including the specialist advice of Ms Cummings, consideration of the approach being taken in PC5, and feedback from submitters, the Applicants instructed the consultant team to consider what improvements could be made. Following considerable time and effort from a range of parties including another set of surveys, the Applicants have overhauled PC20's approach to bats. The revised multifaceted suite of provisions, which TPL/RPL consider represents a "gold standard" approach, includes the following integrated cascade of features, all of which are detailed and assessed in Mr Inger, Ms Cummings, Mr Markham's, and Mr Mckensey's evidence:

(a) A **resource management issue[112]** that places at the forefront potential bat effects and the need to recognise and provide for the protection of identified areas of bat habitat.

(b) A strong and directive **policy**[113] to give effect to existing objectives in the District Plan[114] within the Northern Precinct (set out in full below). This requires that significant bat habitat values must be maintained or enhanced. It also introduces the BHA shown on the proposed Structure Plan, the controlling of building locations, objective and clear standards to minimise light spill, and preparation and implementation of the EMP (with its associated effects management requirements).

(c) A **proposed Structure Plan** identifying the extensive **BHA** to be protected and enhanced.[115] The BHA consists of a 2.23ha "corridor" and a 2.72ha "Hub" area, corresponding with a row of trees extending from Middle Road and a grouping of trees within the Hub respectively. The primary purpose of the BHA is to enable movement and foraging. Ms Cummings notes that following enhancement, roosting of bats may occur. The BHA covers areas assessed by Ms Cummings as amongst the highest value (albeit not significant) bat habitats onsite that provide the best opportunities for protection and enhancement. Enhancement planting to improve bat habitat function will be required within the BHA, as shown

---

[111] Potential effects largely relate to a change in habitat, through urbanisation, that is less suitable for bat foraging, commuting, and roosting.

[112] 10.2.3A.

[113] 10.3.2.2A. As outlined below, the wording of policy 10.3.2.2A is supported by all planners and bat ecologists in the Bat JWS, with the exception of the insertion of the word "functional".

[114] Objective 24.3.1

[115] See proposed Figures 1 and 2 in Appendix S10, and the associated provisions framework.

on landscape cross-sections in the proposed Structure Plan with respect to the 50m corridor. The cross-section designs are based on corridor designs that were recently adopted in the Amberfield resource consents and in HCC PC 5.

(d) Comprehensive **EMP** and **Bat Management Plan** (a sub-plan) requirements for the whole PC20 area, covering a range of matters relevant to bats.[116] The EMP requirements are detailed and robust and are explained within the evidence of Mr Inger.

(i) The provisions require the **avoidance** of more than minor adverse effects on bat habitat values within BHAs; the avoidance or mitigation of more than minor adverse effects outside of BHAs; and where adverse effects are unable to be avoided or mitigated, they must be **offset or compensated** for to achieve a **no net loss outcome** (e.g. habitat enhancement and/or pest control).[117]

(e) In anticipation of there being residual adverse effects requiring offsetting or compensation as a result of PC20 development outside of BHAs, the Applicants have scoped a **proposed compensation package**, guided by the accepted Biodiversity Compensation Model ("BCM").[118]

(i) TPL has entered into a conditional agreement to buy a 11ha offsite proposed compensation area which, if PC20 is successful, the Applicants intend to enhance through pest control and planting to offset/compensate for any residual adverse effects associated with the Proposal.[119] The property is only approximately 500m from the PC20 site. It has a direct frontage to the Waikato River corridor which provides a strategically located and valuable opportunity for habitat creation within and between identified key bat habitats (most of the property is within the mapped biodiversity corridor along the Waikato River). It contributes significantly and meaningfully to the bat ecological values of the Region. It warrants observation that securing a compensation site at this early stage of a process is highly unusual and represents an approach that exceeds that adopted in PC5.

116 Refer Rule 10.4.2.14B. The EMP is required to be developed as part of the first land use or subdivision consent. The EMP Rule 10.4.2.14B was supported by all expert in the Bat JWS, with the exception of Mr Gooding who sought addition of the word "functional".

117 Proposed provisions 10.3.2.2A, and 10.4.2.14B(a)(vi).

118 Refer to Mr Markham's evidence regarding the BCM.

119 Refer to the map at Attachment 2 of the Bat JWS.

(ii) As part of the wider compensation package, the Applicants are also intending to undertake pest control over a ten-year period in areas bats are known to frequent. Under the preliminary BCM assessment this would occur over an 80ha area.

(iii) The habitat protection and enhancement/restoration opportunities (and benefits) of the proposed compensation site and wider compensation package are detailed in Ms Cummings' and Mr Markham's evidence. Suffice to say the multimillion-dollar conditional acquisition of the compensation site (together with the almost 5ha of otherwise developable land in the BHA which represents many more millions of dollars in lost yield) are a significant demonstration of the Applicants' commitment to the long-tailed bat.

(f) Strict **lighting controls** limiting the amount of light spill allowed from fixed artificial lighting in the Northern Precinct (both indoor and outdoor) when measured at the boundary of a BHA.[120] The controls will provide upfront certainty on permissible light levels.

(g) Strict **vegetation trimming, pruning, and removal** controls.[121]

(h) Strict **buildings controls** requiring a minimum 5m building setback from the BHA, which is consistent with HCC PC 5.[122]

(i) Targeted **ecological assessment criteria**.[123]

8.23. On the back of the revised approach proposed by the applicants, the experts have made some progress resolving or narrowing issues.[124] The Bat JWS records:[125]

> *All of the planning and bat ecology experts consider that **the amended version of PPC20** (dated 2nd February 2023) **is a significant improvement** in relation to providing for bats compared to the notified version.*

8.24. Issues with some submitters remain, however.

---

120 Rule 10.4.2.14A. The lighting standards are adapted from the standards proposed in HCC PC5.

121 For example Rules 10.4.1(zc); 10.4.2.14C; and 10.4.2.14D. These provisions were largely supported by all experts in the Bat JWS.

122 Rule 10.4.2.A. This was supported by all experts in the Bat JWS.

123 Section 21.1.10.18A and 21.1.10.21.

124 All planners and ecologists attending the ecology and bat conferencing recorded in the Bat JWS that they support a wide range of updated proposed provisions, except as otherwise noted in the JWS. Agreed provisions include: Issue Statement 10.2.3A; Policy 10.3.2.2A*;* Activity Status Table 10.4.1; Performance Standard 10.4.2.3A; Performance Standard 10.4.2.14A (except as recorded in the JWS); Performance Standard 10.4.2.14B (except as recorded in the JWS); and Performance Standard 10.4.2.14C (except as recorded in the JWS). This is except for Ms Thurley for DoC, who *"considers the drafting of provisions to be a planning matter so reserves her opinion on their adequacy"* (Bat JWS, para 3.1.1.)

125 Bat JWS, para 3.1.1. Emphasis added.

8.25. While the Applicants agree that it is necessary and appropriate to be focussing on the detailed wording of PC20's proposed bat provisions, in our view the Panel should not lose sight of the fact that the biodiversity provisions in PC20 represent the most comprehensive and onerous provisions in the District with respect to bats. The District Plan provisions applying to the current 41ha Northern Precinct extent do not contain any specific ecological requirements.[126]

The statutory/planning framework

Section 6(c)

8.26. The planning context for bats is addressed in detail in Mr Inger's evidence. The starting point for the management of bat habitat which is given effect to in the RPS begins with s6(c) of the RMA which directs the Panel to recognise and provide for, as a matter of national importance:

> *…the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna*

The RPS

8.27. The RPS implements s6(c). Key provisions include those set out below, although the full suite of RPS provisions are analysed in Mr Inger's evidence.[127] It is appropriate to set out the RPS provisions at some length. Doing so makes plain that the effects management framework advanced by DoC is based on its view of the world as opposed to the higher order policy direction. To assist the Panel, the provisions below include those relating to "significant habitats of indigenous fauna" (e.g. ECO-P2 and ECO-M13), notwithstanding it is the Applicants' evidence that PC20 contains no such areas and that it is the provisions relating to "non-significant" habitat that apply.

> ***ECO-O1 – Ecological integrity and indigenous biodiversity***
>
> *The full range of ecosystem types, their extent and the indigenous biodiversity that those ecosystems can support exist in a healthy and functional state.*
>
> ***ECO-P1 – Maintain or enhance indigenous biodiversity***
>
> *Promote positive indigenous biodiversity outcomes to maintain the full range of ecosystem types and maintain or enhance their spatial extent as necessary to achieve healthy ecological functioning of ecosystems, with a particular focus on:*
>
> 1. *working towards achieving no net loss of indigenous biodiversity at a regional scale;*
> 2. *the continued functioning of ecological processes;*
> 3. *the re-creation and restoration of habitats and connectivity between habitats;*

[126] Mr Grala EIC, para 21; and EIC of Mr Inger, paras 19 and 28.
[127] Note that provisions numbering is different than in the AEE, due to recent changes made to the RPS to restructure the content in accordance with the National Panning Standards.

4. *supporting (buffering and/or linking) ecosystems, habitats and areas identified as significant indigenous vegetation and significant habitats of indigenous fauna;*
5. *providing ecosystem services;*
6. *the health and wellbeing of the Waikato River and its catchment;*
7. *contribution to natural character and amenity values;*
8. *tangata whenua relationships with indigenous biodiversity including their holistic view of ecosystems and the environment;*
9. *managing the density, range and viability of indigenous flora and fauna; and*
10. *the consideration and application of biodiversity offsets.*

ECO-P2 – Protect significant indigenous vegetation and significant habitats of indigenous fauna

Significant indigenous vegetation and the significant habitats of indigenous fauna shall be protected by ensuring the characteristics that contribute to its significance are not adversely affected to the extent that the significance of the vegetation or habitat is reduced.

