

BEFORE THE HEARING COMMISSIONER

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of subdivision to create 242 residential lots within the C2 Growth Cell, and associated lots for public assets by 3Ms OF CAMBRIDGE GP LIMITED (SP/0179/20)

OPENING LEGAL SUBMISSIONS ON BEHALF OF 3Ms OF CAMBRIDGE GP LIMITED

Dated: 25 May 2021

LACHLAN MULDOWNEY
BARRISTER

P +64 7 834 4336 **M** +64 21 471 490

Office Panama Square, 14 Garden Place, Hamilton

Postal PO Box 9169, Waikato Mail Centre, Hamilton 3240

www.lachlanmuldowney.co.nz

INTRODUCTION

1. According to 'Waipa 2050', the Waipa District Council's (**Council**) growth strategy established in late 2017, by 2050 Waipa District will be home to an additional 25,000 people.
2. The majority of those people will be located within Cambridge. By 2027 Cambridge is expected to grow from its 2017 population of 16,100 to 23,200, an increase of 7100 people or 3400 households. By 2050 that figure is expected to grow to a total population of 30,300, which represents 13,500 households.¹
3. The Waipa 2050 growth strategy states that to meet its growth targets, between 2017 and 2027 the annual demand for housing in Cambridge is 340 additional households. The supply of new sections or new houses in Cambridge since 2017 has been woefully short of that figure, closer to between 30-50.
4. Furthermore, the current situation shows no sign of improvement. There is currently 1 vacant developable section for sale within Cambridge.²
5. Put simply, Council is failing to deliver on its growth strategy, and as each year passes, its goals become more and more unachievable. The reasons are complex, and have much to do with the deep public infrastructure deficit which is felt across New Zealand, including in places like Cambridge, the balance sheet constraints which Councils must work within, and the very limited funding and financing tools available to local government. There is no easy fix. This is the housing crisis, and it is real.
6. For some councils, the crisis is not so acute. There are a number of territorial districts within New Zealand where planning for growth is not a

¹ Waipa 2050 page 2, tables 1 and 2

² Supplementary evidence of Mark Crisp dated 25 May 2021

significant strategic issue. Waipa District is not one of them. For Waipa District the issues are significant, and urgent. The National Policy Statement on Urban Development 2020 (**NPS-UD**) identifies Waipa District as a high-growth urban area and a Tier 1 urban environment. As such, it is required to adhere to Policy 2 of the NPS-UD, which provides:

Policy 2: Tier 1, 2, and 3 local authorities, at all times, provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term, and long term.

7. Clearly this policy is not currently being met in Cambridge, the identified primary growth node within the district, nor is being met across the other identified growth nodes. Council is however taking steps to address the issue. It has made a series of planning decisions which have created 'plan-enabled' land resources, and is in the process of making certain financial decisions within its Long Term Plan (**LTP**) framework that will assist in the provision of some public infrastructure which will support development. These are small but important first steps towards supporting its growth strategy.
8. However, Council cannot achieve its growth strategy without a partnership with the development community. It is, after all, the land developers who are instrumental in taking the 'plan-enabled' land resources and turning those resources into our new homes, schools, community hubs and playgrounds. That process requires the investment of resources by both Council and the developer, in a manner which is effective and efficient, having regard to the interests of the community as a whole.
9. The 3MS of Cambridge GP Limited (**3MS**) subdivision application (**development**) represents a significant opportunity for Council to begin its journey of delivering on its growth strategy for Cambridge. A 40 hectare block of land within the C2 Growth Cell, held in single ownership, delivering up to 242 individual households providing homes for up to 600-800 people, a school accommodating 300 pupils to being with, and reaching up to 1000

pupils, a retirement village comprising 185 townhouses, an 80 bed hospital and 60 serviced units, all integrated with public and private spaces achieving the best in urban design principles.

10. Most significantly however, the development enables the efficient roll out of public infrastructure. Rather than requiring Council to invest in significant public infrastructure at the earliest point of urbanisation, where it becomes stranded capacity, the development will achieve the initial urbanisation of the C2 Growth Cell, while timing the delivery of its most significant public infrastructure to align with the longer term demand generated by land development in the balance of the growth cell.
11. This issue of the timing and location of certain public infrastructure will become a central theme of this hearing. The development makes provision for public infrastructure identified in the C2 Growth Cell Structure Plan (**Structure Plan**), but not all of the identified infrastructure. In particular, a central corridor comprising a stormwater swale and collector road which is identified on the Structure Plan as being located on the 3MS land is not a feature of the development. The good reasons for this will be explored.
12. The critical resource management issue which should be the focus of the commissioners' inquiry is whether the development frustrates or runs contrary to the Structure Plan objectives and its intended outcomes. As will be demonstrated through the evidence presented on behalf of 3MS, the development gives effect to the Structure Plan and does not inhibit the ultimate provision of the intended infrastructure within the C2 Growth Cell.
13. Ultimately, it will be demonstrated that the development gives effect to the single purpose of the Resource Management Act 1991 (**RMA**) and warrants the endorsement of Council through the grant of consent.

THE APPLICATION/ACTIVITY STATUS

14. The subdivision consent application seeks to subdivide four existing lots comprising approximately 40 hectares in single ownership, to create:
 - a) 242 residential lots;
 - b) A super lot for a retirement village (Lot 300);
 - c) Commercial centre;
 - d) Future residential development super lot / balance lot (Lot 306);
 - e) Super lot (Lot 307) potentially to be used for high density residential development;
 - f) School site (Lot 310);
 - g) Roads to vest; and
 - h) Local purpose reserves.

15. The development is located in the Deferred Residential Zone. As the zone name suggests, land within the zone is intended for urbanisation. The land resource within this zone is managed to ensure its use does not compromise the ultimate urbanisation of the land. Accordingly, subdivision and residential land development is a non-complying activity.

16. Resource consent is required from Waipa District Council in accordance with the following rules of the Operative Waipa District Plan (**ODP**):
 - a) Rule 15.4.1.1(w) – Subdivision in a Deferred Zone – Non-Complying Activity;

- b) Rule 15.4.2.1 (ac) – Residential Subdivision in the C1 and C2/C3 structure plan areas – Non-Complying Activity;
 - c) Rule 15.4.2.1 (ad) - Comprehensive Residential Subdivision in the C1 and C2/C3 structure plan areas, in accordance with Rule 15.4.1.1 (e) and Rule 15.4.2.62 - Non-Complying Activity;
 - d) Rule 15.4.2.3 - Lot frontage, lot shape factor and vehicle crossings (all other zones) – Discretionary Activity;
 - e) Rule 15.4.2.5 – Lot Design – Discretionary Activity; Rule 15.4.2.7 – Lot Design – Discretionary Activity;
 - f) Rule 15.4.2.13 – Site Suitability: General – Non-Complying Activity;
 - g) Rule 15.4.2.65 – Roads – Discretionary Activity;
 - h) Rule 16.4.2.2 – Road Hierarchy - Discretionary Activity; and
 - i) Rule 16.4.2.5 - Vehicle entrance separation from intersections and other vehicle entrances – Discretionary Activity.
17. The planning framework within the ODP is unhelpfully complex. As identified, the development is located within the Deferred Residential Zone. The urbanisation of the land is intended to be fully enabled by ‘uplifting’ the deferred status via a Council resolution. This is on the basis that the deferred residential planning framework had been approved via a previous RMA first schedule process, but its timing to go ‘live’ has been deferred. In the case of the C1, C2 and C3 Growth Cells the resolution would be made subject to the requirements of Rule 14.4.1.9 which sets out a series of pre-conditions. Pending this resolution the zone is controlled by the typical rural zone objectives, policies and rules, which protect against land uses that might compromise the ultimate urbanisation of the land

resource.³ As a non-complying activity, pursuant to Rule 14.4.1.7, prior to a resolution made under Rule 14.4.1.9 to uplift a deferred zoning, the application is assessed against the performance standards in the Rural Zone.

