

IN THE MATTER of the Resource Management Act
1991

AND

IN THE MATTER of an application to **HAMILTON
CITY COUNCIL** by **GREEN SEED
CONSULTANTS LIMITED** for a
private plan change (PC7) to the
Hamilton City District Plan to
rezone 140ha of land at Rotokauri

**OUTLINE OF LEGAL SUBMISSIONS OF COUNSEL FOR
GREEN SEED CONSULTANTS LIMITED**

1. INTRODUCTION

- 1.1 This is the hearing of Plan Change 7 ("PC7") to the operative Hamilton City District Plan ("HCDP"). PC7 seeks to rezone 140 hectares of land in Rotokauri in northern Hamilton, and to provide the policy and planning framework for the urbanisation of that land.
- 1.2 The applicant for the private plan change ("PPC") that became PC7 is Green Seed Consultants Limited ("Green Seed"), which company is under the umbrella of the MADE Group Limited ("MADE"). For simplicity (and with some minor exceptions where appropriate), these submissions will refer to MADE and Green Seed collectively as Green Seed.
- 1.3 A PPC was necessary for PC7 because:
- (a) In terms of planning, the Rotokauri North land is zoned Future Urban Zone ("FUZ") under the HCDP, meaning that it cannot be developed for residential use without a rezoning to Residential; and
 - (b) The Rotokauri Structure Plan ("RSP") and Future Proof Strategy 2017 ("FPS")¹ anticipate that the Rotokauri North land will be developed, but not until 2036-2045.²
- 1.4 PC7 will enable a high quality residential community to be established at the northern gateway to Hamilton, supported by an appropriately sized neighbourhood centre, several years earlier than contemplated by the RPS and FPS. This opportunity to provide approximately 1,600 to 2,000 much needed houses in Hamilton is only available because Green Seed will provide the infrastructure required to service the development (in the same way it has done when establishing the Auranga³ community in Drury West, Auckland).

¹ It is acknowledged that HCC is currently progressing an updated Future Proof Strategy 2021. However, this update is at the early stages of development, with submissions on the consultation document not closing until 12 November 2021. Thus, for the purposes of this hearing, it is considered appropriate to still give significant weight to the current FPS.

² FPS, Page 90: Confirming that Rotokauri Stage 2 is scheduled for release in Decade 3, being 2036-2045.

³ Drury 1 Precinct in the partly operative Auckland Unitary Plan.

- 1.5 As outlined in Mr Noland's evidence, Green Seed (via MADE) has a proven track record in being able to deliver infrastructure at pace, in order to support large-scale greenfield development. That in large part explains why there is no opposition to PC7 in principle from any party, despite the development being "out of sequence" with the RSP and FPS. The Panel can accordingly have confidence that Green Seed's commitment to infrastructure provision (as outlined in the evidence provided on behalf of Green Seed) will be matched by action "on the ground".
- 1.6 In developing PC7, Green Seed has also been acutely aware that the Rotokauri North area is within the wider catchment of, and in proximity to, the Waikato River. It has therefore worked extensively with iwi (via the specifically established Tangata Whenua Working Group ("TWWG")) and local authorities, to recognise and protect the health and wellbeing of the River. This is not only consistent with Green Seed's own operating principles, but is of course also required by Te Ture Whaimana o Te Awa o Waikato, in accordance with the Waikato-Tainui Raupatu Claims Settlement Act 2010 ("Settlement Act"). Green Seed is pleased and humbled that this work has enabled TWWG to strongly support the project, as outlined in the evidence of Mr Hill.
- 1.7 Green Seed has also worked hard over several years with representatives of all the relevant agencies (particularly Hamilton City Council ("HCC")), to ensure that PC7:
 - (a) Provides the "most appropriate" (in a section 32 sense) and the most efficient and effective means of achieving the relevant strategic planning objectives as they apply to the PC7 land; and
 - (b) Appropriately "fits" within the structure and format of the HCDP.
- 1.8 Green Seed is pleased to advise that these outcomes have been achieved. This is reflected in:
 - (a) The positive recommendation made in HCC's section 42A report ("section 42A report");
 - (b) The fact the Waikato Regional Council ("WRC") has advised that it only has one outstanding matter to resolve and is unlikely to attend the hearing; and
 - (c) The lack of any submission on PC7 from the Waikato District Council ("WDC"), noting that while the PC7 land is entirely within Hamilton City, the boundary between HCC and WDC runs along the northern and western boundaries of PC7.
- 1.9 The extensive work undertaken by Green Seed's consultant team over the last five years has resulted in there now being only a small number of minor matters which remain outstanding as between Green Seed, HCC and/or submitters, as outlined in Section 3 below. In that regard:
 - (a) The only outstanding issues as between Green Seed and HCC relate to disagreement over two outstanding transportation matters with HCC (as outlined below).
 - (b) The outstanding matter with WRC relates to the provision of an interim public transport solution, which is outside the scope of its submission, and not something that can readily be provided for in any event.
- 1.10 Green Seed owns or has a management interest in approximately 90% of the PC7 land. That said, in developing PC7, Green Seed has always endeavoured to engage with, and be a good neighbour to, the surrounding Rotokauri community and has a strong commitment to that continuing.
- 1.11 Green Seed acknowledges that some local landowners submitted in opposition to PC7 (many of which were pro-forma), primarily raising concerns regarding potential traffic safety effects, as outlined in Ms Perring's evidence. Mr Hills' evidence addresses in detail

those concerns and how they have been addressed (by way of agreement reached with Waka Kotahi, as well as the transport experts for both WRC and HCC).