ECO-M1 – Maintain or enhance indigenous biodiversity

Regional and district plans shall maintain or enhance indigenous biodiversity, including by:

1. *providing for positive indigenous biodiversity outcomes when managing activities including subdivision and land use change;*
2. *having regard to any local indigenous biodiversity strategies developed under ECO-M11; and*
3. *creating buffers, linkages and corridors to protect and support indigenous biodiversity values, including esplanade reserves and esplanade strips to maintain and enhance indigenous biodiversity values.*

ECO-M2 – Adverse effects on indigenous biodiversity

Regional and district plans shall recognise that adverse effects on indigenous biodiversity within terrestrial, freshwater and coastal environments are cumulative and may include:

1. *fragmentation and isolation of indigenous ecosystems and habitats;*
2. *reduction in the extent and quality of indigenous ecosystems and habitats;*
3. *loss of corridors or connections linking indigenous ecosystems and habitat fragments or between ecosystems and habitats;*
4. *the loss of ecological sequences;*
5. *loss or disruption to migratory pathways in water, land or air;*
6. *effects of changes to hydrological flows, water levels, and water quality on ecosystems;*
7. *loss of buffering of indigenous ecosystems;*
8. *loss of ecosystem services;*
9. *loss, damage or disruption to ecological processes, functions and ecological integrity;*
10. *changes resulting in an increased threat from animal and plant pests;*
11. *effects which contribute to a cumulative loss or degradation of indigenous habitats and ecosystems;*
12. *noise, visual and physical disturbance on indigenous species, particularly within the coastal environment; and*
13. *loss of habitat that supports or provides a key life-cycle function for indigenous species listed as 'Threatened' or 'At Risk' in the New Zealand Threat Classification System lists.*

ECO-M3 – Avoidance, remediation, mitigation and offsetting (for indigenous biodiversity that is not significant)

Regional and district plans:

1. *for non-significant indigenous vegetation and non-significant habitats of indigenous fauna (excluding activities pursuant to ECO-M4):*
    a. *shall require that where loss or degradation of indigenous biodiversity is authorised adverse effects are avoided, remedied or mitigated (whether by onsite or offsite methods).*
    b. *should promote biodiversity offsets as a means to achieve no net loss of indigenous biodiversity where significant residual adverse effects are unable to be avoided, remedied or mitigated.*
    c. *when considering remediation, mitigation or offsetting, methods may include the following:*
        i. *replacing the indigenous biodiversity that has been lost or degraded;*
        ii. *replacing like-for-like habitats or ecosystems (including being of at least equivalent size or ecological value);*
        iii. *the legal and physical protection of existing habitat;*
        iv. *the re-creation of habitat; or*
        v. *replacing habitats or ecosystems with indigenous biodiversity of greater ecological value.*
2. *for significant indigenous vegetation and significant habitats of indigenous fauna ECO-M13 applies.*

ECO-M13 – Protect areas of significant indigenous vegetation and significant habitats of indigenous fauna

Regional and district plans shall (excluding activities pursuant to ECO-M4):

1. *protect areas of significant indigenous vegetation and significant habitats of indigenous fauna;*
2. *require that activities avoid the loss or degradation of areas of significant indigenous vegetation and significant habitats of indigenous fauna in preference to remediation or mitigation;*
3. *require that any unavoidable adverse effects on areas of significant indigenous vegetation and significant habitats of indigenous fauna are remedied or mitigated;*
4. *where any adverse effects are unable to be avoided, remedied or mitigated in accordance with (2) and (3), more than minor residual adverse effects shall be offset to achieve no net loss; and*
5. *ensure that remediation, mitigation or offsetting as a first priority relates to the indigenous biodiversity that has been lost or degraded (whether by on-site or off-site methods). Methods may include the following:*
    a. *replace like-for-like habitats or ecosystems (including being of at least equivalent size or ecological value);*
    b. *involve the re-creation of habitat;*
    c. *develop or enhance areas of alternative habitat supporting similar ecology/significance; or*
    d. *involve the legal and physical protection of existing habitat;*
6. *recognise that remediation, mitigation and offsetting may not be appropriate where the indigenous biodiversity is rare, at risk, threatened or irreplaceable; and*
7. *have regard to the functional necessity of activities being located in or near areas of significant indigenous vegetation and significant habitats of indigenous fauna where no reasonably practicable alternative location exists.*

ECO-M14 – Assess significance

Where regional and district plans require an assessment of significant indigenous vegetation and the significant habitats of indigenous fauna that have not been identified by Waikato Regional Council as part of ECO-M12, the criteria in APP5 shall be used. The identification of the characteristics of any area will be undertaken prior to any modification of the area or site and will inform the decision-making process as to whether the proposed activity or modification is appropriate. The characteristics that have contributed to an area being significant should also be communicated to the relevant landowners and kept on record by the local authority.

8.28. APP5 sets out a list of ecological criteria for determining whether indigenous biodiversity is of significance or not.[128] It is these criteria that are referenced by Ms Cummings evidence which concludes that there are no areas of significant habitat for bats within the PC20 site. Ms Thurley disagrees and relies on an absolutist interpretation that the presence of bats (with apparently no minimum threshold or timescale) means the PC20 land is significant in its entirety, notwithstanding her acknowledgement that the site is not ideal habitat as it is subject to aircraft noise and has few trees.[129]

8.29. The UFD (urban form and development) objective and policies in the RPS also promote positive indigenous biodiversity outcomes, but are less directive and detailed on matters of indigenous biodiversity than the ECO provisions. Of note, Policy UFD-P1 requires that subdivision, use and development of the built environment occurs in a planned and coordinated manner and has regard to the development principles in APP11 of the WRPS. Those development principles include:

…

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

…

<u>The District Plan</u>

8.30. The District Plan then gives effect to the RPS. As outlined in Mr Inger's evidence, Section 24 of the District Plan (Indigenous Biodiversity) sets out a three-tiered approach. The most restrictive approach applies to Significant Natural Areas ("SNAs") and bush stands (which are identified in the District Plan); a less restrictive regime applies to biodiversity corridors (which are identified in the District Plan); and the most permissive provisions apply to indigenous vegetation and wetlands in the remainder of the District. There are

128 See APP5, Table 28. As confirmed in ECO-M14. Case law relating to s6(c) establishes that whether an area is "significant" requires a factual assessment based on the inherent quality of the area (*Royal Forest and Bird Protection Soc of New Zealand Inc v Auckland Council* [2017] NZHC 1606, applying *Man O'War Station Ltd v Auckland Council* [2017] NZCA 24, [2017] NZRMA 121).

129 Thurley EIC para 9.6

no SNAs, bush stands, or biodiversity corridors identified in the District Plan on the PC20 site for any ecological values (including bat habitat).[130] Key District Plan provisions include.[131]

> ***Objective - Managing effects on district wide indigenous biodiversity***
>
> *24.3.1 To maintain and enhance the existing level of biodiversity within the District.*
>
> ***Policy - Maintenance and enhancement of indigenous biodiversity***
>
> *24.3.1.1 To achieve the maintenance and enhancement of indigenous biodiversity values in the District by ensuring that removal of indigenous vegetation or disturbance of wetland areas only occurs where:*
>
> *(a) Connectivity to link core habitats along biodiversity corridors is supported; and*
>
> *(b) Sensitive sites remain buffered from intensive land use, development and subdivision; and*
>
> *(c) Habitat is retained for at risk and threatened indigenous species; and*
>
> *…*
>
> *(e) Consideration has been given to opportunities that contribute to no net loss at a regional scale.*

8.31. There are no rules in Section 24 of the District Plan that restrict removal of indigenous vegetation outside of the identified SNAs, bush stands, and biodiversity corridors; nor which restrict the removal of non-indigenous vegetation within the district (within the identified areas or elsewhere). The exception is specifically scheduled trees. As a result, the removal of indigenous and non-indigenous vegetation within the PC20 site is currently a permitted activity. Mr Inger explains to the Panel why the provisions contained in PC20 on the BHAs are more responsive and appropriate to dealing with bats than the scheduling of SNAs.[132]

8.32. The Director-General's submission sought the imposition of SNAs on all Airport Business Zone land which of course would capture the Hamilton Airport and other parts of Titanium Park and in so doing enlarge the area subject to PC20. The evidence of Ms Drew on behalf of Waikato Regional Airport Limited elaborates on its opposition regarding that relief. Mr Gooding's evidence on behalf of the Director-General states that, if Ms Thurley's evidence is preferred, mapping of a SNA "on the PC20 site" is required.[133] Mr Inger addresses this matter in detail in his rebuttal statement.

---

130 A 750m biodiversity corridor applies to the Waikato River and adjacent land.
131 As required under s75 of the RMA addressed above.
132 Inger EIC, para 128 and Rebuttal para 43.
133 Mr Gooding EIC, para 9.7.

PC20 gives effect to the higher order framework

8.33. Mr Inger's evidence includes a careful analysis demonstrating how PC20's ecology and bat provisions give effect to the higher order provisions relating to ecosystems and biodiversity and built environments.[134] Principal among these are PC20's proposed Appendix S10.2.5 and Policy 10.3.2.2A and the rules that implement them:

> ***S10.2.5*** *Development of the Northern Precinct will occur in a way that protects identified Bat Habitat Areas and maintains or enhances long-tailed bat habitat values.*
>
> ***10.3.2.2A*** *To maintain or enhance significant long-tailed bat habitat values by:*
>
> *(a) providing Bat Habitat Areas for long-tailed bats within the Northern Precinct;*
>
> *(b) controlling the location of buildings adjacent to Bat Habitat Areas;*
>
> *(c) minimising light spill into Bat Habitat Areas;*
>
> *(d) requiring the preparation and implementation of an EMP as part of development to:*
>
> *i. avoid more than minor adverse effects on long-tailed bat habitat values within Bat Habitat Areas; and;*
>
> *ii. avoid or mitigate more than minor adverse effects on long-tailed bat habitat values outside of Bat Habitat Areas; and*
>
> *iii. where any effects on long-tailed bat habitat values are unable to be avoided or mitigated, ensure that any more than minor residual effects are offset or compensated to achieve no net loss.*

8.34. The wording of policy 10.3.2.2A is agreed to by all planners and bat ecologists in the Bat JWS, with the exception of the insertion of the word "functional" that is proposed by DOC's experts and Mr Kessels but opposed by the Applicants' experts.[135] Mr Inger and Ms Cummings set out their reasoned opinion as to why the addition is not warranted and it is addressed also in the Bat JWS with Mr Grala's input.[136]

8.35. The s42A report recommends acceptance of the Applicants' proposed ecology/bat provisions for PC20 (i.e. no changes to provisions are recommended).