18. Council has not yet resolved to uplift the deferred status, and has since determined that its deferred zoning mechanism is legally questionable. Accordingly, it has elected to commence a plan change to work around the deferred zoning mechanism and establish the residential zoning in the ordinary RMA First Schedule manner (**PC13**). PC13 was publicly notified on 22 March 2021 and attracted 33 submissions, mostly in support.
19. The intended outcome of PC13 is welcomed by 3MS, as it will bring into play the appropriate objectives, policies and rules to enable the full urbanisation of the site without having to contend with the deferred residential framework which constrains urbanisation. For this reason 3MS has not yet sought land use consents for residential land uses concurrent with the subdivision application, because until PC13 is operative, 3MS would need to apply for those residential land use consents under the existing deferred residential zone rules, which are significantly less enabling. Once PC13 is operative, most of the residential land use activities within the subdivision will be classified as permitted, controlled or restricted discretionary activities.
20. Accordingly, 3MS is content to seek subdivision consent as a non-complying activity under the existing Deferred Residential Zone provisions, and await the outcome of PC13 before seeking and land use consents. As Mr Chrisp describes in his evidence⁴:

67. It is important to recognise that the Non-complying Activity status is largely just a matter of timing. All subdivisions within a Deferred Zone (aside from boundary adjustments) are classified as a Non-complying Activity. The activity status is being amended by Plan

³ Pursuant to rule 14.4.1.5(a) any activity that would be non-complying in the rural zone (such as residential subdivision) is deemed a non-complying activity in the Deferred Residential Zone.

⁴ Mark Chrisp EIC paragraph 67

Change 13, which is rezoning the 3Ms site to Residential Zone whereby the Residential Zone provisions will apply once Plan Change 13 is operative (wherein the current subdivision consent application, if advanced following Plan Change 13 becoming operative, would be a Restricted Discretionary Activity).

21. Mr Chrisp will give evidence that as a non-complying activity the application passes both gateway tests under s 104D of the RMA. The s42 author also concludes that the gateway test in s104D can be met and the application should proceed to be determined under s104 of the RMA.⁵

THE STRUCTURE PLAN

22. Despite the deferred residential zoning not yet being in place, there is good guidance in the ODP regarding the ultimate urban form of the land resource, if it were to be developed ahead of PC13 becoming operative. Subdivision Chapter 15 in the ODP contains extensive provisions controlling subdivision within the C1, C2 and C3 Growth Cells, which are each subject to a Structure Plan.
23. The rule which links subdivision to the Structure Plan is Rule 15.4.2.65 which provides:

15.4.2.65 All development and subdivision within an area subject to an approved structure plan, development plan or concept plan **shall be designed in general accordance with the requirements of that structure plan**, concept plan or development plan. For the avoidance of doubt, the following areas are subject to concept plans, development plans and/or structure plans:

(a)

(t) Cambridge C1, and C2 / C3 Structure Plans
Appendix S19

Activities that fail to comply with this rule will require a resource consent for a discretionary activity, except where these structure plans indicate that non-compliance with the rules of the structure plan, development plan or concept plan will result in the activity being a non-complying activity.

⁵ S42A report para 15.1

(emphasis added)

24. This requirement for development to be ‘in general accordance’ with the Structure Plan is reflected in many of the Structure Plan provisions which reflect the ‘guidance’ characteristics of the Structure Plan rather than a prescribed set of performance standards that enable a pass/fail assessment. A snapshot of some of the Structure Plan provisions gives a flavour for the broad guidance offered:

- a) **S19.1.2** These Structure Plans offer details on anticipated land use, necessary infrastructure and establish an associated planning context for how the implementation of the Structure Plan areas are to be managed. **The Structure Plans provide a broad framework within which landowners and developers can prepare development proposals in a flexible manner while maintaining an integrated approach to development.** Well planned residential areas consistent with the amenity and character expected within Cambridge are sought, together with providing for an adequate provision of services and appropriate walking, cycling and street connections.
- b) **S19.3.3.2** The following outcomes sought are facilitated through the relevant district plan provisions, including the relevant objectives, policies, rules and assessment matters relating to residential and compact residential housing land use. **Where there is any conflict or inconsistency between the structure plan outcomes and guidance and any zone rule, the zone rule shall prevail.**
- c) **S19.4.1.1** Good stormwater management is a key design driver for development of the C1 and C2/C3 Structure Plan areas. This is due to the proposed change in land use from what is currently a predominantly rural-residential setting into an urban landscape. This change will interfere with current drainage systems, flow paths and flood extents and also bring about a significant increase in impermeable surfaces due to the creation of additional roads and buildings. This will result in a substantial increase in stormwater runoff which the existing drainage systems were not designed to accommodate. There are also large areas that currently have no formal drainage system. As such, the creation of a stormwater concept for each Growth Cell is vital, and must consider:
 - (a) how stormwater will be treated to avoid or mitigate adverse water quality effects on the downstream receiving environments;
 - (b) how increases in flow rate and volume will be managed to avoid or mitigate adverse flood and scour effects on the downstream environments;
 - (c) **how stormwater will move through the three cells in an integrated, flexible and robust fashion** while appropriately managing flood risk to infrastructure, people and property (both inside and outside the cells); and

- (d) how stormwater could be managed in the adjacent Growth Cell, C7, so that future stormwater management in this cell is not made unnecessarily difficult when that area develops.
- d) **S19.4.1.2** For further detail of the stormwater investigation and assessments undertaken as part of the Structure Plan project, refer Cambridge C1 and C2/C3 Structure Plans: Stormwater Report (Beca, 2018). This report also sets out the stormwater management requirements for C1 and C2/C3. **It is noted that these requirements will be refined and confirmed when Council obtains resource consents from the Waikato Regional and/or the Waipa District Council for the overall discharge of stormwater from C1, C2 and C3 (subsequent to Plan Change 7).** Development within C1 and C2/C3 will need to comply with these resource consents and the conditions thereof.
- e) **S19.4.1.7** To ensure stormwater moves through the C1, C2 and C3 growth cells **in an integrated, flexible and robust fashion**, WDC will be responsible for seeking the necessary approvals under the Resource Management Act 1991 for a permanent stormwater solution that manages all stormwater flows generated from the cells. To ensure subsequent development within the cells (where connection to the permanent stormwater solution will be required in the future) is compatible with the permanent stormwater solution, the uplifting of any deferred residential zoning shall be contingent on the necessary consents first being obtained by WDC.
- f) **S19.4.1.8** WDC shall engage with affected landowners who have a direct interest in the permanent stormwater solution, in designing and seeking consents/approvals for such infrastructure.
- g) **S19.4.1.11** A number of feasible options have been identified to convey the majority of stormwater runoff from C1, C2 and C3 south through the C2 and C3 to the Waikato River. The proposed approach outlined below has been identified as the preferred option based on investigations undertaken to date (including further investigations and consultation carried out in response to submissions on the Plan Change). **It is noted the layout, sizes and detailed performance requirements of the features described below (both private and public) will be refined during future assessment and design stages, in particular the aforementioned resource consent applications.**
- h) **S19.4.1.12** It is also recognised that **there may be alternative measures available to manage stormwater and it is not intended to exclude these provided they are acceptable to both Council and the WRC and are consistent with stormwater outcomes of the Structure Plan and the Cambridge C1 and C2/C3 Structure Plans: Stormwater Report (Beca,2018).**
- i) **S19.4.1.13** Within each Growth Cell, the stormwater strategy incorporates different elements as outlined below and **shown indicatively in the following Figures 9 and 10.**
- j) **S19.4.1.13(k)** A large, deep (varies along its length from 3 to 5 m), **centrally located open channel drain** will convey stormwater through C2. The depth of the drain will be designed to avoid and/or

mitigate hazards associated with liquefaction and slope stability under seismic conditions.