- 1.12 The majority of PC7 has now been agreed between the parties, in accordance with the revised PC7 provisions that are attached to the reply evidence of Mr Tollemache and Ms Fraser-Smith.
- 1.13 On the basis of the above and the various assessments prepared by Green Seed's consultant team, Mr Tollemache and Ms Fraser-Smith have concluded that PC7 meets the relevant statutory tests for a proposed plan change under Part 2 of Schedule 1 to the Resource Management Act 1991 ("RMA"). PC7 includes a detailed analysis in accordance with section 32 of the RMA, which demonstrates that PC7:
- (a) Is the most appropriate way to achieve the purpose of the RMA and objectives of the HCDP, with respect to Rotokauri North; and
 - (b) Will give effect to the operative Waikato Regional Policy Statement ("WRPS") and FPS for growth in the Waikato Region.
- 1.14 In summary, it is submitted that as outlined by Mr Noland (at paragraph 9.3 of his evidence in chief ("EIC")), PC7 is:

"a proposal that will deliver much needed, high-quality development in Rotokauri North ...this housing will be part of a liveable, sustainable community with open space, connectivity, schools, and small scale retail/convenience offerings, that will meet all its residents' needs. As such, it will be a community that is both consistent with, and exemplifies, MADE's core values."

Site visit

- 1.15 At the time of filing these submissions, it is counsel's understanding that the Panel may not have had an opportunity to undertake a site visit. We are of course happy to assist with arrangements for a site visit by the Panel, as required.

Purpose and scope of submissions

- 1.16 The purpose of these submissions is to place all issues before the Panel in a manner which will (hopefully) best assist the Panel with making its findings on all key issues. Specifically, these submissions address:
- (a) Evidence circulated and order of presentation (Section 2).
 - (b) Procedural background and issues in contention (Section 3).
 - (c) Background to MADE/Green Seed and PC7 (Section 4).
 - (d) Statutory framework applicable to PC7 (Section 5).
 - (e) Policy/planning framework for PC7 (Section 6).
 - (f) Consultation and stakeholder engagement (Section 7).
 - (g) Site suitability and potential site constraints (Section 8).
 - (h) Provision for three waters infrastructure (Section 9).
 - (i) Provision for roading and traffic infrastructure (Section 10).
 - (j) Māori cultural and spiritual considerations (Section 11).

- (k) Other potential environmental effects (Section 12).
- (l) Planning assessment (Section 13).
- (m) Principal submission (Section 14).

2. **EVIDENCE CIRCULATED AND ORDER OF PRESENTATION**

- 2.1 Green Seed filed 13 statements of evidence. As indicated in the accompanying memorandum of counsel, the evidence has been organised in a series of tranches in order to most logically tell the "story" of Rotokauri North and the development as proposed by PC7.
- 2.2 For completeness, the witnesses on behalf of Green Seed are set out below and will present in that order as far as practicable (excluding of course those witnesses that the Panel has now indicated it has no questions for). Section 2 of each statement contains a summary that the witnesses would be happy to present in order to provide context for any questions that the Panel may have. In addition, both Mr Hills and Mr Tollemache/Ms Fraser-Smith have provided separate summary statements, reflecting the updates that have occurred since their EIC was filed (and that given the number of issues addressed, the planning evidence did not include a summary statement).

Tranche 1 – Concept and overview

Gary Noland - corporate

- 2.3 Mr Noland is the Chief Operating Officer of MADE and is a property professional with more than 30 years' of public and private sector experience. His evidence outlines Green Seed's vision for Rotokauri north, and specifically the consultation undertaken in the process of developing the concept for Rotokauri North and responding to key issues.

Ian Munro – urban design

- 2.4 Mr Munro is an urban designer, who has led the project's design and development team, including masterplanning, regulatory planning, subdivision and development design. His evidence addresses the design philosophy and structure planning exercises undertaken for the Rotokauri North development, as well as the provision of off-road walking/cycling networks within the PC7 area.

Norman Hill – Māori cultural and spiritual values

- 2.5 Mr Hill is an independent consultant at Te Hira Consultants and an experienced cultural values and mana whenua consultant, with extensive knowledge and experience working with whanau, hapu, and iwi throughout Waikato-Tainui. Mr Hill's evidence addresses the spiritual and cultural significance of Rotokauri North to Waikato-Tainui, and outlines the consultation and engagement undertaken by Green Seed with mana whenua, through the TWWG.

Sonny Matenga – TWWG

- 2.6 Mr Matenga is the current chairperson of the TWWG. He has provided a list of speaking points, appended to the evidence of Mr Hill. Mr Matenga will appear with other members of the TWWG and speak to those points in more detail.

Tranche 2 – Site constraints and infrastructure provision

Andrew Holland - geotechnical

- 2.7 Mr Holland is the Principal Geotechnical Director of HD Geo and his evidence outlines the methodology adopted for the geotechnical assessment and the findings of the

geotechnical report. Mr Holland confirms that that the key geotechnical hazard identified on the site is liquefaction potential, but Mr Holland's evidence is that this can be mitigated at subdivision stage.

Terre Nicholson – site contamination

- 2.8 Ms Nicholson is the Principal Environmental Consultant at HD Geo and her evidence outlines the methodology and findings of both the Preliminary and Detailed Site Investigations ("PSI" and "DSI") undertaken by HD Geo. Ms Nicholson's evidence confirms that there may be areas of contamination, and that this is best addressed by further DSI and remediation as part of the resource consent process. Ms Nicholson confirms that there are no contamination issues that preclude rezoning.

Eugene Vodjansky – three waters

- 2.9 Mr Vodjansky is the Principal Water Resource Engineer at Bloxam Burnett & Olliver. His evidence addresses civil engineering proposals for three waters, with a particular focus on the methodology and approach taken for stormwater management.
- 2.10 Mr Vodjansky's evidence addresses in detail the stormwater and flooding hazards which have been a key issue for PC7. Mr Vodjansky confirms that significant work has been undertaken between the relevant experts for HCC and Green Seed to resolve this issue. As a result of this work, there is now agreement (as reflected in the relevant Joint Witness Statements ("JWS")) that the site can be appropriately serviced with three waters infrastructure, while appropriately managing any adverse effects associated with the provision of that infrastructure.