What is the applicable "effects management framework/hierarchy"

8.36. Ms Thurley and Mr Gooding are critical of PC20's proposed effects management regime, especially with respect to offsetting/compensating for residual adverse effects. Ms Thurley asserts that the "effects management hierarchy" needs to be strictly followed.[137] Ms Thurley's contention is that the framework proposed in PC20 has an undue preference for offsetting/compensation, at the expense of avoidance and mitigation

---

[134] Mr Inger EIC, paras 73-122. See in particular his "assessment of the PC20 approach" from paras 120-122.

[135] The relevant addition is: *"[t]o maintain or enhance significant long-tailed bat habitat values by: (a) providing functional Bat Habitat Areas for long-tailed bats within the Northern Precinct".*

[136] See the Bat JWS where Ms Cummings, Mr Inger and Mr Grala disagree with the insertion of "functional" and see also Mr Inger EIC para 83, 84, Rebuttal paras 44 and 45, and Ecology JWS 3.3.1

[137] Bat JWS, para 3.1.2.

which *"there has not been enough consideration of"*.[138] We understand the underlying premise contended by Ms Thurley, and Mr Gooding in his evidence, is that each step of the effects management hierarchy needs to be exhausted before moving to the next step.[139]

8.37. The effects management hierarchy Ms Thurley refers to in the Bat JWS is contained in the National Policy Statement for Freshwater Management ("NPS-FM") (which is not pertinent here)[140] and in the draft National Policy Statement for Indigenous Biodiversity ("Draft NPS-IB") which is still in draft. While Ms Thurley/DOC appear to have a preference for applying the effects management hierarchy in the NPS/FM and/or Draft NPS-IB, it is the RPS policy framework which governs the management response for PC20. PC20 is required to give effect to the RPS, which the Environment Court has recently endorsed in the following strong terms:[141]

> *[33] The Court concludes that **the [ECO] provisions… of the RPS should dictate the actions taken in respect of the on-going validity and survival of the known indigenous bio-diversity in the locality.** The policies, implementation methods, and rules of this chapter are as on point with respect to the valuable qualities of the site short of the document simply being an instruction manual to the preservation and enhancement of the long-tailed bat. The relevance of these matters is undeniable.*

8.38. The critical issue for the Panel is whether PC20 appropriately gives effect to (i.e. applies or steps through) the management hierarchy prescribed by the RPS. Even if it were accepted that PC20 contained areas of significant habitats of indigenous fauna (which the Applicants do not) RPS Policy ECO-P2 does not direct absolute avoidance of effects. It is qualified. Policy ECO-P2, along with the relevant method ECO-M13.2 requires avoidance ***in preference*** to remediation or mitigation. (The provisions applying to "non-significant" areas are more flexible again.)

8.39. Inexplicably, Mr Gooding's citation of ECO-M13 in his evidence[142] simply omits the decisive *"in preference to remediation or mitigation"* wording. While this may reflect an innocent cut-and-paste error, it could also explain Mr Gooding's skewed policy interpretation, as outlined by Mr Inger.

---

138 Bat JWS, para 3.1.2.

139 DoC advanced, and the Council responded to, similar arguments at the hearing HCC's PC5, which concerned the same RPS provisions.

140 Bat JWS, para 3.1.2.

141 *Weston Lea Limited v Hamilton City Council* [2020] NZEnvC 189 at [33].

142 Mr Gooding evidence, para 8.37.

8.40. In the PC5 decision, in which it was accepted the "significant" habitat RPS provisions were engaged for parts of the site, the Commissioners found that the RPS provisions relating to significant bat habitat direct an effects management framework that is not absolute:[143]

> 63. *…ECO-P2 – includes the qualifier as follows:*
>
> > *Significant indigenous vegetation and the significant habitats of indigenous fauna shall be protected by ensuring the characteristics that contribute to its significance are not adversely affected to the extent that the significance of the vegetation or habitat is reduced. [The Commissioners' emphasis]*
>
> 64. *The relevant Method ECO-M13.2 further clarifies that the directive is not unqualified where it states:*
>
> > *Regional and district plans shall (excluding activities pursuant to ECO-M4)*
> >
> > *…*
> >
> > 2. *require that activities avoid the loss or degradation of areas of significant indigenous vegetation and significant habitats of indigenous fauna in preference to remediation or mitigation; [The Commissioners' emphasis]*

8.41. Where any adverse effects are unable to be avoided, remedied or mitigated, more than minor adverse effects must therefore be offset to achieve no net loss. Even for "significant" biodiversity, the RPS does not establish an absolute requirement for avoidance or create a requirement for all avoidance options to be absolutely exhausted before moving down the hierarchy. The RPS allows a more flexible approach to that proposed by DOC. It:

(a) **Prefers** avoidance over remediation or mitigation;

(b) Explicitly **provides for** unavoidable adverse effects (by requiring that they be remedied or mitigated);

(c) **Provides for/enables** offsetting of adverse effects that cannot be avoided, remedied or mitigated.

8.42. The effects management hierarchy (as it appears in the NPS-FM nor the Draft NPS-IB) must not be elevated to some kind of touchstone for measuring whether PC20's provisions are appropriate.

8.43. In the PC5 Decision, the Commissioners disposed of similar arguments by DoC in the following terms:[144]

---

143 PC5 Decision, paras 63-64.

144 PC5 Decision, para 46.

… suffice to say at this point that we are not persuaded that either the NPSFM approach or the draft NPSIB are pertinent or necessary considerations for the exercise of the Panel's s.6(c) duty.

8.44. For completeness, notwithstanding that neither the NPS-FM nor the Draft NPS-IB applies to the management of biodiversity effects for PC20, the effects management hierarchies in both those documents sequentially prioritise avoidance, minimisation, remedying, and then offsetting/compensation; but they – like the RPS – also do not establish an absolute requirement for avoidance.[145] Before the offset/compensate steps, the hierarchy requires avoidance, minimisation, or remedying **where practicable.[146]** Therefore, without derogating from the position that it is the RPS framework that dictates the management of biodiversity effects in this case, whether under the RPS or the "effects management hierarchy" as defined in the NPS-FM or Draft NPS-IB, the Panel's task is to determine whether PC20 appropriately steps through the progressive management of effects, *in the context of* the biodiversity values potentially affected by PC20. This involves a series of judgments, including what effects, in the context of PC20, are practicable to avoid, and so on.

Compensation is available

8.45. To pre-empt a potential legal argument by DoC, which the Director-General also advanced in the PC5 hearing (a foundation for which appears to be attempted in DoC's evidence),[147] simply because ECO-M13 refers to offsetting only, does not mean that compensation is unavailable. The PC5 decision records:[148]

> *81. We record our agreement with counsel for the Council that the absence of an express reference to compensation in… ECO-M13… does not exclude compensation from being an available response. As the Environment Court in the Waka Kotahi case that counsel for the Council referred us to noted:[149]*
>
> > *[187] We find that even though 'compensation' is not provided for in Policy 13-4(d) of the One Plan as a step in the offsetting hierarchy, its absence there does not affect*

145 The Commissioners in PC5 made this point at para 86c.

146 The Environment Court decision in *Royal Forest & Bird Protection Society of New Zealand Inc v Whakatane District Council* [2017] NZEnvC 51 contains a comprehensive analysis of the meaning of "practicable", including for the purposes of interpreting regional policy statement and district plan provisions that required consideration of whether avoiding adverse effects was "practicable". At paragraph 51 the Court noted: *"'Practicable' has been held to mean 'possible to be accomplished with known means or resources' and synonymous with 'feasible,' being more than merely a possibility and including consideration of the context of the proceeding, the costs involved and other matters of practical convenience."* At paragraph 53, the Environment Court held that whether a measure is "practicable" involves examining the options having regard to, among other things: *"i) The nature of the activity and its effects; ii) The sensitivity of the environment to adverse effects generally and to the identified effects of the activity in particular; iii) The likelihood of adverse effects occurring; iv) The financial implications and other effects on the environment of the option compared to other options; v) The current state of knowledge of the activity, its effects, the likelihood of adverse effects and the availability of suitable ways to avoid or mitigate those effects; vi) The likelihood of success of the option; and vii) An allowance of some tolerance in such considerations."*

147 See for example Mr Gooding's and Ms Thurley's evidence.

148 PC5 Decision, para 81-82.

149 Waka Kotahi NZ Transport Agency v Manawatu-Whanganui Regional Council [2020] NZEnvC 192.

the validity of its inclusion in the overall mitigation package proposed for the Project. The proposed compensation will contribute to replacing biodiversity that cannot be offset (in terms of the definition of that word) and will be verified after the fact as required by the conditions of consent.

82. We also consider that the references to offsetting in methods ECO-M13.4 and .5, which refer to the achievement of "no net loss" through "on-site or offsite methods", are consistent with and are broad enough to include the concept of environmental "compensation"

PC20 gives effect to the applicable effects management hierarchy

8.46. The package of PC20 biodiversity provisions require a comprehensive suite of management responses and step through the management of effects as required by s6(c) of the RMA and the RPS framework. The PC20 provisions clearly articulate the applicable effects management framework, or hierarchy. They reflect, and give effect to, the RPS provisions on biodiversity effects management.