- k) **S19.4.5.1 A number of feasible options have been identified** to convey stormwater from C1, through C2 and C3 to the Waikato River. The proposed approach outlined above has been identified as the preferred option based on investigations and land owner/stakeholder consultation undertaken to date. **However, prior to designation of the stormwater corridor**, a number of further investigations will need to be undertaken as part of the next design stages.
- l) **S19.5.2.2 Collector Roads**, as shown on the Structure Plans and within Movement Network Plans below (Figure 10 for C1 and Figure 11 for C2/C3 8), **are generally fixed in location, subject to the outcomes of detailed design.**
- m) **S19.5.2.3 Local Roads**, as shown on the Structure Plans and within Movement Network Plans below, **are indicative in terms of their location.** In this regard, the layout as shown is considered appropriate and reflects appropriate block depths and widths, street lengths, orientation and location adjacent to open space and other land uses; notwithstanding, **it is acknowledged that exact alignment of these roads is likely to be modified** as further detailed design is undertaken. What remains important is that the outcomes outlined below and intent behind the plans is retained through detailed design.
- n) **S19.5.3.1** The movement of pedestrians, cyclists and vehicles through the Structure Plan and connecting to the surrounding environment is **guided by the following outcomes and guidelines:**
- o) **S19.5.3.2** The following outcomes have been established for the Structure Plan **to help guide future development:**
- (a) A road network based on a modified grid structure – supporting Cambridge’s established grid system and supporting connectivity
 - (b) A range of transportation choices provided with priority given to walking, cycling and a future provision of public transport
 - (c) Integration of transportation and land use planning
 - (d) Vehicle, pedestrian and cycling safety promoted through design – with streets designed as public spaces where pedestrians feel safe.
- p) **S19.5.3.3** The following **general guidelines have been developed to help guide movement, circulation and access** within the C1 and C2/C3 Structure Plans:
- (a) Support a fine-grained network of connected streets to provide multiple alternate routes for local traffic and reduce congestion caused by limited entry points.
 - (b) Minimise cul-de-sacs. Where cul-de-sacs are unavoidable, minimise their length and include pedestrian/cyclist linkages to the surrounding movement or open space network (to provide shortcuts and a choice of routes).
 - (c) Increase connectivity and permeability by: (i) Establishing walkable blocks averaging 200m by 80m, based on a formal or informal grid wherever possible (ii) Facilitating the creation of new connections, mid-block spaces, and green linkages, for

walking, and particularly where larger block sizes are proposed.
 (d) Prioritise pedestrians first, followed by cyclists then future public transport (buses) and other vehicles at street intersections within the Structure Plan area.

(emphasis added)

25. Notably, the Structure Plan also creates flexibility for the staged roll out of public infrastructure, recognising that residential development will likely precede the designation and construction of the stormwater network. Rule S19.4.4 provides:

S19.4.4 Staging

S19.4.4.1 It is likely that the drive for residential development within these growth cells will precede the designation and construction of the proposed stormwater network. As such, a staged approach to stormwater management is considered appropriate, to enable initial stages of development to occur without reliance on the wider stormwater solution. The temporary solution includes opportunity to provide for a centrally located stormwater management area that, once the permanent stormwater solution is in place, could be converted back to open space or residential development.

S19.4.4.2 There are significant risks with a staged approach that will need to be worked through in further detail by developers in consultation with Council if a staged approach is to proceed. These will depend on the location, size and nature of development areas being considered. Further, triggers regarding the uplifting of Deferred Zones are contained within Section 14 (Deferred Zone), provision 14.4.1.9 of the Waipa District Plan; and these triggers must be met prior to the Deferred Zoning being uplifted or any temporary solution being implemented.

(emphasis added)

26. This acknowledgement that the stormwater network requires designating under the RMA is reinforced in Rule S19.4.5.1 which sets out the regulatory pathway to be followed. To date, Council has taken no steps towards securing the necessary designation(s). Accordingly, the location of the central stormwater corridor and collector road identified in the Structure Plan are 'indicative', providing general guidance on their location and how they integrate with land uses within the Structure Plan areas.

27. Collector roads are acknowledged within the Structure Plan as Council's responsibility. Rule S19.5.2.1 provides:

S19.5.2.1 Streets have been organised in a hierarchical pattern, according to street width, character and carrying capacity. The Structure Plans provide for two tiers of road typology within Growth Cell boundaries – Collector Roads and the Local Roads. **Council are responsible for funding Collector Roads within the Structure Plan areas**, and all remaining Local Roads are to be funded by the developer and designed in collaboration with Council. Where necessary, any notices of requirement required to give effect to a Local Road will be prepared by Council as the Requiring Authority.

28. Put at its absolute highest, the collector roads are described as 'generally fixed in location'.⁶ This description is self-evidently unhelpful, because it offers no guidance on which collector roads might not be fixed in location, and to what extent departures might eventuate. To make sense of the provision requires the rule to be read in its context, where it forms part of a set of structure plan provisions offering 'general guidance' and 'indicative' layouts for urbanisation.⁷
29. This approach to the interpretation of plan provisions is consistent with the principles established by the Court of Appeal in *J Rattray and Son Limited v Christchurch City Council*⁸, later endorsed by the Court of Appeal in *Powell v Dunedin City Council*⁹, which requires that assistance not only may, but ought to be sought from the composite planning document taken as a whole whenever obscurities and ambiguities might seem to arise. While it is appropriate to seek the plain meaning of a rule from the words themselves, it is not appropriate to undertake that exercise in a vacuum. Regard must be had to the immediate context and, where any obscurity or ambiguity arises, it may be necessary to refer to the other sections of the plan¹⁰, as well as:
- a) The text [and immediate context] of the relevant provision in the plan;

⁶ Rule S19.5.2.2

⁷ See para 24 above excerpts.

⁸ (1984) 10 NZPTA 59 at 61

⁹ [2004] 3NZLR 721

¹⁰ Ibid; at para [35]

- b) The purpose of the provisions;
 - c) The context and scheme of the plan;
 - d) The history of the plan;
 - e) The purpose and scheme of the RMA being the statute under which the plan is prepared and under which it operates; and
 - f) Any other permissible guides to meaning (including the common law principles or presumptions of statutory interpretation).¹¹
30. Applying these principles of plan interpretation, it is clear that any attempt to depict the location of the stormwater corridor and collector road as 'set in stone' whereby they must be provided for in the exact location identified in the Structure Plan is a misinterpretation of the plan provisions and a gross overstatement. Rather, flexibility is intended.