Bernie Milne - surveying

- 2.11 Mr Milne is a licensed cadastral surveyor and the land development manager at Bloxam Burnett & Olliver. Mr Milne addresses the plan rule sought by HCC to constrain the potential land tenure structure for the rear lanes and confirms his opinion that it is not appropriate for the HCDP to contain such a constraint. As a result of receiving Mr Milne's evidence, it is understood that HCC is no longer pursuing this proposed provision, as reflected in the current version of the PC7 provisions attached to the reply evidence of Mr Tollemache and Ms Fraser-Smith.

Tranche 3 – Assessment of effects

Leo Hills – traffic and transportation

- 2.12 Mr Hills is a traffic engineer at Commute Transportation Consultants. Mr Hills' evidence details how the PC7 land can be appropriately serviced with transport infrastructure, in a manner that will ensure the development will not result in unacceptable transport effects on the surrounding road network. In particular, Mr Hills comprehensively addresses the extensive discussions that he has had with representatives from HCC, WRC and Waka Kotahi in particular, to develop appropriate triggers for required infrastructure upgrades and address property access issues.
- 2.13 Mr Hills concludes that all potential traffic effects from development of the PC7 land can be appropriately managed, including the traffic safety issues related to Exelby and Burbush Roads outlined in Ms Perring's evidence. Thus in his opinion, PC7 is suitable from a transport planning perspective.

Rob Pryor – landscape and visual assessment

- 2.14 Mr Pryor is a landscape architect and director of LA4 Landscape Architects. Mr Pryor was responsible for developing the overall landscape design for the site within Rotokauri North and has undertaken a landscape and visual effects assessment to inform and support PC7. Mr Pryor confirms that the PC7 masterplan has been designed to

appropriately integrate the proposed development within the surrounding environment and will result in a high quality urban development.

Arden Cruickshank - archaeology

- 2.15 Mr Cruickshank is an archaeologist working for CFG Heritage and prepared an archaeological assessment of the PC7 site. Mr Cruickshank's assessment confirms that there is no evidence of pre-1900 archaeology or heritage, or significant 20th century heritage found on the PC7 site. Overall, Mr Cruickshank confirms there is no archaeological matter that would preclude rezoning of the site.

Dean Miller - ecology

- 2.16 Mr Miller is the team leader of ecology at Tonkin + Taylor and his evidence addresses the findings of the stream classification and bat survey reports prepared for the site by Tonkin + Taylor. Mr Miller confirms that the majority of the watercourses across the site are modified and that no long tailed bats were detected on the site during the surveys they undertook.

Tim Heath - economics / retail effects

- 2.17 Mr Heath is a consulting economist at Property Economics and his evidence focuses on the economic impact of PC7, particularly from the proposed neighbourhood centre (or Business 6 zone ("B6Z")). Mr Heath confirms that the proposed neighbourhood centre is appropriate for:

- (a) The scale, location, anticipated growth and its proximity to centre competition; and
- (b) Servicing the proposed residential development in Rotokauri North.

Tranche 4 – planning assessment

Renee Fraser-Smith and Mark Tollemache - planning

- 2.18 Ms Fraser-Smith and Mr Tollemache are planning consultants at Tollemache Consultants, and are responsible for leading the strategic planning of Rotokauri North, including extensive consultation with stakeholders. Their evidence traverses the statutory and non-statutory planning documents, confirming that PC7 is consistent with and achieves the objectives of those planning documents, represents sustainable management and the optimal outcome for this area. Overall, Ms Fraser-Smith and Mr Tollemache confirm that, having regard to the various experts assessments that have been undertaken (and on which they rely), in their opinion it is appropriate for PC7 to be approved.
- 2.19 Counsel and the relevant witnesses are grateful for the indication that Messrs Cruickshank, Miller, Heath, and Holland, and Ms Nicholson, are not required to attend the hearing.

3. PROCEDURAL BACKGROUND AND ISSUES IN CONTENTION

- 3.1 The section 42A report contains a useful analysis of submissions lodged, etc. This section provides a brief overview of the procedural background to PC7 and issues in contention, building on the summary from the section 42A report.

Submissions on PC7

- 3.2 PC7 was limited notified by HCC on 21 February 2020. 80 submissions and 8 further submissions were lodged on PC7. Of these submissions:

- (a) 19 support the application in its current form;
 - (b) 5 support the application with amendments; and
 - (c) 56 are opposed to the application unless amendments are made.
- 3.3 The submissions can be broadly categorised as follows:
- (a) Submissions in support;
 - (b) Submissions from key stakeholders; and
 - (c) Submissions in opposition from neighbouring landowners, which are predominantly pro forma in nature.
- 3.4 Green Seed confirms it has no issue with the three late submissions being accepted, as recommended in the section 42A report.
- 3.5 Green Seed representatives have sought to constructively respond to those submissions, by making a number of refinements to the proposal. The nature and rationale of those amendments are set out in the evidence filed on behalf of Green Seed, as well as the various JWS filed following expert conferencing (which have all been provided to the Panel). The latest version of the PC7 provisions (both tracked and clean) reflecting the amendments made is attached to the reply evidence of Mr Tollemache and Ms Fraser-Smith.
- 3.6 It is submitted that, as a result of this work, Green Seed has appropriately addressed all issues raised in submissions. This is reflected in both the small number of discrete issues that remain outstanding and the limited amount of expert evidence or other material lodged by submitters, which comprises:
- (a) Two statements of evidence on behalf of Waka Kotahi;⁴ and
 - (b) One statement of evidence on behalf of specified landowners.⁵
- Expert conferencing**
- 3.7 Following the close of the submission period, the Panel issued directions 13 September 2021 that expert conferencing be facilitated on the following two topics:⁶
- (a) Transport; and
 - (b) Stormwater.
- 3.8 Following these initial expert conferencing sessions, the Panel made further directions on 23 and 28 September 2021 respectively that additional transport conferencing be convened,⁷ and that planning conferencing be convened.⁸
- 3.9 In accordance with those directions, conferencing sessions have taken place with respect to PC7 as follows:
- (a) 21 September and 5, 12 and 14 October 2021 for transport;⁹

⁴ Being from Duncan Tindall and Michael Wood.