8.47. In doing so, they prioritise avoidance of the loss of bat habitat through a range of measures, principally the establishment of a BHA (and associated controls on a range of matters, including lighting and vegetation removal) for the areas determined to be of elevated value. Given the evidence, the Panel can be assured that the BHA will avoid loss of habitat within the BHAs, and indeed will enhance it.

8.48. PC20's management of effects on bat habitat is not limited to establishment of the BHA and associated controls. Outside of the BHA (i.e. in areas of lower bat habitat value), PC20 moves away from strict avoidance, into remediation, mitigation and offsetting/compensation.

8.49. PC20 provisions therefore establish that avoidance of effects is always at the forefront of planning decision considerations, even where urban development is provided for. Where residual adverse effects cannot be otherwise managed, PC20 provides for offsetting or compensation. While deliberately not foreclosing potential future offsetting options, the Applicant's evidence (namely Mr Markham's and Ms Cumming's evidence) demonstrates why offsetting is neither practicable nor possible in this case.

8.50. Therefore, any contention that PC20 gives undue flexibility to "skip" straight to the compensation stage, or is otherwise unduly skewed towards compensation in favour of avoidance or mitigation, is unfounded. It is this flawed interpretation of the higher order policy direction that underpin many of the changes to PC20 sought by DOC.

BHA location, extent, and controls

8.51. An important issue for the Panel is to determine whether the spatial extent of the BHA proposed in PC20, and their associated controls, are appropriate (i.e. whether more habitat loss is required to be avoided through additional or expanded BHA or more stringent controls).

8.52. As identified above, PC20 proposes nearly 5ha of BHA (including a 50m wide corridor and an area centred on the Hub), with a suite of associated provisions ensuring the protection and enhancement of this bat habitat. Mr Kessels agrees that the 50m wide proposed BHA corridors is an appropriate width, which is consistent with the PC5 Decision.[150] The Forest and Bird submission (#7) sought protected bat corridors at a minimum width of "perhaps 50m". In contrast, Ms Thurley (DoC) has reservations regarding whether there is certainty that the proposed PC20 BHA will be functional.[151] She states that it is her preference that there be no roads through the BHA.[152]

Of course, expanding the BHA would contribute to further avoidance of adverse effects on bat habitats. It would come at considerable cost - we are advised that the provision of the BHAs has already 'cost' many millions in lost yield, which unlike residential development cannot be 'offset' through further intensification. We submit that – in line with the above analysis and the evidence for the Applicants – the location and extent of the BHA is appropriate in terms of s32 of the RMA, and that increased provision of BHA within PC20 would not be justified. Sterilising further land from urban development would be a disproportionate response in the context of the applicable planning framework. Provision of more BHA could raise serious issues around airport operations and aeronautical safety and Waikato Regional Airport Limited have addressed those concerns in its further submission and evidence of Mr Langley and Ms Drew.

"Uncertainty", "further information", "do more"

8.53. Broad concerns expressed by DOC's experts include:

(a) There is too much uncertainty regarding effects on bats;

(b) More assessment should be undertaken to better understand potential effects and the effectiveness of management measures proposed; and

(c) More could be done to avoid or compensate for effects (Ms Thurley even cites a study suggesting that creating bat habitat at least the size of the area of

---

150 Bat JWS, para 3.1.2.

151 Bat JWS, para 3.1.2.

152 Bat JWS, para 3.1.2.

development, being 130ha in the case of PC20, could mitigate effects of urbanisation).[153]

8.54. In our experience, raising "uncertainty", seeking "further assessment", and offering the truism that "more could be done"[154] are common refrains from DoC staff/experts. Similar arguments were made by DoC in the PC5 hearing. There will always be some uncertainty with any proposed development, and by definition more can always be done.[155] However, simply pointing to a level of uncertainty or to other things that could be done should not, and cannot, if the country is to give effect to the NPS-UD and other planning directives, preclude high quality development that gives effect to the policy imperatives when it comes to threatened species.

8.55. Ms Thurley seeks further assessment/information in order to assess the proposed offsite offset/compensation initiative, although Mr Kessels supports the proposal in principle.[156][157] However, we submit that the key matter for the Panel to determine is whether, in light of the higher order policy direction, the PC20 provisions set the appropriate framework for offsetting/compensation to be effectively realised. We submit that they do, including the limits on when offsetting/compensation is available (i.e. where more than minor adverse effects are unable to be avoided or mitigated) and the requirement for a no net loss outcome.[158] The Applicants have gone a step further and shown their commitment to management of bat effects by conditionally purchasing a compensation site. This provides added certainty and should give the Panel the utmost confidence that a workable and appropriate outcome can be delivered through the PC20 provisions. However, notwithstanding the work has already been done, the Panel need not concern itself with the precise mechanics/details of the offset/compensation proposal itself, which is a matter for the consenting stage.

8.56. The PC5 commissioners held the following it their decision:[159]

> *…[W]e consider that we have **sufficient information** to be able to determine plan provisions which are appropriate to manage effects on the LTB [long-tailed bat] and their habitats. As counsel for the Council noted, **we are not required at this juncture to know exactly how LTBs will be affected or the precise compensation package that will (or will need to) be adopted. Instead, all we need to be satisfied about is that there are***

---

153 Ms Thurley EIC, para 11.6.
154 Ms Thurley, Bat JWS, page 5.
155 Mr Kessels and Ms Thurley acknowledge this in the Bat JWS where they agree that *"…urbanisation of any area will increase the uncertainty that bats will continue to use an area."*
156 Bat JWS, para 3.1.2.
157 There have been 5 bat surveys conducted.
158 Proposed 10.3.2.2A(d)(ii); 10.4.2.14B(a)(vi); and 21.1.10.18A(c).
159 PC5 Decision, para 139. Our emphasis.

mechanisms in the plan which are appropriate, realistic and within the jurisdiction and ability of parties to manage those matters.

8.57. For PC5, the HCC did not have a *particular* proposed compensation site identified. We submit there is therefore materially more certainty regarding the delivery of PC20 compensation measures (where a proposed compensation site has been conditionally purchased), yet the PC5 Commissioners were still satisfied in that case.

8.58. Ms Thurley also highlights that the effectiveness of PC20's BHA will be influenced, in part, by factors outside of the plan change area. While there is uncertainty, and while factors outside the control of the applicants (e.g. development outside of the PC20 area) will impact on bats, we submit that PC20 is entirely appropriate in the context of the applicable policies. PC20 implements the applicable planning framework – or indeed goes "above and beyond" – on the land it relates to, and over the range of matters that it is capable of controlling. There is always some uncertainty, and there are matters relevant to bats in the region that PC20 does not – nor cannot – control, but that does not make PC20 inappropriate. For example, it is not for PC20 to respond to possible future developments in the Region – effects of those developments will be assessed at the time.

8.59. The District Plan, including PC20 if approved, is just one tool for protecting and enhancing bats and their habitat. A wide range of parties, with a wide range or guiding strategy documents, have a role to play. Bats are not just a PC20 issue. This is reinforced by ECO-P3 (Collaborative management) in the RPS and its suite of supporting methods which make it clear that maintaining and enhancing indigenous biodiversity includes landowners, resource managers, tangata whenua, and other stakeholders. The Panel's and the Council's functions with respect to PC20 are limited to the statutory matters outlined above. We submit that the Panel can be confident that, in the context of bats and the protection of their habitat, PC20 is appropriate with respect to the jurisdiction it holds for PC20.

8.60. Furthermore, as the Commissioners identified in the PC5 decision identified, where development is to be progressed over the next several decades (as the Northern Precinct is), the 10-year plan review requirement provides appropriate "break points" where the effectiveness of the compensation package and overall management regime can be reviewed.[160] The Council could also initiate a plan change if necessary and

---

[160] PC5 Decision, para 139.

proposed Rule 10.4.2.14B requires procedures to be identified for reviewing and amending (if necessary) the BMP.

The BCM

8.61. The BCM has been used by Mr Markham as a “sense check” on the preliminary compensation actions investigated, in the context of the requirements of the proposed PC20 provisions. The actual details of proposed compensation will be provided at the resource consent stage, including through the EMP and BMP.[161]

8.62. Ms Thurley takes issue with the use of the BCM.

8.63. In his rebuttal statement, Mr Markham explains how the BCM was used and why it is an appropriate tool for that purpose. The BCM is a reputable tool that is widely used. It has been used and accepted in Environment Court[162] and council hearings[163] (including in the recent PC5 Decision). In the recent PC5 Decision, the BCM was endorsed with the Panel favouring the evidence of HCC, including Mr Kessels, over DoC’s expert who raised significant concerns with it.

8.64. As Mr Markham states:[164]

> *… the BCM User Guide provides a high degree of scientific robustness, repeatability, and transparency with clear meaningful structure of output. The BCM is a decision-making tool, just like any other model, in which inputs can be transparently tested with full technical justification provided. I consider the BCM is a significant step forward when compared to sole reliance on professional opinion, use of compensation multipliers, or “horse trading” via negotiations between professionals or stakeholders.*

8.65. We submit the Panel would be on safe ground accepting the utility of the BCM in its limited role.

Summary

8.66. Ultimately, the Commissioners need to determine which evidence and policy interpretation they prefer. This is not an uncommon situation. We submit the Panel should focus on the evidence, as opposed to the broad complaints by DOC, which mirror those it has made in other recent plan change processes. We submit that the evidence on behalf of the Applicants should be preferred.

---

161 As required by Rule 10.4.2.14B.

162 *Waka Kotahi NZ Transport Agency v Manawatu-Whanganui Regional Council* [2020] NZEnvC 192 at [169]-[175].

163 Auckland Regional Landfill, BUN60339589.

164 Mr Markham rebuttal statement, para 9.

8.67. We submit there is a robust evidential basis for the Panel to recommend that PC20 be approved. The evidence demonstrates that PC20's revised proposed approach is appropriate and gives effect to/is otherwise consistent with the applicable planning framework. It provides for the appropriate management of adverse effects on bats. The Panel can be satisfied that PC20 appropriately steps through the applicable effects management framework, transitioning from avoidance, remediation/mitigation, and lastly to offsetting/compensation in a way that is appropriate in the context of the site, and ultimately is appropriate with respect to s32 of the RMA. This is the case even if the Panel were to determine that some of the PC20 site constituted significant habitat under the RPS. PC20 appropriately resolves the competing policy directions for urban development and biodiversity protection.