EVALUATING THE DEVELOPMENT AGAINST THE STRUCTURE PLAN

31. As previously signalled, the location of the central stormwater corridor and collector road is identified in the s42A report, and by submitters, as a critical issue in the evaluation of the application. The submitters in particular point to the fact that this infrastructure is not provided within the development, and assert this is a material departure from the Structure Plan which somehow warrants decline of consent. This approach is misconceived. To require 3MS to provide for the stormwater corridor and collector road in the exact location shown in the Structure Plan, or to decline consent because it is not so located, would amount to an error in the interpretation and application of the relevant planning instrument.

¹¹ *Landco Mt Wellington v Auckland City Council* A101/05; at para [19]

32. The Structure Plan makes it clear that the stormwater corridor is Council's responsibility, and is to be designated by Council, and that the collector road is also Council's financial responsibility.¹² Council has taken no steps towards securing a designation of the stormwater corridor under the RMA. As evidenced in the AEE, Council did engage with 3MS in an attempt to acquire land from 3MS for the corridor, but its only offer was at a value well below the 3MS valuation, and incidentally well below the rate it has now offered 3MS for the reserve land. Unsurprisingly, those negotiations failed.
33. Accordingly, no landowner or developer within the C2 Growth Cell has any certainty regarding where and when the stormwater and collector road corridor will be established. This state of uncertainty is a significant barrier to development, because like any investment decision, risk must be evaluated and managed. Nevertheless, even without Council assisting developers by creating this certainty, some developers, like 3MS, are prepared to make investment decisions and commence development.
34. As Structure Plan section S19.4.4.1 notes, 'the drive for residential development within these growth cells will precede the designation and construction of the proposed stormwater network. As such, a staged approach to stormwater management is considered appropriate, to enable initial stages of development to occur without reliance on the wider stormwater solution.'
35. Set in this planning context, it is an anticipated outcome of the development process that while the Structure Plan will provide clear guidance on the spatial layout, key features, and land uses within the C2 Growth Cell, the sequencing of development, and the ultimate location of public infrastructure will be determined by those developing the land. Furthermore, it is expressly acknowledged that while development is

¹² S19.4.5.1 and S19.5.2.1

expected to be in general accordance with the Structure Plan, departures, variations, alterations, modifications, and adaptations are to be expected.

36. In resource management terms, the correct approach to the evaluation of those aspects of a proposed development is to examine whether the variations frustrate or run contrary to the stated vision, outcomes and objectives of the Structure Plan.
37. Dealing first with the overarching objectives and outcomes. These are articulated as follows:

Objective - Structure planning

15.3.15 To achieve integrated development within structure plan areas.

Policy - Structure planning

15.3.15.1 To enable development and subdivision within approved structure plan areas where the development and subdivision is integrated with the development pattern and infrastructure requirements specified in an approved structure plan.

S19.1.4 C2/C3 Structure Plan

S19.1.4.1 The C2/C3 Structure Plan area is made up of two Growth Cells – the C2 and C3 Growth Cells. These Growth Cells have been combined to minimise serviceability complications, provide a coordinated approach to the western gateway to Cambridge and enable a more comprehensive approach to design. The Growth Cells are located to the west of the Cambridge town belt and north of the Waikato River, with the area being characterised by rural and rural residential land uses.

S19.2 Plan Overview

S19.2.1 The Structure Plan design is formed through the arrangement of land uses, public spaces, transport systems, services and amenities. It is this design that gives form, shape and character to neighbourhoods – defining place and ultimately contributing to the quality of life in Cambridge as a whole. The overarching Structure Plan diagrams for C1 and C2/C3 are included as Attachment A.

S19.2.2 Vision

S19.2.2.1 The vision for the design of the Structure Plan is to enable residential development consistent with the character of Cambridge while providing for increased housing choice and placing a strong emphasis on the provision and quality of public open space. The framework for the design process is based on a methodology emphasising environmental, community and economic outcomes.

S19.2.3 Goals and Objectives

S19.2.3.1 The goals and objectives underpinning the C1 and C2/C3 Structure Plan areas are based on best practices for designing liveable, sustainable communities. These include development guidelines for mixing land uses, supporting transportation choices, and aiming to provide for increased quality of life through good neighbourhood design.

38. The stormwater strategy is set out at section S19.4 of the Structure Plan. It seeks to achieve an integrated network of stormwater conveyance structures beginning in the C1 Growth Cell, passing through the C2 Growth Cell, then extending on to the C3 Growth Cell and ultimately discharging to the Waikato River. As articulated in sections S19.4.1.4:

S19.4.1.4 In line with the overarching goals and objectives (S19.2.3), stormwater features (that manage conveyance, treatment, flooding and scour) will be strategically placed to provide a clearly defined drainage spine that serves all three cells as well as offering ecologically friendly and aesthetic solutions that are integrated into the wider open space network. The solution will aim to provide a sustainable approach that takes into consideration the existing character of Cambridge.

S19.4.1.13 Within each Growth Cell, the stormwater strategy incorporates different elements as outlined below and shown indicatively in the following Figures 9 and 10.

39. The transport and roading strategy is described in the Structure Plan as the 'Movement Network'. S19.5 provides:

S19.5.1 Overview

S19.5.1.1 Movement within the C1 and C2/C3 Structure Plans is facilitated through a network of roads – accommodating both vehicles and cyclists alongside high-quality pedestrian-oriented paths. It is also supported by off-road walkways and cycleways, linking through the central stormwater channel in C2 and connecting the community to its surrounds.

General Outcomes Sought

S19.5.3.2 The following outcomes have been established for the Structure Plan to help guide future development:

- (a) A road network based on a modified grid structure – supporting Cambridge's established grid system and supporting connectivity.
- (b) A range of transportation choices provided with priority given to walking, cycling and a future provision of public transport.
- (c) Integration of transportation and land use planning.
- (d) Vehicle, pedestrian and cycling safety promoted through design – with streets designed as public spaces where pedestrians feel safe.

S19.5.2 Street Hierarchy

S19.5.2.1 Streets have been organised in a hierarchical pattern, according to street width, character and carrying capacity. The Structure Plans provide for two tiers of road typology within Growth Cell boundaries – Collector Roads and the Local Roads. Council are responsible for funding Collector Roads within the Structure Plan areas, and all remaining Local Roads are to be funded by the developer and designed in collaboration with Council. Where necessary, any notices of requirement required to give effect to a Local Road will be prepared by Council as the Requiring Authority.

S19.5.2.2 Collector Roads, as shown on the Structure Plans and within Figure 13: C1 and C2/C3 Movement Network, are generally fixed in location, subject to the outcomes of detailed design.

S19.5.2.3 Local Roads, as shown on the Structure Plans and within Figure 13: C1 and C2/C3 Movement Network, are indicative in terms of their location. In this regard, the layout as shown is considered appropriate and reflects appropriate block depths and widths, street lengths, orientation and location adjacent to open space and other land uses; notwithstanding, it is acknowledged that exact alignment of these roads is likely to be modified as further detailed design is undertaken. What remains important is that the outcomes outlined below and intent behind the plans is retained through detailed design.