⁵ Being from Heather Perring.

⁶ Direction/Minute #3 of the Independent Hearing Panel, 13 September 2021.

⁷ Direction/Minute #4 of the Independent Hearing Panel, 23 September 2021.

⁸ Direction/Minute #5 of the Independent Hearing Panel, 28 September 2021.

⁹ JWS dated 21 September, 5, 12 and 14 October 2021.

(b) 21 September for stormwater;¹⁰ and

(c) 6 October 2021 for planning.¹¹

3.10 The conferencing was effective in narrowing and, indeed, resolving, issues raised by both HCC and submitters. Green Seed is grateful both to the Panel for facilitating this process, and Ms Oliver for her assistance in facilitating the conferencing sessions.

Section 42A report and issues arising

3.11 A comprehensive and carefully reasoned section 42A report has been prepared by HCC's reporting officer, Mr Sharman, who concludes as follows:

*"Subject to the identified matters being resolved satisfactorily, it is recommended pursuant to clause 10 of Schedule 1 to the Resource Management Act 1991 that Private Plan Change 7: Rotokauri North be approved, and that the submissions and further submissions be determined in accordance with this report and the specific recommendations within the submissions tables within Section 3 of this report. Amendments to district plan chapters are shown within **Appendix B** to this report and form part of the recommendation."*

3.12 Green Seed has carefully considered the recommendations made by Mr Sharman, which are primarily amendments to the wording of the proposed plan provisions. Green Seed accepts a number of these refinements and others are no longer being sought by HCC, as a result of expert conferencing. The very limited nature of the outstanding issues between Green Seed and HCC is demonstrated by the current set of PC7 provisions attached to the reply evidence of Mr Tollemache and Ms Fraser Smith. We also address those outstanding issues further below.

Amendments to PC7 since notification

3.13 Green Seed has carefully considered all feedback received on PC7 since lodgement, including via submissions and the recommendations in the section 42A report. As noted, Green Seed has also made concerted efforts to engage with HCC and other submitters at all stages in developing and progressing PC7. As a result, a number of changes and refinements have been made to the proposal since PC7 was first notified, including the following:

(a) Reducing the number of roading connections onto State Highway 39 ("SH39") from two to one. The remaining connection is in the same location as identified in the RSP.

(b) Amending the internal roading layout generally and undertaking revised transport modelling, as a result of the reduced number of connections to SH39.

(c) Preparing a revised sub-catchment Integrated Catchment Management Plan ("ICMP") for the PC7 area and incorporating the outcomes from that revised ICMP into the PC7 text, as required.

(d) Various drafting edits, re-ordering and re-locating text between chapters.

(e) Updating infrastructure/staging provisions relating to water and wastewater. Issues relating to stormwater were agreed in principle and through JWS the remaining text-related areas of disagreement have been resolved.

(f) Updating provisions for transport triggers/staging transport, as outlined in the reply evidence of Messrs Hills and Tollemache and Ms Fraser-Smith.

¹⁰ JWS dated 21 September 2021.

¹¹ JWS dated 6 October 2021.

- (g) Deleting various transport related items, as resolved through HCC's Plan Change 6 (relating to the Regulatory Effectiveness and Efficiency Programme).
- (h) Inserting a new development control for consistency with the Structure Plans.
- (i) Amending or adding new development controls for residential development (landscape, fencing, separation, service courts).
- (j) Inserting various new assessment criteria for public transport provision, stormwater management, and additional ecology and landscape matters.
- (k) Inserting new information requirements for management plans.

3.14 These amendments are addressed in more detail in the evidence of Green Seed's expert team and in these submissions.

3.15 Given the broad nature of some of the submissions received on PC7, it is submitted that the amendments summarised above and shown in the revised PC7 provisions attached to the reply evidence of Mr Tollemache and Ms Fraser-Smith are clearly in response to submissions on PC7. As such, the Panel clearly has jurisdiction to make these amendments (a position that is not challenged by the reporting officer or any submitters) and a new section 32 analysis is not necessary. However, we will address scope issues in more detail in reply submissions, should that be required.

Issues that remain in contention

3.16 Following caucusing and consultation with submitters, the issues that remain in contention as between Green Seed and HCC or submitters fall within a fairly narrow compass. They can be summarised as follows:

- (a) The nature and timing of upgrades required for rural roads south of the PC7 area;
- (b) The need (and responsibility) to address existing traffic safety issues on the roading network surrounding PC7, given PC7 is proceeding 'out of sequence' as anticipated under the RSP;
- (c) The appropriateness of the transport modelling undertaken to support PC7 and in particular, whether a specific transportation model should have been created for this purpose;
- (d) Additional provisions to address construction traffic effects, including the need for construction management plans ("CMP") to be prepared to support resource consent applications for development within the PC7 land;
- (e) Appropriate speed limits on the on the road network surrounding PC7; and
- (f) Additional provision of walking and cycling.