Retail effects and controls

Context

8.68. The approach to s74(3) of the RMA, which provides that in changing a district plan a territorial authority must not have regard to trade competition or the effects of trade competition, is settled. Despite s74(3), effects may go beyond trade competition and become effects on people, communities, and their wellbeing (i.e. "retail distribution effects"); but they must be "significant" to be regarded as beyond the effects ordinarily associated with trade competition.[165]

8.69. As outlined below, we submit that any retail effects associated with PC20 will be standard trade competition effects, and certainly – on the comprehensive evidence of Mr Colegrave – will not be close to being significant.

HCC has raised several material issues with PC20, including regarding retail issues, and transport matters (addressed below). The issues raised by HCC are generally not supported by proposed specific alternative wording, nor s32AA evaluations with respect to the associated changes. HCC's concerns with existing and proposed centres have been somewhat a 'moving target'. This has made it challenging for the Applicants and their experts to engage and respond.

165 Refer to the Court of Appeal decision in *General Distributors Ltd v Waipa District Council* [2009] NZCA 213 at [9]-[13], which referred to the issue as being "authoritatively determined" by the Supreme Court decision in *Discount Brands Ltd v Westfield (New Zealand) Ltd* [2005] 2 NZLR 597. See *Pohutukawa Coast Community Association v Auckland Council* [2013] NZEnvC 104 at [58]-[59] for an analysis of the issue in a more recent private plan change.

Extent of non-ancillary retail provision – the retail "cap"

8.70. PC20 includes provision for a limited level of non-ancillary retail within the Hub and a small defined retail area, which is proposed to be capped at 5,000m^2 GFA.[166] Other standard retail tenancy controls in the District Plan, including on maximum tenancy size, will also apply.[167] This is the same approach that the District Plan already takes for the other precincts within the Airport Business Zone.

8.71. All planners and economists attending conferencing agree:

(a) it is appropriate for some retail to be enabled within the PC20 land to meet the needs of those working within and proximate to the area;[168] and

(b) the level of retail within PC20 should not undermine *"the vitality and viability of existing commercial centres"* as directed by the RPS.[169]

8.72. The experts have not reached agreement on the level at which non-ancillary retail supply within PC20 should be capped.

8.73. Mr Colegrave, Mr Grala and Mr Williamson (the s42A Report author)[170] support the proposed 5,000m^2 non-ancillary retail cap. Mr Colegrave's evidence contains detailed analysis, including modelling, regarding PC20's impacts on other existing and future centres. It includes a comprehensive section detailing further modelling and analysis on retail impacts.[171] Mr Colegrave's evidence establishes that the level of non-ancillary retail enabled by PC20 will not impact the health and vitality, nor the role and function, of existing or planned centres (including the future Peacocke local centre and the Tamahere Village) and that trade impacts will be "immaterial".

8.74. As Mr Colegrave and Mr Grala highlight, potential effects on centres need to be assessed with regard to the following context:

(a) In the context of the district and its other centres (amounting to 540,000m^2 of retail GFA across the city), non-ancillary retail GFA of 5,000m^2 is small.

---

166 Proposed rule 10.4.2.11A Rule 10.4.1.5(d)(ii) makes any retail outside these two areas a non-complying activity. Exceeding the retail cap would change the activity status from permitted under Rule 10.4.1.1(u) to non-complying.

167 For example Rule 10.4.2.12 which applies a maximum GFA tenancy size of 450m^2, except that one tenancy across the Airport Business Zone can exceed 450m^2 provided it does not exceed 1,000m^2 and that the tenancy primarily sells pre-prepared fresh food/groceries and beverages, together with other non-food goods in an ancillary capacity.

168 Economics JWS, page 2, para 2.

169 Economics JWS, page 2, para 3.

170 S42A Report section 9.6 (the s 42A Report recommends no changes to the relevant provisions).

171 Mr Colegrave EIC, paras 77-91.

(b) The non-ancillary retail cap is supplemented by tenancy restrictions that are already included within the Airport Business Zones.[172]

(c) In addition to the retail cap controlling **how much** non-ancillary retail can occur, the Structure Plan will also limit **where** it can locate.

(d) Retail provided within the Northern Precinct will be focussed on meeting the day-to-day needs of local business and workers, not drawing in trade from further afield.

(e) There is a distance between PC20 and other centres in the context of the retail offering to be provided at PC20.

(f) There is a limited residential population proximate to PC20.

(g) It is unlikely that the Northern Precinct, a business/industrial node, will be an attractive retail destination other than for people living and/or working in the immediate area.

(h) Large format retail is not provided for.

(i) The non-ancillary retail cap is a maximum, not a target or a requirement, and the actual retail provision will depend on a range of factors, including the types of business that locate within PC20.

(j) Full PC20 build-out is not expected for approximately 15 years. Any effects on existing retail will not be felt immediately nor all at once.

(k) It is relevant that that the introduction of the BHA has significantly reduced the area of the Hub that is available for development. Buildings are now only able to be developed on an area roughly half the size of the Hub.

8.75. Mr Grala has proposed in his rebuttal statement some amendments to the non-ancillary retail cap rule[173] to improve the precision/certainty of the rule in terms of which activities are within its scope.

8.76. Mr Akehurst in his evidence, and Ms Fairgray and Mr Govender for HCC, and Mr Keenan for WRC, state in the Economics JWS that a “bottom up” assessment of the likely PC20 retail demand needs to be undertaken to test the appropriateness of the 5,000m^3 cap

---

172 Rule 10.4.2.12.

173 Rule 10.4.2.11A. See paras 22-23 of Mr Grala’s evidence.

proposed in PC20.[174] By this, they mean that onsite employment should be estimated and then converted to estimates of daily at-work spend on convenience food and retail. Mr Akehurst and Mr Govender's evidence is that, on this basis, the non-ancillary retail cap should be reduced five-fold to 1,000m.[2] The detailed assumptions Mr Akehurst has used in arriving at this figure are not set out in his evidence, and Mr Colegrave raises a range of fundamental issues/and or errors with the methodology, including potentially being influenced by fundamental misunderstandings of the controls imposed by PC20.[175]

8.77. Mr Colegrave disagrees with Mr Akehurst's "bottom up" methodology for the substantive reasons outlined in his rebuttal statement.[176] Despite this, Mr Colegrave's Rebuttal Statement undertakes a "bottom up" assessment demonstrating that, using realistic assumptions, the 5,000m^2 cap is suitable.

8.78. Notwithstanding the above, Mr Colegrave explains in his Evidence that the "bottom up" approach is not required or particularly useful in this context, including because:

(a) Given this is a plan change, such a "bottom up" assessment would rely on – and be highly sensitive to – on a range of unknown assumptions (such as the type, level, and timing of activities that will establish under PC20) and would therefore be entirely uncertain; and

(b) Such analysis relates to the question of what is the appropriate provision of retail to cater for the (uncertain) demand generated by the PC20 activities, not the crucial and relevant question of the potential impact of retail provision in PC20 on existing centres.

(c) Such an assessment is unnecessary if it is demonstrated that retail provision up to the proposed cap of 5,000m^2 GFA will not undermine the vitality and viability of existing centres. This is precisely what Mr Colegrave has demonstrated in his AEE report and evidence. While a significant focus of Mr Akehurst's evidence is the basis for the proposed cap, its *basis* is not critical if the evidence establishes that its *effect* will be acceptable. As outlined, Mr Colegrave's evidence is that the level of non-ancillary retail enabled by PC20 will not impact the health and vitality or role and function of other centres; and Mr Akehurst's proposal of splitting the retail cap into separate convenience and trade components is not necessary or

174 Keenan and Fairgray have not filed evidence.
175 Mr Colegrave Rebuttal statement.
176 See also Mr Colegrave's reasoning in the Economics JWS.

appropriate. Mr Colegrave's evidence contrasts with the "significant impact" predicted by Mr Akehurst.

8.79. Again, the Panel will need to decide which evidence it prefers. We submit Mr Colegrave's detailed analysis provides a robust evidential basis for the Panel to determine the PC20 retail provisions proposed by the Applicants are appropriate.

Ancillary retail

8.80. PC20 proposes to use the District Plan's existing definition of "ancillary retail" to control the mix of retail versus the principal industrial activity. In the Economics JWS, Mr Govender states, without providing reasons, that he supports the HCC submission point seeking that in the PC20 area ancillary retail (as defined in the District Plan) be prohibited from occupying more than 10% of the total GFA of the principal industrial activity or $100m^2$ per site. No rationale in the JWS is provided as to why this approach, which is not otherwise adopted in in the District Plan, nor in HCC's own plan, is justified. Mr Akehurst and Mr Govender run with the issue in their evidence and support the same restrictions.

8.81. Mr Govender accepts Mr Grala's point (made in the JWS) that HCC's own district plan has a 50% GFA cap rather than the 10% or $100m^2$ cap he seeks to be imposed in PC20. However, Mr Govender asserts that this has no relevance to HCC's submission.[177] Putting aside the planning double standard, understanding the equivalent rules in other existing centres is relevant to determining whether PC20 will or will not impact the health and vitality or role and function of other centres as required by the RPS. Fortunately, Mr Grala allays one of Mr Govender's concerns that PC20 could undermine existing centres by facilitating large amounts of large format retail by confirming that this is not credible as large format retail is precluded by rule 10.4.2.12 and is restricted in its location and quantum.[178]

8.82. In their rebuttal statements Mr Colegrave and Mr Grala explain that the 10% limit seeks to control an outcome that is extremely unlikely to eventuate. It is therefore unnecessary and inefficient. The evidence does not identify any compelling differentiating features associated with PC20 that warrants a significantly different response from that in Hamilton City or the rest of the Airport Business Zone/Titanium Park.