General Guidelines

S19.5.3.3 The following general guidelines have been developed to help guide movement, circulation and access within the C1 and C2/C3 Structure Plans:

- (a) Support a fine-grained network of connected streets to provide multiple alternate routes for local traffic and reduce congestion caused by limited entry points.
- (b) Minimise cul-de-sacs. Where cul-de-sacs are unavoidable, minimise their length and include pedestrian/cyclist linkages to the surrounding movement or open space network (to provide shortcuts and a choice of routes).
- (c) Increase connectivity and permeability by: (i) Establishing walkable blocks averaging 200m by 80m, based on a formal or informal grid wherever possible. (ii) Facilitating the creation of new connections, mid-block spaces, and green linkages, for walking, and particularly where larger block sizes are proposed. (d) Prioritise pedestrians first, followed by cyclists then future public transport (buses) and other vehicles at street intersections within the Structure Plan area.

40. Having regard to these key drivers within the Structure Plan it is clear that there is nothing in the 3MS proposed subdivision layout which frustrates these outcomes. While the central stormwater corridor and collector road are not located within the subdivision, that does not mean they cannot be provided in the future. As will be explained in the evidence of Mr McCaffrey and Mr Apeldoorn, both the stormwater network and transportation network within the subdivision can and will integrate with the central stormwater corridor and collector road when they are constructed.

Nothing about the subdivision frustrates the overall spatial layout of the Structure Plan, nor the concept of a centralised stormwater and collector road corridor running north/south within the C2 Growth Cell.

41. In this regard the commissioners can be satisfied that while the corridor may not feature within the 3MS subdivision, its ultimate delivery within the C2 Growth Cell is in no way compromised by the development. The only challenges to the delivery of the corridor along some alternative alignment are the same that are present if Council had elected to build the corridor within the 3MS land; being securing the funding, concluding the necessary land acquisition, and then attending to its construction. Nothing has changed in that regard, except that the Structure Plan alignment will be met with opposition from 3MS, Chartwell/St Peters, and Te Awa retirement village.
42. The only variation from the Structure Plan is that the corridor will now be located on an alignment outside of the 3MS land. Exactly where is a matter for Council to determine. Again, this is a matter outside of 3MS' control.
43. Accordingly, it is important to differentiate between effects arising from the development, and effects which do not. The development will not require the corridor to be built on the submitters' land. The 3MS development can function without the corridor in place. Future development of land within the C2 Growth Cell will require the corridor, and it will therefore become an effect arising as a consequence of those developments. Unless and until that further development occurs, it is not an effect as defined in s3 of the RMA, nor one which requires assessment under s104(1)(a) of the RMA. To elevate this aspect of the development to an actual environmental effect would amount to an error of law.
44. That is not to say this feature of the development should be ignored completely in the commissioners' evaluation. Instead, the issues arising

due to the corridor not being located on the 3MS land are matters falling within the ambit of s104(1)(c) of the RMA which provides:

104 Consideration of applications

(1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—

...

(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

45. It is noted that the legal submissions on behalf of the submitters in opposition assert that by not accommodating the corridor within the subdivision, adverse environmental effects arise.

46. The submissions assert that;

a) Additional pressure for private homes and businesses to be taken by compulsion will affect the amenity values of the owners and occupiers.¹³

b) Effects on efficiency and certainty of provision of public infrastructure are affects on natural and physical resources.¹⁴

c) Disturbance of existing developed resources in the western parts of the Growth Cell is an effect on the environment.¹⁵

d) The fragmentation of land ownership outside the 3MS land makes the location of the corridor less efficient and less certain to be achieved within any particular timeframe. That is an effect on the public infrastructure resources and public financial resources.¹⁶

¹³ Opening legal submissions dated 24 May 2021; para 26

¹⁴ Ibid; para 28

¹⁵ Ibid; para 30

¹⁶ Ibid; para 31

e) The opposing submitters whom I represent wish to remain living on their properties and continue the activities that they have developed and enjoy on those properties. In contrast, the 3Ms property has been put together expressly for the purpose of immediate residential development and land use. The comparatively low level of impact on amenity values for the purposeful developer, and the comparatively low level of impact on aesthetic enjoyment of its land are relevant matters for consideration in the context of effects on the environment.¹⁷

47. These are not environmental effects arising from the development. None of these landowners had any certainty that there would not be public infrastructure accommodated on their land. They all reside within an identified growth cell. Without a designation in place, that element of the Structure Plan offers no certainty, particularly given it offers 'guidance', 'flexibility', and the opportunity to develop even if not in general accordance with the Structure Plan.
48. The matters identified by the submitters are the expected issues facing those holding land within a strategically valuable growth cell, which is in the early stages of urbanisation. To suggest that the development creates the issues identified is to ignore the range of factors that impact on the future use of that land. It is an error to conclude that these are all effects arising from the development which fall for evaluation under s104(1)(a) of the RMA. Yes they are resource management issues, but they are not effects requiring evaluation under s104(1) of the RMA

¹⁷ Ibid; para 34

THE IMPACTS OF THE CORRIDOR NOT BEING LOCATED WITHIN THE 3MS DEVELOPMENT

49. Pursuant to s104(1)(c) the commissioners must have regard to any matter considered relevant and reasonably necessary to determine the application. The overall evaluation under s104 is subject to Part 2, which requires that the purpose of sustainable management must be served. It is through this lens of sustainable management that the issue of the location corridor must be viewed.
50. While the corridor location is not yet determined, there is a clear directive within the Structure Plan that it be centrally located within the C2 Growth Cell, and that it run north /south, and extend down into the C3 Growth Cell. Taking these cues from the Structure Plan, 3MS has developed an alternative alignment that, at best, could be considered a likely possibility. That alignment is Plan #3 in the map bundle, and its potential impact on the land owned by submitters is shown on Plan #14. The analysis of the impacts of the corridor location are based on this assumed alignment.

Impact on Council

51. Council will benefit significantly from the corridor not being located within the development. It will enable Council to deliver this important public infrastructure in a more timely manner, linked more closely and efficiently to the growth that it will be required to service.
52. Pursuant to the Local Government Act 2002, in performing its role, Council must act in accordance with a set of principles. Relevantly, s14 states:

14 Principles relating to local authorities

(1) In performing its role, a local authority must act in accordance with the following principles:

...

(g) a local authority should ensure prudent stewardship and the efficient and effective use of its resources in the interests of its

district or region, including by planning effectively for the future management of its assets;

53. Council's draft LTP has identified a range of capital projects that it is required to fund and deliver within the C1, C2 and C3 Growth Cells over the next 10 years. The central stormwater corridor and collector road are part of that capex programme.
54. However, as demonstrated by the development, there is the ability to enable in excess of 250 separate lots, a school and a comprehensive retirement village without having to make this capital investment. More importantly, each of the submitter landowners to the immediate north west of the development have indicated an unwillingness to develop their land in the short to medium term. Accordingly, if the central corridor were delivered by Council as part of the 3MS development, the asset would be largely stranded until development proceeds in the balance of the C2 Growth Cell. This would represent an inefficient allocation of resources on the part of Council.
55. Instead, Council should be prioritising the development of the public infrastructure within the C3 Growth Cell, where all landowners have indicated a willingness to commence land development in the short term. This approach by Council could see the C3 Growth Cell developed with the central stormwater and collector road corridor in place, and completed up to the Cambridge Road roundabout, with the extension of the corridor into the C2 Growth Cell to await demand for services arising once the land owners in the balance of the C2 Growth Cell are ready to proceed.
56. In addition to these benefits, the total land required to accommodate the infrastructure will reduce due to a reduction in the stormwater capacity necessary to accommodate growth, given that the 3MS development will attenuate run-off within the subdivision. This will give rise to a corresponding reduction in the total capital expenditure Council is required to make.