3.17 Green Seed's position in respect of each of those issues is outlined in detail in Section 10 below.

4. BACKGROUND TO MADE/GREEN SEED AND PC7/ROKOKAURI NORTH

4.1 The MADE Group has developed a unique approach to land development which is focused on creating real communities, which both promote enjoyment and wellbeing for their residents and respect the natural environment in which they are located. As a MADE development, the Rotokauri North proposal is no exception.

4.2 Mr Noland's evidence outlines the vision, philosophy and business model that MADE/Green Seed is applying to the Rotokauri North project. In terms of the vision for Rotokauri North/PC7, Mr Noland's evidence is as follows:¹²

"3.2 *MADE's vision for PC7 is to facilitate medium density urban development, within an area that HCC has identified as a growth cell. Further, that development will be supported with open green space connecting the entire site through walkable and cycleable multi-modal transport corridors, and a neighbourhood centre in the eastern portion of the site.*

3.3 *It is intended to enable approximately 2,000 new dwellings, comprising a range of housing options, as well as affordable housing, to assist in addressing the current housing crisis."*

4.3 To facilitate these outcomes, MADE's business model enables it to secure sufficient landholdings to progress plan changes such as PC7, as well as support the funding arrangements necessary to deliver necessary infrastructure at pace. MADE now has an established track record of developing successful and meaningful communities, which reflect the company's values and objectives. This includes MADE's flagship "Auranga" development in Drury West, Auckland.

4.4 Consistent with this approach, having identified the potential opportunity to create a residential community at Rotokauri North, MADE set about acquiring the landholdings needed to transform the company's vision into reality. As noted, Green Seed owns or has a management interest in approximately 90% of the land it is seeking to rezone via PC7.

Summary of PC7/Rotokauri North

4.5 The background to both the RSP and development of PC7 are comprehensively addressed in Section 3 of the assessment of environmental effects ("AEE") filed in support of PC7 and Section 1 of the section 42A report. That material does not need to be repeated or elaborated on for the purpose of these submissions, other than to note that the PC7 land has been identified as an area that will be urbanised, since the RSP was first notified in October 2007. PC7 now seeks the rezoning to support that urban development, albeit earlier than initially anticipated under the RSP and FPS.

4.6 To that end, in summary, PC7 seeks to:

- (a) Rezone approximately 137.6 hectares from FUZ to Medium Density Residential Zone ("MDZ") to facilitate and support residential development;
- (b) Rezone approximately 1.2 hectares from FUZ to B6Z (Neighbourhood Centre);
- (c) Amend the existing RSP map to exclude the PC7 area; and
- (d) Insert a new Structure Plan for the Rotokauri North area, being the Rotokauri North Structure Plan ("RNSP") and associated rules.

4.7 The detail of the specific amendments to the HCDP proposed by PC7 is provided in Section 3.2 of the AEE and paragraph 2.3 of the section 42A report.

4.8 Overall, the approach taken has been to develop the PC7 land in accordance with the land use pattern identified in the RSP and existing zones in the HCDP. This recognises that HCC has already robustly considered the appropriate outcome for the land and adopted the RSP to reflect that assessment, before the PC7 team commenced master planning and associated analysis of the plan change area.

¹² EIC Noland at [3.2] - [3.3].

4.9 Mr Munro's evidence¹³ confirms that:

- (a) PC7 has been through a careful masterplanning process, which was prepared in accordance with best practice urban design and planning principles, which confirmed that the land could be subdivided in a manner that would result in a high quality neighbourhood.
- (b) Green Seed's master plan demonstrates that the land can be subdivided logically and will support a high-quality neighbourhood, consistent with the RSP. Where modifications to the existing HCDP/zone provisions have been proposed, these have largely been to ensure a high-quality urban environment, consistent with Green Seed's vision and philosophy for the site, as well as respond to issues identified through the specific analysis and assessments that have been undertaken for the purposes of PC7.

4.10 There are no solely urban design issues for the Panel to determine, and the section 42A report confirms that urban design and amenity effects are acceptable, as the plan change includes mechanisms to achieve strong amenity and urban design outcomes.¹⁴ It is submitted that any outstanding issues regarding the urban form and design of PC7 relate to matters of detail, rather than substance.

Related procedures

4.11 For completeness, we note as follows:

- (a) The PC7 land was previously gazetted as a Special Housing Area under the Housing Accords and Special Housing Areas Act 2013 ("HASHAA"). Green Seed lodged a qualifying development ("QD") resource consent application for Stage 1 of the Rotokauri North development under HASHAA. The QD application was formally withdrawn on 9 September 2021 and PC7 is being progressed under the RMA, not HASHAA. As such, that procedural history is not relevant to (and does not need to be considered for the purposes of) the Panel's determination of PC7.
- (b) Rotokauri North Holdings Limited (a company related to Green Seed) has recently lodged an application to have the necessary resource consents for Stage 1 of the Rotokauri North development referred to and determined by an Expert Consenting Panel under the COVID-19 Recovery (Fast-track Consenting) Act 2020. As is appropriate, that application has been made on the basis of the land's current FUZ zoning, as well as the provisions of the HCDP as they currently stand. The referral application also acknowledges that Green Seed is simultaneously seeking rezoning of the land via PC7. Again, that process is completely separate from, and has no bearing on, the Panel's determination of PC7.

5. STATUTORY FRAMEWORK APPLICABLE TO PC7

- 5.1 PC7 was accepted by HCC pursuant to clause 25(2) of the First Schedule to the RMA on 5 September 2019 and limited notified on 21 February 2020. The upshot is that we are operating under the RMA provisions in place immediately before amendment by the Resource Management Amendment Act 2020. We accordingly address the statutory framework, legal principles and policy/planning framework applicable to PC7 as follows.
- 5.2 Green Seed is a "person" entitled to bring a private plan change request, pursuant to clause 21 of the First Schedule to the RMA. As PC7 was accepted (rather than adopted) by HCC, this means that:

¹³ EIC Munro at [3.1] - [3.2].