177 Govender EIC para 56.
178 Grala Rebuttal paras 43 and 45.

"Granular" land use controls

8.83. Mr Govender for HCC proposes additional "granular" controls to limit the industrial activities that can establish in the Northern Precinct to "high value" activities only, and to protect airside areas for airside activities. He does not provide a definition of 'high value activity' or explain how it would be assessed objectively within the District Plan. Nor does he explain why TPL or RPL would have any interest in attracting 'low value' activities or activities that would undermine the sustainable management of the Hamilton Airport. Waikato Regional Airport has not raised such concerns and it is difficult to see why Mr Govender considers he is best placed to provide the "more nuanced planning approach".

8.84. Mr Govender opines that a design guide should be established. TPL and RPL agree and Messrs Morgan, Richards and Coles have confirmed that. Mr Morgan has provided a copy of the existing Titanium Park Guidelines which with amendment will be applied to the Northern Precinct also. Mr Coles addresses the guideline process and notes the independent review panel involvement. Mr Govender does not refer to the evidence of Mr Coles or outline his experience in urban design or urban design evidence relied upon. For the reasons outlined in Mr Grala's rebuttal evidence, we submit that controls as advanced by Mr Govender are uncertain, inefficient, and unjustified. They would amount to significant overregulation.

Transport infrastructure provision and effects

8.85. In response to submissions, the Applicants' transport consultants ran a new model[179] scenario using a 2031 "baseline" that includes delivery of the 41 hectares of Northern Precinct land that is currently zoned Airport Business. The additional work undertaken by the Applicants, expert conferencing, and provision of detailed analysis in the Mr Inder's statement of evidence mean that a range of transport issues have been able to be narrowed or entirely resolved.

(a) Waka Kotahi has confirmed that it is satisfied that PC20 appropriately addresses transportation network effects and that Waka Kotahi supports the PC20 provisions as proposed by the Applicants.[180] The Applicants welcome the mature and constructive approach adopted by Waka Kotahi.

---

179 As recorded in the first transport and planning JWS, all experts agree that the WRTM is an appropriate modelling methodology tool.

180 Refer the EIC of Duncan Tindall (sections 1 and 11) and Sarah Loynes (paragraphs 6.7-6.12).

(b) Several issues raised by HCC and its experts have been narrowed or resolved, including as a result of Mr Inder's statement of evidence.[181]

8.86. The following sections summarise the discreet transport matters that remain in contention.

Walking and cycling connection route

8.87. Before any subdivision or traffic-generating development is delivered, proposed rule 10.4.2.13A requires:

> *Construction of new walking and cycling shared path connecting Peacocke Road to the Northern Precinct via Middle Road and Faiping Road or a suitable alternative.*

8.88. We understand HCC is seeking:

(a) That the proposed shared path connection between the Northern Precinct and Peacocke be required under PC20 to follow a route that is not along Faiping Road, but along the eastern edge gullies of one of two Faiping Road properties that HCC has (since PC20 was filed) purchased for the proposed Southern Wastewater Treatment Plant ("WWTP") (Faiping Road bisects the properties).[182] The land acquisition for the Southern WWTP was not disclosed in HCC's submission or within the JWSs. HCC's rationale is that the shared path may affect HCC's future WWTP plans on the properties.

(b) That PC20 require provision of an additional 1.6km of shared path out of the Waipā District and into Hamilton City (as opposed to the proposed terminus at the Faiping/Peacockes Road intersection at the edge of the Waipā District).

<u>*HCC's alternative route*</u>

8.89. The Applicants' do not consider the alternative route sought by HCC should be mandated by PC20, including for the following reasons:

(a) The proposed rule 10.4.2.13A wording does not preclude an alternative route being pursued (that is the purpose of the *"or a suitable alternative"* wording agreed during conferencing). It is inappropriate and unnecessary to "lock in" a single route – especially when that is inferior and will require the acquisition of third-party land.

---

[181] As explained in Mr Prakash's EIC (see paragraph 8 for example).

[182] Mr Grala rebuttal statement, para 48. Mr Govender EIC, para 79(d).

(b) Planning for the Southern WWTP is still in the early stages. It is premature to foreclose the use of the legal road.

(c) Faiping road is a straight legal (partially unformed) road. Waipā District Council as the road controlling authority has been consulted on its use over a long period. Utilising its alignment for a shared path is consistent with its current status as legal road and provides a simple, direct, and efficient connection. In his rebuttal statement Mr Inder confirms the suitability of Faiping and Peacocke Roads for cycling, and that the Faiping Road route is the preferred solution from a transport perspective.[183]

(d) In contrast, the route proposed by HCC is indirect, convoluted and approximately 800m longer for commuting, a point acknowledged by HCC's witnesses.[184] While HCC's alternative route is supported by Mr Govender (HCC planner), HCC's independent transport expert appears lukewarm on the idea.[185]

(e) HCC has provided no evidence demonstrating how a shared path down Faiping Road may inhibit the construction of the Southern WWTP on the sizeable landholdings involved. Presumably the existence of a legal road bisecting the properties represents the more immediate constraint.

Extension into Hamilton City

8.90. Mr Inder, Mr Balachandran and Ms Makinson consider that Peacockes Road is suitable for cycling in its current state. On this basis, the 1.6km additional shared path on Peacockes Road sought by HCC is not justified and the Applicant's proposal is sufficient and appropriate.

8.91. Mr Prakash does not consider cycling on a section of Peacockes Road is safe; hence his proposal for the PC20 developers to be responsible – before the first stage of development PC20 land – not only for the considerable section of shared path proposed, but also for an additional 1.6km of additional shared path on Hamilton City land that will urbanise in the future.

8.92. If HCC considers that shared path facilities on Peacockes Road in <u>its</u> district are needed or would be beneficial, then it can use the range of funding and other mechanisms at its disposal to achieve that. The mechanisms exist for HCC to deliver such an outcome either now, or as the (HCC) area is urbanised. It is not efficient, proportionate or

---

183 Mr Inder rebuttal statement, paras 6-18.
184 Mr Prakash EIC, para 18. Refer Mr Inder rebuttal statement, para 9.
185 Mr Prakash EIC, para 18.

otherwise justified to require the PC20 developer to deliver the additional shared path facilities in the manner sought by HCC.

8.93. More fundamentally:

(a) We are uncertain on what basis HCC considers Waipā District Council has the jurisdiction to make plan rules relating to land outside its district.[186]

(b) There are serious questions whether the relief sought by HCC is "on" the plan change, based on the case law traversed by several parties regarding preliminary issues of scope for this hearing.[187]

Timing of transport upgrades

8.94. Rule 10.4.2.13A requires specific transport upgrades to be delivered before certain Northern Precinct development stages are developed. The timing requirements (or "triggers") are based on the comprehensive modelling and assessment undertaken by Mr Inder.

8.95. We submit that Mr Inder's evidence demonstrates that PC20's transport upgrade trigger provisions incorporate a pragmatic level of conservatism and are appropriate.

Detailed intersection design

8.96. The ITA supporting PC20 included several concept designs to assist with understanding the intersection upgrades required by PC20. The "concept designs" are just that. Their purpose is to demonstrate the feasibility of the intersection upgrades.

8.97. Experts for other parties, including HCC, have sought to debate matters of detailed design regarding several intersections.[188] However, it is simply unnecessary to debate matters regarding their detailed design at this plan change stage. That is for the future resource consent and engineering plan approval stages.

8.98. In a similar vein, it is inappropriate to insert into a district plan an 'advice note' dealing with a future but not consented development on the Tabby Tiger land. This is not the forum for airing historic frustrations on the planning approach in the wider area or to attempt to design a roundabout on third party land which would, if required by PC20, have the potential to frustrate PC20.

---

186 Refer RMA s76(4) which states that a rule may apply *"throughout a district or a part of a district",* not in another district. The rule-making functions of district councils (s31) relate to its district.

187 *Clearwater Resort Ltd v Christchurch City Council* (High Court AP34/02).

188 As described, for example, in Mr Inder's rebuttal statement, paras 22 and 26.

Summary

8.99. There is a high level of agreement between Mr Inder and the s42A Report (and the Council's transportation peer reviewer, Mr Tinnion-Morgan). Mr Inder has responded comprehensively to the issues Mr Tinnion-Morgan sought further information on in his statement attached to the s42A Report.[189] Similarly there is a high degree of alignment between Messrs Inder and Tindall for Waka Kotahi.

8.100. Mr Inder's evidence confirms that the Proposal can be accommodated by the surrounding road network while maintaining acceptable levels of safety and performance, and that PC20 provides an appropriate framework for the consideration of transportation matters at the resource consent stage. The rule framework is clear, certain and prescriptive.

9. OTHER ISSUES RAISED IN SUBMISSIONS OR THE S42A REPORT

9.1. For completeness, we respond to certain other issues in submissions and/or the s42A Report below.

Southern Wastewater Treatment Plant

9.2. Mr Govender has described in the most general sense a rule framework, including staging and trigger mechanisms, requiring the connection of PC20 development to HCC's public Southern WWTP which *may* be constructed in the future. Mr Govender does not propose any PC20 wording changes for how to achieve this.

9.3. While TPL/RPL have expressed their preference that the PC20 land ultimately connects to the Southern WWTP, it is not the only feasible/appropriate option for wastewater servicing (as detailed in the evidence).[190] Mr King has outlined the various short- and medium-term options. It is therefore premature and inefficient/unjustified to specify mandatory connection to the Southern WWTP in PC20, or to link (e.g. stage) development of the PC20 land to the availability or otherwise of the Southern WWTP. Ms Scrimgeour as the s42A reviewer has not recommended triggers or staging in the manner advanced by Mr Govender.