57. This staged and strategic approach to the roll out of public infrastructure would represent the most efficient and effective use of public funds. It would see a large part of the C2 Growth Cell underway, and most of the C3 Growth Cell underway, for the minimum expenditure of public funds. In doing so Council would be taking meaningful steps towards achieving its NPS-UD requirements, and the aspirations it has set itself in the Waipa 2050 Growth Strategy.

Impact on submitter properties

58. The impact of the alternative alignment on submitter properties is illustrated on Plan #14. This identifies the parts of those properties which would be required to accommodate the infrastructure. This can be compared to the impact that would be felt by these same properties if the corridor was aligned strictly as depicted in the Structure Plan, which is illustrated on Plan #6.
59. A comparison between the two scenarios shows that apart from the Hawthorn and Jiang/Yang partnership properties, each submitters' land would be affected under either scenario.¹⁸ While the degree of land affected varies between sites and scenarios, the reality is that most of the submitters will be subject to a land acquisition process with Council.
60. This impact should come as no surprise to the submitters. Each were aware of Plan Change 7 which introduced the Structure Plan and clearly signalled that the land resource within the C2 Growth Cell was to be fully urbanised. It is noteworthy that a number of the submitters in opposition assert an unwillingness to change their current land use to a denser urban form, at least in the short to medium term. That is their prerogative. However, on this basis it must be recognised that it would be inefficient to deliver the

¹⁸ For a full site by site comparison see Plans #6-13, and Plans #14-21

infrastructure to these land owners who have no intention of developing their land.

61. Accordingly, for these submitters, the development should cause them no concern. Their land is not affected by the development, and their land will not be required for urbanisation in the short to medium term. They can each continue to use their property as they currently do.
62. However, all of the submitters must accept that they own land located in an area which has been identified for urbanisation. That urbanisation will take different forms, depending on the location. For some landowners, their properties will accommodate houses, while for some, their properties may accommodate public infrastructure, and others may accommodate a mixture of both.¹⁹
63. For those submitters who do have land development aspirations, such as the Brouchs and the Jiang/Yang partnership, the alternative alignment may affect them to varying degrees. Based on Plan #14, the Jiang/Yang partnership will have a small amount of land acquired, but will be left with a highly developable corner site with direct access to the collector road. The Brough property will be substantially affected by the alignment. However, that will mean they are fully compensated for the land acquisition, and any consequential losses, under the Public Works Act 1961.
64. Based on the Brough submission it appears they too have development aspirations as a community-led non-profit venture which is partnering with an incorporated society to achieve their goals. That development model will face its own unique challenges, but it is not inconceivable that if fully compensated for any necessary land acquisition, those goals may become even more achievable on an alternative site, fully capitalised using the compensation.

¹⁹ This is demonstrated in Plans #6 and #14

65. Turning to the submitter in support, Chartwell Developments LP is the owner of land within the C3 Growth Cell. It supports the development and like its neighbour Te Awa Lifecare Limited has made it clear that it supports the potential realignment of the Cambridge Road roundabout which would arise if the corridor was subject to the alternative alignment.²⁰ In this respect the alternative alignment would have a positive effect on these landowners.

Impact on the wider community

66. The alternative alignment will not have any material impact on land owners within the balance of the C2 Growth Cell. While the timing and delivery of the stormwater corridor and collector road is uncertain, and is largely within Council's control, if the alternative alignment was pursued by Council, the progressive development of the C2 Growth Cell can continue to occur in general accordance with the Structure Plan.
67. The alternative alignment will give rise to broader benefits in the Cambridge community for those trying to secure a home. Approximately 10 hectares of additional land which would otherwise have been sterilised and taken up via the corridor will now be available for residential dwellings within the development. This will accelerate the supply of sections to the market, and enhance Cambridge's offering.

EFFECTS ASSESSMENT

68. Section 104 of the RMA requires the commissioners to have regard to any actual or potential effects on the environment.
69. Section 5 of the AEE identifies and addresses the following actual or potential effects of the proposal:

²⁰ Evidence of Matthew Smith

- a) Positive effects;
- b) Character and amenity effects;
- c) Transportation effects;
- d) Servicing related effects; and
- e) Potential effects related to changes in the Structure Plan spatial layout.

Positive Effects

70. The AEE identifies the following positive effects arising from the proposal²¹:

- a) The delivery of desperately needed residential sections to market;
- b) A diversity of residential sections to meet the needs of a diverse community;
- c) Local employment and commercial activity, particularly in a COVID affected economy;
- d) Provide the community with a new school;
- e) Increased community wellbeing; and
- f) Provision of a destination playground.

71. The evidence of Mr Smith and Mr Chrisp will address these effects.

²¹ Refer to Section 5 of the AEE for more detail.

Character and Amenity Effects

72. The development will positively contribute to the character and amenity of the area and will play an important part in delivering the built form that will contribute to the character and amenity that is anticipated for the C1 and C2/C3 Growth Cells.

Transportation Effects

73. The transportation effects of the proposal are discussed in the evidence of Mr Apeldoorn. He concludes that subject to the changes to Cambridge Road and the conditions proposed by the applicant, the subdivision can be appropriately integrated into the existing and planned future transport network.
74. Since preparing his evidence Mr Apeldoorn has engaged directly with Council's transportation advisor, Mr Cameron Inder. Mr Apeldoorn will provide supplementary evidence updating the commissioners on those discussions and the resolution of various transportation issues raised by Mr Inder.

Servicing Related Effects

75. As detailed in the evidence of Mr McCaffrey, the site can be appropriately serviced from a 'three waters' perspective. As signalled, of these infrastructure components, the only issues of significance relate to the stormwater infrastructure.
76. All stormwater generated from the 3MS development will be managed within the 3MS land via soakage, rather than being reliant on a direct discharge to the Waikato River via the north/south public swale system. This system will integrate with the ultimate stormwater infrastructure for

the C1, C2 and C3 Growth Cell, and will provide a degree of resilience in the network beyond that envisaged by the Structure Plan. The benefits of the stormwater system are discussed in the evidence of Mr McCaffrey.

Potential effects relating to differences between the development and the Structure Plan spatial layout

77. The s42A report contains extensive analysis of the differences between the development and the Structure Plan. Mr Batchelor considers some of those variations to be significant adverse effects²². Mr Chrisp does not agree with that assessment.
78. He will give evidence confirming that the 3MS alternative layout demonstrates that the north/south infrastructure is not frustrated, and can be achieved by locating it slightly to the west. In doing so, it is still in general accordance with the Structure Plan. Mr McCaffrey has identified a corridor 400 metres in width in which the north/south public infrastructure corridor could be located without compromising the outcomes sought in the Structure Plan. Furthermore, the evidence of Mr McCaffrey and Mr Smith confirms that the alternative layout will result in a range of better outcomes.
79. On this basis Mr Chrisp concludes that this aspect does not give rise to adverse effects on the environment. As discussed earlier, the impacts of the alternative alignment is a matter to be considered under s104(1)(c), but is not, in and of itself an adverse effect on the environment.
80. Similarly, any variations to the layout of the sports fields and other public spaces do not give rise to any adverse effects that are not appropriately mitigated through the urban design considerations applied within the subdivision.

²² For example, at paragraph 3.21, 7.3.2(iii), and 9.4.9.