¹⁴ Section 42A report at [4.72].

- (a) The Council officers accepted that PC7:
 - (i) Was not frivolous or vexatious;
 - (ii) Was in accordance with sound resource management practice and principles; and
 - (iii) Would not result in the HCDP being inconsistent with Part 5 of the RMA.
- (b) PC7 now falls to be considered pursuant to Part 1 of the First Schedule to the RMA.

5.3 As PC7 is a "land use" plan change (and as confirmed in *Colonial Vineyard Limited v Marlborough District Council*¹⁵), it follows that the provisions of primary relevance are sections 72 to 76 in Part 5 of the RMA. As the Panel will be aware, those provisions set out the purpose of district plans, matters to be considered by the territorial authority in the preparation of district plans and the content of district plans, respectively.

5.4 When considering a plan change request that has been accepted by the local authority, in summary the Panel needs to determine whether the plan change is the most appropriate means of achieving the statutory purpose of the RMA, or whether it is some other method. As set out by the (then) Planning Tribunal in *Hall v Rodney District Council*:¹⁶

"A relevant consideration in making that judgment is that the Resource Management Act provides... for privately initiated plan changes, so a general attitude of refusing such changes on the basis of a forthcoming review could frustrate the opportunity that Parliament has deliberately made (cf Countdown). Other relevant considerations are relative efficiency and effectiveness (see section 32(1)(c)); extent of implications for a wider area (Foodstuffs and Imrie); possible prejudice to other interests (Foodstuffs); and the need for general review (Imrie). That is not necessarily an exhaustive list; nor will all those considerations necessarily be relevant in every case."

Council/Panel jurisdiction

5.5 Pursuant to the applicable provisions outlined above, the Panel must be satisfied that PC7:

- (a) Is in accordance with:
 - (i) The Council's functions as set out in section 31 of the RMA;
 - (ii) The Council's duty under section 32 of the RMA; and
 - (iii) The purpose and principles in Part 2 of the RMA.
- (b) Gives effect to:
 - (i) Any relevant national policy statement;
 - (ii) Any relevant national environmental standard; and
 - (iii) The WRPS.

¹⁵ [2014] NZEnvC 55 (EC) at [17].

¹⁶ [1995] NZRMA 537 (PT).

5.6 Clause 29(4) of the First Schedule to the RMA provides that after considering PC7 and undertaking a further evaluation of the PPC in accordance with section 32AA of the RMA, HCC:

- (a) May decline or approve PC7 and may make modifications if approving PC7; and
- (b) Must give reasons for its decision.

5.7 As already noted, the Settlement Act is also relevant to PC7.

5.8 We set out each of the statutory provisions applicable to the Panel's determination of PC7 in more detail, as follows.

Section 31 of the RMA

5.9 The functions of territorial authorities (such as HCC) for the purpose of giving effect to the RMA in their districts are set out in section 31(1) of the RMA. Those relevant to PC7 are as follows:

"(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 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 hazards;

(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 biodiversity

...

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

Sections 72 to 76 of the RMA

5.10 Section 72 provides as follows:

"72 Purpose of district plans

(1) 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."

5.11 Section 74 outlines the matters which must be considered by HCC when changing the HCDP. As applicable to PC7, section 74 provides as follows:

"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*
 - (c) *A direction given under section 25A(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...*
- (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."*

5.12 Section 75 sets out the required contents of district plans, as follows:

"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."*

5.13 The relevant policy statements and standards for the purposes of PC7 are addressed in Section 6 below.

5.14 Section 76 provides for district rules, as follows:

"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.
- ...
- (2) *A rule may –*
 - (a) *Apply throughout a district or a part of a district*
 - (b) *Make 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."*

Section 32 of the RMA

5.15 In exercising its functions under the RMA, HCC (and applicants for PPC) must undertake evaluations and further evaluations of objectives, policies and other methods in accordance with section 32 of the RMA.

5.16 The relevant aspects of section 32 are set out below:

- (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 the 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;*
 - (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;*
 - (ii) *Employment that are anticipated to be provided or reduced; and*
 - (b) *If practicable, quantify the benefits and costs referred to in paragraph (a);*
 - (c) *Assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.”*

5.17 As set out in the provision, section 32 requires an evaluation of the extent to which each objective is the “most appropriate” way to achieve the purpose of the RMA and of whether the provisions in a proposal are the most appropriate way to achieve those objectives. The second evaluation is required to be undertaken by identifying other reasonably practicable options for achieving the objectives, assessing the efficiency and effectiveness of the provisions in achieving the objectives and summarising the reasons for deciding on the provisions.

5.18 The section 32 evaluation is to be carried out, initially, when preparing a district plan (including a plan change). Decision makers must have particular regard to the section 32 evaluation when deciding:

- (a) Whether to accept a plan change; and
- (b) Before making decisions on submissions.

5.19 If changes are made to the proposal following the notification, a further evaluation must then be made available at the time of the decision in accordance with section 32AA RMA and the decision makers must have regard to this.

Part 2 of the RMA

5.20 Section 74(1)(b) of the RMA provides that plans must be developed “in accordance with” the provisions of Part 2. However, in *Environmental Defence Society Incorporated*

v The New Zealand King Salmon Company Limited,¹⁷ the Supreme Court determined that where there is no ambiguity in higher order planning documents, then assessment against Part 2 of the Act is not required.