---

189 Para 2.8.
190 Mr King EIC, paras 87-112.

Māori cultural issues

9.4. As recorded in the s42A report,[191] the Applicants have engaged with tangata whenua throughout the development of PC20. Feedback from tangata whenua was incorporated into the master planning process and development of the Structure Plan.

9.5. The outcome of the Applicants' engagement was summarised in the s32 report accompanying the AEE, which was also accompanied by a Cultural Impact Assessment by Te Hira Consultants.[192] Mr Hill sets out in his statement the engagement that has occurred since then and the recommendations contained within the Cultural Impact Assessment. Since the filing of Mr Hill's evidence there has been further hui and the drafting of a Relationship Agreement/Memorandum of Understanding (MoU) with Ngā Iwi Tōpū O Waipā (NITOW) is underway. Messrs Morgan and Yates confirm their commitments in respect of the on-going engagement and development of a Relationship Agreement/MOU.

9.6. The engagement undertaken by the Applicants has been meaningful. It attests to the importance TPL/RPL ascribes to its relationship with tangata whenua, and the extent to which TPL/RPL recognise cultural obligations to – and associations with – the site and the environment generally. Including through this consultation, the Applicants consider that PC20 appropriately recognises and provides for Māori cultural matters, including as expressed in the RMA (s6(e), s7(a), and s8) and the range of relevant planning documents.

The existing environment

9.7. The Panel is required to consider PC20's effects.[193] The Panel must consider PC20's effects as against the "existing environment" (or the "receiving" and/or "future" environment, as it has variously been termed).[194]

9.8. The Environment Court in *Contact Energy v Waikato Regional Council* stated its understanding of the term "environment" as follows:[195]

> *We hold that consideration is to be given to the effects on the environment as it actually exists now…*

191 Para 7.1.5.
192 Refer also to Mr Grala's EIC for a summary of consultation undertaken (paras 26-29).
193 Sections 74(1) and 32(2) of the RMA.
194 The existing environment concept applies to the consideration of both resource consents and plan changes Refer for example to *Golf (2012) Ltd v Thames-Coromandel District Council* [2019] NZEnvC 112 at [132], which refers to *Queenstown Lakes District Council v Hawthorn Estate Limited* [2005] NZCA 114 (below).
195 *Contact Energy v Waikato Regional Council* (2000) 1 ELRNZ 1 (EnvC) at paragraph 38.

9.9. The existing environment concept was extended by the Court of Appeal decision *Hawthorn*, which held:[196]

> *In our view, the word "environment" embraces the future state of the environment as it might be modified by the utilisation of rights to carry out permitted activit[ies] under a district plan. It also includes the environment as it might be modified by the implementation of resource consents which have been granted at the time a particular application is considered, where it appears likely that those resource consents will be implemented. [...] We think the legitimate considerations should be limited to those that we have just expressed.*

9.10. For completeness, it is noted that in two subsequent decisions, the High Court has cautioned against *Hawthorn* being applied "like a statute" and encouraged a "real world" approach to assessing the relevant environment which appropriately recognises the context of each proposal.[197]

Southern Links

9.11. An issue with respect to the existing environment is whether, and to what extent, the Southern Links designations should be taken into account as part of the existing environment. This has particular relevance for certain PC20 effects assessments, for example visual and landscape effects.

9.12. The Courts have confirmed that the principles in *Hawthorn* apply to designations that are included in district plans.[198]

9.13. In *Save Wanaka* the Environment Court considered whether, and to what extent, a designation should be taken into account as part of the existing environment. The Court commented:[199]

> *Save Kapiti assists us on the proper application of Hawthorn. Gendall J observed that Hawthorn intended to draw a distinction between activities "likely to happen and those that were not", in terms of a "real world approach". Applying Hawthorn, it was not appropriate to consider a future environment "that is artificial". Because the [roading designation being considered by the Court in that case] could not co-exist with the expressway project (as the project would be built along the same route), the Court found the Board had not erred in finding that it would be "artificial" to treat the WLR as part of the future receiving environment.*

---

196 *Queenstown Lakes District Council v Hawthorn Estate Limited* [2005] NZCA 114, paragraph 84.

197 *Queenstown Central Limited v Queenstown Lakes District Council* [2013] NZRMA 239 and *Royal Forest and Bird Protection Society of New Zealand Incorporated v Buller District Council* [2013] NZRMA 275.

198 *Save Wanaka Lakefront Reserve Inc v Queenstown Lakes District Council* [2017] NZEnvC 88 at [70]-[73]; and *Save Kapiti Inc v New Zealand Transport Agency* [2013] NZHC 2104 at [70] (see [61]-[70]).

199 *Save Wanaka Lakefront Reserve Inc v Queenstown Lakes District Council* [2017] NZEnvC 88.

> *[73] In this case, it would not be artificial to consider what is likely to change in vicinity of the proposal… through implementation of [the] Designation…*

9.14. The Court confirmed that in considering how the designation is likely to affect the future environment, both its enabling and protective purposes (under s176 of the RMA) were relevant. Ultimately the Court found the designation in question was to be considered as part of the existing environment.[200]

9.15. As in *Save Wanaka*, we submit that it would be artificial to not assess Southern Links as part of the existing environment for the purposes of assessing PC20's effects. While Waka Kotahi has not committed to construct Southern Links and there is therefore some uncertainty regarding its construction and timing (as identified by Waka Kotahi in its submission), this is standard for major roading infrastructure pending funding and other planning decisions. It is also reflected in the long lapse period of 2036. Simply, the Designation is in the District Plan and has been impacting on land use and planning in the area for some time (including through the restrictions imposed by s176 of the RMA). If Waka Kotahi considered the delivery of Southern Links to be sufficiently unlikely, it could have exercised its ability to withdraw the designation. It has not done so.

9.16. With that in mind, Ms Brown's critique of Ms Jack's analysis because it was informed by Southern Links is misplaced and wrong at law. It is also relevant to assessing the concerns of Ms Thurley given she opines that bats may need quiet places[201] and that roads bring noise and artificial light.[202] The PC20 Site is located between a busy regional airport and the Southern Links designation. Ms Thurley acknowledges this in part at paragraph 9.6 where she states *"[t]he site is not ideal long-tailed bat habitat – it is subject to noise (particularly by aircraft) and limited by having few trees*". In addition, appropriate transport function can be maintained with or without Southern Links, and the PC20 provisions framework provide for this. Transportation effects can be appropriately managed with or without southern links.

9.17. In summary, whether or not (and to what extent) Southern Links forms part of the existing environment is not determinative of the appropriateness of PC20. If Southern Links is not found to come within the existing environment, this does not represent a barrier to PC20's approval.

---

200 At [82] and [148].
201 Thurley EIC para 6.4
202 Ibid, at paragraph 6.5

10. ISSUES RAISED: SUMMARY

10.1. The plan change refinement process has resulted in amendments to the Proposal which have further fine-tuned the Proposal. Taken together, the Applicant's and the Council's expert witnesses conclude – and we submit the Panel can be satisfied – that:

(a) there are no issues precluding the granting of PC20;

(b) PC20 provides an appropriate framework under which all potential adverse effects can be avoided, remedied, mitigated, or offset/compensated (as required); and

(c) all submitter concerns and issues raised in the s42A Report are appropriately addressed in the latest version of PC20.

10.2. For completeness, in the event the Panel considers valid concerns remain, we submit that those are capable of being addressed through amendments to PC20, as opposed to rejecting it.

11. PRINCIPAL SUBMISSION

11.1. We submit that the combined evidence of the Applicants and the Council should give the Panel a very high degree of confidence that that there are no impediments to PC20, and that it is the most appropriate planning framework for the site. The Proposal will bring meaningful benefits for the district and the region, facilitating much-needed business land in a strategic location by way of quality, coordinated development. Further, the suite of measures proposed by TPL/RPL to manage potential adverse effects is comprehensive and robust.

11.2. In line with the legal framework set out above, we submit that:

(a) The proposed objectives and policies applying to the PC20 land appropriately give effect to – and are not inconsistent with any directive provisions of – all applicable higher order planning instruments; and

(b) The proposed rules appropriately implement the proposed policies.

(c) In terms of s32 of the RMA:

(i) The proposed objectives are the "most appropriate" means of achieving the purpose of the RMA; and

(ii) The proposed provisions are the most appropriate way to achieve the objectives of the District Plan and the RPS.

(d) PC20 will promote the sustainable management purpose of the RMA, including because:

(i) Any potential adverse effects can be appropriately managed through the proposed framework;

(ii) The proposed development of the PC20 site:

- Is an efficient use and development of natural and physical resources; and
- Can be achieved in a manner that maintains or enhances the quality of the environment and amenity values.

(e) The proposed changes accord with the Council's functions under s31 of the RMA.

11.3. In particular:

(a) The proposed provisions are entirely appropriate for the site. They strike an appropriate balance between the desirability of stimulating business activity through quality development of business land and the need to ensure that development appropriately responds – through design and management of effects – to the immediate site and surrounds and the district and region as a whole.

(b) The Proposal will achieve an outcome which will have significant positive benefits. It will supply highly sought-after business land, introduce jobs, and stimulate local investment and spending.

11.4. We submit that no material amendments to the Plan Change text attached to Mr Grala's rebuttal statement are justified. PC20 represents a significant and valuable opportunity to positively provide for sustainable growth.

Dated this 15th day of March 2023

J R Welsh
Counsel for Titanium Park Limited and Rukuhia Properties Limited

ANNEXURE A: KEY RMA PROVISIONS

31 Functions of territorial authorities under this Act

(1) Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:

- *(a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:*
- *(aa) the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district:*
- *(b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of—*
  - *(i) the avoidance or mitigation of natural hazards; and*
  - *(ii) [Repealed]*
  - *(iia) the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land:*
  - *(iii) the maintenance of indigenous biological diversity:*
- *(c) [Repealed]*
- *(d) the control of the emission of noise and the mitigation of the effects of noise:*

…

(2) The methods used to carry out any functions under subsection (1) may include the control of subdivision.