PROVISIONS OF RELEVANT POLICY AND PLANNING DOCUMENTS

81. Both the AEE and the s 42A report identify the relevant statutory policy and planning documents as being:
- a) Vision and Strategy for the Waikato River;
 - b) National Policy Statement on Urban Development;
 - c) Waikato Regional Policy Statement; and
 - d) Waipa District Plan.

Vision and Strategy for the Waikato River

82. The subdivision of land itself will have no adverse effects on the Waikato River. While the subdivision will enable a range of mostly residential land uses, that activity will either be in accordance with permitted activity rules in the Waipa District Plan (following PC 13 becoming operative) or by way of a land use consent being granted by Council. Both the plan change process and land use consenting process will provide for an assessment of the effects of any land uses in relation to the Vision and Strategy.
83. The main aspect of the future residential development of the land in the C2 Growth Cell of relevance to the Vision and Strategy is the discharge of stormwater. Council has already secured a resource consent authorising the discharge of stormwater from the C1 and C2/C3 Growth Cells to ground and to the Waikato River. The development will result in less stormwater (and associated contaminants) discharging to the Waikato River, which is a positive effect, at least in interim terms, compared with the outcome that would be achieved if the stormwater solution in the Structure Plan was pursued at the outset.

National Policy Statement on Urban Development

84. The AEE²³ provides a detailed assessment of the proposal in relation to the NPS-UD. Mr Batchelor concurs with that analysis²⁴.
85. Of significance, Objective 2 of the NPS-UD requires Council to ensure:
- Objective 2: Planning decisions improve housing affordability by supporting competitive land and development markets.
86. The positive contribution that the development will make to Council meeting its obligations under the NPS-UD have been canvassed already, and will be addressed in the evidence of Mr Smith and MR Chrisp. There appears to be no contention that the development represents a significant step forward in Council achieving its national policy obligations.
87. The significance of this national directive cannot be overstated. As Mr Chrisp refers to in his supplementary evidence, the recent decision on behalf of Waikato District Council in respect of the Sleepyhead proposal at Ohinewai correctly recognises the significant weight that must be attributed to this higher order planning instrument. The commissioners rejected a *narrow doctrinaire interpretation of the relevant strategic planning documents* which gave little weight to the strong directions in the NPS-UD for decision makers to be responsive to development opportunities unanticipated by RMA planning documents.
88. 3MS urges you to take a similarly enabling and responsive approach which puts the NPS-UD at the forefront of your decision making.

²³ At Section 6.5.2.3.

²⁴ At paragraph 13.5.1 of the section 42A report.

Waikato Regional Policy Statement

89. A detailed analysis of the proposal in relation to the relevant provisions of the Waikato Regional Policy Statement (“RPS”) RPS is presented in the AEE²⁵.
90. In the s42A report Mr Batchelor considers that the proposal may be inconsistent with the provisions of clause (c) of Objective 3.12 in the RPS. This clause seeks to ensure that land use and infrastructure be integrated. Mr Chrisp will give evidence that he does not agree that the proposal is inconsistent with this provision. The AEE and the evidence of Mr McCaffrey and Mr Apeldoorn confirm that the site can be serviced with appropriate infrastructure provision in a manner that integrates with the wider area. In addition, the 3Ms development does not frustrate or prevent any other infrastructure being constructed within the Structure Plan area. On this basis there is no basis for Mr Batchelor to have reached that conclusion.

Waipa District Plan

91. The key objectives and policies of the ODP begin with those that relate to the Deferred Zone. The main objective and policy are as follows:

Objective - Deferred Zoning

- 14.3.1 Land intended for conversion from its current land use to an alternative land use in order to respond to growth demands is clearly identified, occurs in a planned manner, and its resources are protected for its anticipated future use.

Policy - Land subject to deferred zoning

- 14.3.1.2 Land subject to deferred zoning will only accommodate land uses which do not compromise the ability for the area’s natural and physical resources to be used for the purpose of the deferred zoning.

²⁵ At Section 6.5.2.4.

92. Contrary to the legal submissions made on behalf of the submitters in opposition, the development is entirely consistent with this objective and policy set. While the proposal differs in some respects with what is shown on the Structure Plan, that does not mean that the proposal is occurring in an unplanned manner which compromises the ultimate urbanisation of the land resource, or fails to protect land resources for their anticipated use. As Mr Chrisp states, the submitters take an unduly granular approach to their interpretation of this objective, and suggest that every parcel of land must deliver exactly what the Structure Plan has identified on it.
93. This approach misinterprets the objective, which must be read and construed in light of its surrounding and related provisions.²⁶ The Structure Plan does not call for strict and absolute adherence. It offers guidance, is flexible, and encourages development in general accordance with it, but also enables development which is not. Such a strict interpretation of objective 14.3.1 cannot be reconciled with the overall scheme of the ODP.

RESPONSE TO KEY ISSUES IDENTIFIED IN THE S42A REPORT AND SUPPLEMENTARY STATEMENT OF MARK BATCHELOR

94. The s42A report identifies a number of key issues which Mr Batchelor considers so significant, that if not appropriately addressed in the conditions of consent, would warrant declining consent. Those issues are:
- a) The absence of the central stormwater corridor within the development;
 - b) The absence of the central collector road within the development;
 - c) The adequate provision of sports fields within the development.

²⁶ Ibid at footnote 11; *Landco*

95. In his supplementary statement of evidence Mr Batchelor concludes:

59. As suggested in the recommendations and related discussion in the S42A report, when a new practicable site for the removed and displaced facilities is secured or provided then consent would be suitable. Lack of securing these facilities makes consent not suitable.

96. The significance of this planning conclusion cannot be overstated; his overall assessment is that unless these public infrastructure assets are located within the development, or their alternative location has been secured or provided by some other means, the development should not be consented. In other words, to address the uncertainty, all development that might have the effect of precluding an option for Council must be avoided. This amounts to a sterilisation of the land resource. In the context of the NPS-UD, and the fundamental requirement to achieve the sustainable management of the land resources, this cannot be the solution.

97. The funding and provision of these public assets are the acknowledged responsibility of Council.²⁷ Council has failed to designate the corridor, which would have required it to analyse all alternatives and allow affected parties to test their respective positions in the usual way. Absent a designation, Council has failed in its negotiations with 3MS to acquire the land for the corridor. Nor has Council taken any steps to compulsorily acquire the land under the Public Works Act 1981 (**PWA**). Council has known since September 2020 that it could not secure the land from 3MS under its proposed terms and has terminated any attempts to secure the land from 3MS. Yet since then it has done nothing to secure an alternative route.

98. Against that background Council's planner now concludes that 3MS should not be able to develop its land unless it provides for the infrastructure corridor within the subdivision, or until Council secures an alternative alignment. A remarkable recommendation in the context of the total

²⁷ S19.5.2.1, S19.4.5.1

inertia shown by Council, a housing crisis, and where a developer with an outstanding track record in Cambridge wants to get on with the job.

99. Accordingly, the recommendations made by the s42A author should be viewed with caution, and each of the issues should be carefully examined before determining that the only appropriate planning response is to decline consent, or approve consent subject to conditions that, unless offered up on an *Augiers* basis, would be unlawful.

The central stormwater corridor and collector road

100. Mr Batchelor's planning assessment refers to the central stormwater corridor and collector road as having been 'removed from the C2 Structure Plan and not replaced or provided with an alternative location'.²⁸ He states variously:

[4] **Removal of these infrastructure components from the structure plan entirely** removes the means by which the structure plans are proposed to be developed and removes a significant part of their purpose. The change is a change of such an extent to be an effective change to the district plan.