5.21 There are, however, some caveats to this general rule, including:

- (a) Where there is a challenge to the lawfulness of a planning document;¹⁸
- (b) Where the document concerned does not cover all matters in issue, and the decision maker must determine whether Part 2 assists in dealing with those matters not covered;¹⁹ and
- (c) If there is any uncertainty to the meaning of particular policies, references to Part 2 may assist in a purposive interpretation.²⁰

5.22 *King Salmon* is also authority for the principle that the way a policy or rule is articulated is important, where policies expressed in directive terms carry greater weight than less directive policies.²¹

5.23 For the purposes of PC7, it is accepted that the HCDP needs to be updated to give effect to the National Policy Statement on Urban Development 2020 (“NPSUD”, as addressed further shortly). Apart from that requirement, there is room for argument as to whether the Panel is required to consider Part 2 in the context of PC7. Certainly, if we were to apply the caveats in relation to lawfulness, coverage and uncertainty to PC7, in our submission there is no need to go there. Nevertheless, we address Part 2 of the RMA next, for completeness and because Green Seed’s evidence (with which the section 42A report agrees) demonstrates that the purpose of the RMA is clearly promoted by PC7, should the Panel determine that recourse to Part 2 is appropriate.

Section 5 – sustainable management purpose of the RMA

5.24 Section 5 is the key section in Part 2, containing the purpose of the RMA:

- “(1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) *In this Act, sustainable management means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety while –*
 - (a) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
 - (b) *Safeguarding the life-supporting capacity of air, water, soil and ecosystems,*
 - (c) *Avoiding, remedying, or mitigating any adverse effects of activities on the environment.”*

¹⁷ [2014] 1 NZLR 593 (SC) at [85].

¹⁸ *Ibid* at [88].

¹⁹ *Ibid*.

²⁰ *Ibid*.

²¹ *Ibid* at [129].

Section 6 – matters of national importance

- 5.25 Section 6 matters must be “recognised and provided for” in relation to managing use, development and protection of resources. It is submitted that the section 6 matters that are or may be relevant for the purposes of PC7 are:
- (a) Sections 6(e) which, together with sections 7(a) and 8, are the triumvirate of provisions that provide for Māori cultural and spiritual values, the exercise of Kaitiakitanga and the principles of the Treaty of Waitangi; and
 - (b) Section 6(h) – The management of significant risks from natural hazards.

Section 7 – other matters

- 5.26 Section 7 requires that “particular regard” is had to the matters set out in this section. Those matters which could be considered to be of particular relevance in the context of PC7 (in addition to section 7(a), as already addressed) are as follows:
- (a) Section 7(b) – Efficient use and development of natural and physical resources;
 - (b) Section 7(c) and (f)– maintenance and enhancement of amenity values and the quality of the environment; and
 - (c) Section 7(i) – The effects of climate change.

Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010

- 5.27 The Settlement Act gives effect to the Deed of Settlement reached in respect of Waikato-Tainui’s claim to the Waitangi Tribunal regarding the Waikato River. As set out in section 3 of the Settlement Act, the overarching purpose of the settlement is to restore and protect the health and wellbeing of the Waikato River for future generations.
- 5.28 As particularly relevant to PC7, the Settlement Act provides as follows:
- (a) Te Ture Whaimana o Te Awa o Waikato/the Vision and Strategy for the Waikato River applies to the Waikato River and activities in its catchment affecting the Waikato River (section 9(2)).
 - (b) Te Ture Whaimana o Te Awa o Waikato is part of the WRPS and as such, must also be given effect to by PC7 (section 11(1)).
 - (c) Any person (including HCC) that changes a resource management planning document to which sections 9 to 14 of the Settlement Act apply (which includes the HCDP) must make an explicit statement in the document as to how Te Ture Whaimana o Te Awa o Waikato has been given effect to. As required, this statement is set out in paragraphs 7.5.9 - 7.5.11 of the AEE.

Legal principles relevant to assessing PC7 – the ‘Long Bay’ test

- 5.29 As the Panel will be aware, there is an established body of case law as to how the statutory provisions regarding plan changes should be interpreted and applied in practice. The generally accepted approach for assessing proposed planning provisions was articulated in *Long Bay-Okura Great Park Society v North Shore City Council*,²² subsequently updated in *High Country Rosehip Orchards Ltd v Mackenzie District Council*²³ and *Colonial Vineyard Limited v Marlborough District Council*²⁴ as follows:

²² A078/08 (EC).

²³ [2011] NZEnvC 387 (EC).

²⁴ Supra Note 15.

"A. General requirements

1. A district plan (change) should be designed to accord with,²⁵ and assist the territorial authority to carry out its functions²⁶ so as to achieve the purpose of the Act.²⁷
2. When preparing its district plan (change) the territorial authority must give effect to any national policy statement or New Zealand Coastal Policy Statement.²⁸
3. When preparing its district plan (change) the territorial authority shall:
 - (a) Have regard to any proposed regional policy statement;²⁹
 - (b) Not be inconsistent with³⁰ any operative regional policy statement.³¹
- ...
5. 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;³² and to consistency with plans and proposed plans of adjacent territorial authorities;³³
 - Take into account any relevant planning document recognised by an iwi authority; and
 - Not have regard to trade competition;³⁴
6. The district plan (change) must be prepared in accordance with any regulation³⁵ (there are none at present);
7. The formal requirement that a district plan (change) must³⁶ also state its objectives, policies and the rules (if any) and may³⁷ 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

²⁵ Section 74(1) of the RMA.

²⁶ As described in Section 31 of the RMA.

²⁷ Section 72 and 74(1) of the RMA.

²⁸ Section 75(3)(a) and (b) of the RMA.

²⁹ Section 74(2) of the RMA.

³⁰ Note: under the Resource Management Amendment Act 2005 section 75(3)(c) now requires an operative RPS to be given effect to in a district plan.

³¹ Section 75(3)(c) of the RMA.

³² Section 74(2)(b) of the RMA.

³³ Section 74(2)(b) of the RMA.