32 Requirements for preparing and publishing evaluation reports

(1) An evaluation report required under this Act must—

- *(a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and*
- *(b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—*
  - *(i) identifying other reasonably practicable options for achieving the objectives; and*
  - *(ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and*
  - *(iii) summarising the reasons for deciding on the provisions; and*
- *(c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.*

(2) An assessment under subsection (1)(b)(ii) must—

- *(a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—*
  - *(i) economic growth that are anticipated to be provided or reduced; and*
  - *(ii) employment that are anticipated to be provided or reduced; and*
- *(b) if practicable, quantify the benefits and costs referred to in paragraph (a); and*
- *(c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.*

*(3) If the proposal (an **amending proposal**) will amend a standard, statement, national planning standard, regulation, plan, or change that is already proposed or that already exists (an **existing proposal**), the examination under subsection (1)(b) must relate to—*

(a) the provisions and objectives of the amending proposal; and

(b) the objectives of the existing proposal to the extent that those objectives—

(i) are relevant to the objectives of the amending proposal; and

(ii) would remain if the amending proposal were to take effect.

…

(6) In this section,—

***objectives** means,—*

(a) for a proposal that contains or states objectives, those objectives:

(b) for all other proposals, the purpose of the proposal

***proposal** means a proposed standard, statement, national planning standard, regulation, plan, or change for which an evaluation report must be prepared under this Act*

***provisions** means,—*

(a) for a proposed plan or change, the policies, rules, or other methods that implement, or give effect to, the objectives of the proposed plan or change:

…

72 Purpose of district plans

The purpose of the preparation, implementation, and administration of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of this Act.

73 Preparation and change of district plans

…

(1A) A district plan may be changed in the manner set out in the relevant Part of Schedule 1.

…

(2) Any person may request a territorial authority to change a district plan, and the plan may be changed in the manner set out in Part 2 or 5 of Schedule 1.

…

74 Matters to be considered by territorial authority

(1) A territorial authority must prepare and change its district plan in accordance with—

(a) its functions under section 31; and

(b) the provisions of Part 2; and

…

(d) its obligation (if any) to prepare an evaluation report in accordance with section 32; and

(e) its obligation to have particular regard to an evaluation report prepared in accordance with section 32; and

(ea) a national policy statement, a New Zealand coastal policy statement, and a national planning standard; and

(f) any regulations.

(2) In addition to the requirements of section 75(3) and (4), when preparing or changing a district plan, a territorial authority shall have regard to—

(a) any—

(i) proposed regional policy statement; or

(ii) proposed regional plan of its region in regard to any matter of regional significance or for which the regional council has primary responsibility under Part 4; and

(b) any—

(i) management plans and strategies prepared under other Acts; and

…

to the extent that their content has a bearing on resource management issues of the district; and

(c) the extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities; and

(d) any emissions reduction plan made in accordance with section 5ZI of the Climate Change Response Act 2002; and

(e) any national adaptation plan made in accordance with section 5ZS of the Climate Change Response Act 2002.

(2A) A territorial authority, when preparing or changing a district plan, must take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on the resource management issues of the district.

(3) In preparing or changing any district plan, a territorial authority must not have regard to trade competition or the effects of trade competition.

75 Contents of district plans

(1) A district plan must state—

(a) the objectives for the district; and

(b) the policies to implement the objectives; and

(c) the rules (if any) to implement the policies.

(2) A district plan may state—

(a) the significant resource management issues for the district; and

(b) the methods, other than rules, for implementing the policies for the district; and

…

(3) A district plan must give effect to—

(a) any national policy statement; and

(b) any New Zealand coastal policy statement; and

(ba) a national planning standard; and

(c) any regional policy statement.

(4) A district plan must not be inconsistent with—

…

(b) a regional plan for any matter specified in section 30(1).

…

76 District rules

(1) A territorial authority may, for the purpose of—

(a) carrying out its functions under this Act; and

(b) achieving the objectives and policies of the plan,—

include rules in a district plan.

…

(3) In making a rule, the territorial authority shall have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect.

…

(4) A rule may—

(a) apply throughout a district or a part of a district:

(b) make different provision for—

(i) different parts of the district; or

(ii) different classes of effects arising from an activity:

(c) apply all the time or for stated periods or seasons:

(d) be specific or general in its application:

(e) require a resource consent to be obtained for an activity causing, or likely to cause, adverse effects not covered by the plan.

…

ANNEXURE B: SUMMARY FROM *COLONIAL VINEYARDS LTD V MARLBOROUGH DISTRICT COUNCIL* [2014] NZENVC 55 AT [17]

"A. General requirements

1. *A district plan (change) should be designed to* ***accord with***[203] *— and assist the territorial authority to* ***carry out*** *— its functions*[204] *so as to achieve the purpose of the Act*[205]*.*
2. *The district plan (change) must also be prepared* ***in accordance with*** *any regulation*[206] *(there are none at present) and any direction given by the Minister for the Environment*[207]*.*
3. *When preparing its district plan (change) the territorial authority* ***must give effect*** *to*[208] *any national policy statement or New Zealand Coastal Policy Statement*[209]*.*
4. *When preparing its district plan (change) the territorial authority shall:*
   - *(a) have regard to any proposed regional policy statement*[210]*;*
   - *(b) give effect to any operative regional policy statement*[211]*.*
5. *In relation to regional plans:*
   - *(a) the district plan (change) must* ***not be inconsistent*** *with an operative regional plan for any matter specified in section 30(1) or a water conservation order*[212]*; and*
   - *(b)* ***must have regard to*** *any proposed regional plan on any matter of regional significance etc*[213]*.*
6. *When preparing its district plan (change) the territorial authority must also:*
   - ***have regard to*** *any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations*[214] *to the extent that their content has a bearing on resource management issues of the district; and to consistency with plans and proposed plans of adjacent territorial authorities*[215]*;*
   - ***take into account*** *any relevant planning document recognised by an iwi authority*[216]*; and*
   - *not have regard to trade competition*[217] <u>*or the effects of trade competition;*</u>

203 Section 74(1) of the Ac
204 As described in section 31 of the Act.
205 Sections 72 and 74(1) of the Act.
206 Section 74(1) of the Act.
207 Section 74(1) of the Act added by section 45(1) Resource Management Amendment Act 2005.
208 Section 75(3) RMA.
209 The reference to 'any regional policy statement' in the *Rosehip* list here has been deleted since it is included in (3) below which is a more logical place for it.
210 Section 74(2)(a)(i) of the RMA.
211 Section 75(3)(c) of the Act [as substituted by section 46 Resource Management Amendment Act 2005].
212 Section 75(4) of the Act [as substituted by section 46 Resource Management Amendment Act 2005].
213 Section 74(2)(a)(ii) of the Act.
214 Section 74(2)(b) of the Act.
215 Section 74(2)(c) of the Act.
216 Section 74(2A) of the Act.
217 Section 74(3) of the Act as amended by section 58 Resource Management (Simplifying and Streamlining) Act 2009.

7. The formal requirement that a district plan (change) must[218] also state its objectives, policies and the rules (if any) and may[219] state other matters.

- *B. Objectives [the section 32 test for objectives]*

  *8. Each proposed objective in a district plan (change) **is to be evaluated** by the extent to which it is the most appropriate way to achieve the purpose of the Act[220].*

- *C. Policies and methods (including rules) [the section 32 test for policies and rules]*

  *9. The policies are to **implement** the objectives, and the rules (if any) are to **implement** the policies[221];*

  *10. Each proposed policy or method (including each rule) is to be examined, having **regard to its efficiency and effectiveness,** as to whether it is the most appropriate method for achieving the objectives[222] of the district plan **taking into account**:*

  (i) the benefits and costs of the proposed policies and methods (including rules); and

  (ii) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods[223]; and

  (iii) if a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances[224].

- *D. Rules*

  *11. In making a rule the territorial authority must **have regard to** the actual or potential effect of activities on the environment[225].*

  …

- *E. Other statues:*

  16. Finally territorial authorities may be required to comply with other statutes.

218 Section 75(1) of the Act.
219 Section 75(2) of the Act.
220 Section 74(1) and section 32(3)(a) of the Act.
221 Section 75(1)(b) and (c) of the Act (also section 76(1)).
222 Section 32(3)(b) of the Act.
223 Section 32(4) of the RMA.
224 Section 32(3A) of the Act added by section 13(3) Resource Management Amendment Act 2005.
225 Section 76(3) of the Act.

ANNEXURE C: NPS-HPL CL 3.6

3.6 Restricting urban rezoning of highly productive land

(1) *Tier 1 and 2 territorial authorities may allow urban rezoning of highly productive land only if:*

(a) *the urban rezoning is required to provide sufficient development capacity to meet demand for housing or business land to give effect to the National Policy Statement on Urban Development 2020; and*

(a) *there are no other reasonably practicable and feasible options for providing at least sufficient development capacity within the same locality and market while achieving a well-functioning urban environment; and*

(b) *the environmental, social, cultural and economic benefits of rezoning outweigh the long-term environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.*

(2) *In order to meet the requirements of subclause (1)(b), the territorial authority must consider a range of reasonably practicable options for providing the required development capacity, including:*

(a) *greater intensification in existing urban areas; and*

(b) *rezoning of land that is not highly productive land as urban; and*

(c) *rezoning different highly productive land that has a relatively lower productive capacity.*

(3) *In subclause (1)(b), development capacity is* ***within the same locality and market*** *if it:*

(a) *is in or close to a location where a demand for additional development capacity has been identified through a Housing and Business Assessment (or some equivalent document) in accordance with the National Policy Statement on Urban Development 2020; and*

(b) *is for a market for the types of dwelling or business land that is in demand (as determined by a Housing and Business Assessment in accordance with the National Policy Statement on Urban Development 2020).*

…

(5) *Territorial authorities must take measures to ensure that the spatial extent of any urban zone covering highly productive land is the minimum necessary to provide the required development capacity while achieving a well-functioning urban environment.*