[7]They are not being relocated; they have not been provided with alternative sitting. **They have been removed from the C2 structure plan and not replaced or provided with an alternative location.**

[33]The proposal is not in general accordance with the structure plan. Particularly as it **removes significant components from it** and does not provide alternative locations in mitigation of this.

[41]The application at face value shows the infrastructure identified in the structure plan is **proposed to be removed.**

[49]**Removal of these facilities from the structure plan removes the components..**

[53]**They are being removed** with no mitigative actions or offerings from the applicant.

[55]**The proposal is to remove those components** of this context from the structure plan that are required to allow development.

²⁸ Batchelor supplementary evidence para 7

101. This is a gross mischaracterisation of the development. The development does not remove the central stormwater corridor and collector road from the C2 Structure Plan area. Those elements are not located within the subdivision, but that does not equate to them being removed from the Structure Plan. The subdivision is designed to ensure that it can integrate with those elements, once an alignment is identified and secured by Council. There remains a number of options available to Council in terms of an alternative alignment, and all of those options present the same landowner issues that Council would face if it attempted to place the public infrastructure on 3MS' land.

102. Again, Mr Batchelor appears to elevate the location of the corridor, depicted as line on a map within the Structure Plan, as somehow secured and certain. This ignores the guidance status of those lines on the map. The analysis makes no acknowledgment of the fact that a designation has not been secured for that alignment, despite Structure Plan rule S19.4.5.1 expressly stating that while the identified alignment is currently the preferred approach, 'However, prior to designation of the stormwater corridor, a number of further investigations will need to be undertaken as part of the next design stages.' In fact, nowhere in his s42A report, or supplementary evidence does Mr Bachelor acknowledge or refer to this section of the Structure Plan, or the concept of designation.

103. The lack of a designated infrastructure corridor is significant, and is a material factor in the uncertainty now facing all landowners in the C2 and C3 Growth Cells. Even if the corridor was kept off the submitters land, it cannot be assumed that locating it within the Structure Plan alignment will be achievable. Not only does 3MS resist that outcome, but Te Awa Retirement Village has signalled its clear and entrenched opposition to the alignment, and St Peter/Chartwell have submitted in support of the 3MS proposal.

104. Accordingly, in the absence of a clear strategy on alignment resolution and land acquisition and from Council, no party has any certainty on where and how the corridor can be delivered. In light of the current signals it appears any alignment will require designating, and either negotiated or compulsory land acquisition. That could take up to five years to complete. Sterilising the 3MS land in the meantime is not a sustainable use of the land resource.

RESPONSE TO LEGAL SUBMISSIONS ON BEHALF OF COUNCIL

Land acquisition

105. Mr Smith will respond to certain matters raised in the legal submissions concerning the negotiations between Council and 3MS. It is recognised that the parties will have their own perspectives, but some facts are inescapable. Negotiations between the parties failed in 2020, and Council has taken no further steps towards attempting to secure the corridor within the development. Council has taken steps to secure other land within the development for reserve purposes, and is willing to pay a per square metre rate for that land which mirrors what 3MS had been seeking for the corridor in mid 2020.

Reserve effects

106. Counsel for Council observes that in the context of the assessment under s104 of the RMA it is difficult to uncouple the discussion over whether there is a significant departure from the Structure Plan from the issue of effects. They are in essence interrelated. The submissions further state; *this is why the evidence for the Council does consider that a significant departure from the Structure Plan results in an adverse effect.*²⁹ 3MS agrees that it does not automatically follow that a significant departure gives rise to an adverse effect. Effects must be assessed.

²⁹ Legal submissions for Council dated 21 My 2021; para 13

107. Ultimately, the reserve issue is simply dealt with. 3MS and Council have reached agreement on the acquisition of the land required for reserves within the development. However, it appears that the reserve area is subject to the proposed staging requirement, and that aspect of the recommended conditions is not agreed to by 3MS. Accordingly, subject to resolving the staging issue, the requisite provision for reserves will be achieved within the development.

Generally in accordance with

108. Counsel for Council cites *Palmerston North City Council v New Zealand Windfarms* as authority for the proposition that generally does not permit the consent holder to conduct the activity in a materially different way from that described. As discussed earlier, in the context of the Structure Plan for the C2 Growth Cell, developing the 3MS land in a manner that still allows for the central corridor within the C2 Growth Cell, albeit adjusted west, is not enabling land use in a materially different way to that described in the ODP. Nevertheless, even if the commissioners consider it is materially different, the effects arising do not warrant either the decline of consent nor a sterilisation of the land resource while Council decides how to act.

Staging conditions

109. 3MS is opposed to any staging conditions which have the effect of sterilising the land within the development. The submissions for Council observe;

26. The staging condition that Mr. Smith refers to relates to the infrastructure corridor. As correctly noted by Mr. Batchelor that condition [#3] cannot be legally imposed on the applicant as it is reliant on other parties (Council and affected landowners) acting in a particular way. It is an onerous condition that can only be imposed if the Applicant agrees to it. Again, there is a factual matter that needs to be considered. If the Commissioners agree with Mr.

Batchelor that the effects of the proposal are acceptable as long as the issue of where the public (road and stormwater) infrastructure is located is resolved then a resolution of that issue will be needed. One way it could be resolved is for the Applicant to volunteer a condition to the effect set out as condition 3 in the section 42A report.

27. I note the evidence of Mr. Chrisp who correctly states (at paragraph [44]) that there is no resource management reason that necessitates the corridor to be located on 3MS property to the extent that there is no requirement in the District Plan that the infrastructure be provided exactly in the manner shown in the Structure Plan. Mr. Chrisp makes the same comment in relation to the reserve (at paragraph [45]).

(emphasis added)

110. Counsel goes on to state that the correct approach to the evaluation of the impacts arising from the treatment of the corridor is to determine if any environmental effects arise as a result of this subdivision consent showing an indicative alternative infrastructure corridor and reserve provision, and whether the proposal result in the outcomes of the approved Structure Plan not being able to be achieved.³⁰

111. That approach is supported by 3MS. If correctly evaluated in this way the commissioners can be satisfied that the subdivision consent can be granted without imposing the staging condition recommended by Mr Bachelor.

CONCLUSION

112. The evaluation of this application calls for a courageous and real world approach to planning for growth. The commissioners are urged not to fall into a planning mode which subverts the higher order national policy directives on enabling growth in favour of strict adherence to district plan provisions which, even of themselves call for a degree of flexibility.

113. Put simply, there is little point requiring slavish adherence to a infrastructure plan which is intended to service development, yet has the

³⁰ Ibid; para 33

effect of inhibiting development in the areas ready for growth, and delivering services to those who state they have no use for it.

114. The correct approach to the sustainable management of these resources is to enable the development to proceed, and defer the provision of the corridor until the balance of the C2 Growth Cell is ready to develop. This represents an efficient allocation of public resources and most importantly, is achievable.
115. Landowners within the C3 Growth Cell are on board and ready to develop, and within the C2 Growth Cell 3MS is ready to go. Council needs to seize the opportunity for growth which is in front of it. To do otherwise represents a regressive planning outcome, and one which consigns Waipa District to a no growth future in the short to medium term.
116. Instead, once approved, the development will catalyse the development of the C2 and C3 Growth Cells and put Council on the path to achieving both its, and central government's growth directives.

Dated 25 May 2021



L F Muldowney
Counsel for 3Ms of Cambridge GP Limited