³⁴ Section 74(3) of the RMA.

³⁵ Section 74(1) of the RMA.

³⁶ Section 75(1) of the RMA.

³⁷ Section 75(2) of the RMA.

most appropriate way to achieve the purpose of the Act.³⁸

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;³⁹*

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 objectives⁴⁰ of the district plan taking into account:*

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

(b) *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.⁴¹*

D. *Rules*

11. *In making a rule the territorial authority must have regard to the actual or potential effect of activities on the environment.⁴²*

E. *Other statutes:*

12. *Finally territorial authorities may be required to comply with other statutes..."*

6. **POLICY AND PLANNING FRAMEWORK**

6.1 The relevant policies and planning instruments to be considered for the purposes of PC7 are comprehensively addressed in Sections 7 and 8 of the AEE and Section 5 of the section 42A report. There is no disagreement between Mr Tollemache/Ms Fraser-Smith and Mr Sharman as to the applicable policy and planning instruments, nor that PC7 appropriately gives effect to those instruments. As such, it is not necessary to traverse those in detail for the purposes of these submissions, other than to briefly comment on the NPSUD as follows.

Background to the NPSUD

6.2 The NPSUD came into force on 20 August 2020 and directs councils to enable more housing and businesses to be built where they will ensure access to jobs, community services, public transport, and respond to market demand. For example, unless a qualifying matter applies, the NPSUD directs that Tier 1 Councils (such as HCC) must:

(a) Enable buildings of at least six-storeys within walkable catchments around the city centre, metropolitan centres and existing and planned rapid transit stops; and

³⁸ Section 32(3)(a) of the RMA.

³⁹ Section 75(1)(b) and (c) of the RMA (also section 76(1)).

⁴⁰ Section 32(3)(a) of the RMA.

⁴¹ Section 32(4) of the RMA.

⁴² Section 76(3) of the RMA.

- (b) Remove rules for minimum off-street car-parking for new developments from the HCDP.
- 6.3 As Mr Sharman notes in the section 42A report, the WRPS, HCDP and FPS are all likely to be reviewed and updated in due course to reflect the policy direction in the NPSUD.
- 6.4 In relation to the NPSUD, it is submitted that:
- (a) The NPSUD establishes a clear directive on decision makers to be responsive to “out-of-sequence” development proposals such as PC7. That point, and its relevance to PC7 in light of the *Eden-Epsom* decision, is discussed below.
 - (b) To the extent that the NPSUD applies to PC7 (having regard to the *Eden-Epsom* decision), PC7 gives effect to it.
 - (c) Either way, the NPSUD is not critical to the Panel’s decision, because:
 - (i) PC7 gives effect to the provisions of the WRPS as they currently stand; and
 - (ii) To the extent that HCC will need to amend the HCDP to give effect to the NPSUD, PC7 has been designed to achieve as much consistency as possible (in terms of urban form, etc.) with the changes that HCC will likely be required to implement, but if further amendment is required, PC7 does not prevent HCC from doing that.

The relevance of *Eden-Epsom Residential Society Inc v Auckland Council*

6.5 In the first decision to review the NPSUD in any detail, the Environment Court recently considered its applicability to private plan changes where the relevant planning document has not yet been updated to give effect to it.⁴³

6.6 In that case, the Court observed that the NPSUD applies to “*planning decisions by any local authority that affect an urban environment.*”⁴⁴ The Court went on to say:

“[14] It is not apparent to us that there are any contexts or policy underpinnings for a proposed change not adopted by a council, not to be regarded in the context of the NPS-UD as being the subject of “planning decisions.”

6.7 However, the Court went onto observe that local authorities are required to implement the NPSUD and that a number of policies require:⁴⁵

“...precise activity by the local authority (which we were told is happening in these workstreams) of identifying, by location, the building heights and densities required by Policy 3 - with information about these things to be publicly disseminated when notification of the plan changes occurs. Again, these things are yet to occur.”

6.8 The Court ultimately concluded as follows:

“[29] The Court holds that it is not required to and will not be giving effect in this case to Objectives and Policies in the NPS-UD that are not requiring ‘planning decisions’ at this time.

[30] We acknowledge the promulgation and operative status of the NPS overall but cannot prejudge, let alone pre-empt, Schedule

⁴³ *Eden-Epsom Residential Protection Society Incorporated v Auckland Council & Ors* [2021] NZEnvC 082 (EC).

⁴⁴ *Ibid* at [6].

⁴⁵ *Ibid* at [27].

1 processes yet to be undertaken by the Council on implementation of it."

- 6.9 The NPSUD contains a number of objectives and policies which do not require "planning decisions" but are nevertheless directly relevant in terms of directing urban form outcomes. The risk posed by the Court's determination is therefore that there will be inconsistent planning approaches depending on the identity of a plan change proponent and, potentially, decisions which do not meet the requirements of section 75(3)(a) RMA which requires that the district plan must give effect to "any national policy statement." In other words, the statutory procedure by which plan provisions are introduced or amended is irrelevant in terms of that requirement.
- 6.10 Notwithstanding the above, the *Eden Epsom* decision suggests that the Panel is required to give effect to only those provisions of the NPSUD which "require planning decisions." It is submitted that this should not be interpreted to mean that only the objectives and policies that contain the phrase "planning decision" apply to private plan changes and should be given effect to in the Panel's decision.
- 6.11 A close reading of the decision reveals that this interpretation would not be entirely accurate. While the Court did identify which provisions use the phrase "planning decisions",⁴⁶ it did not state that those are the only provisions which apply. Rather, it said that only those provisions which require planning decisions apply.
- 6.12 In doing so, the Court drew a distinction between those provisions which direct "precise activity" by the local authority and those which apply to decision making on private plan changes. Which objectives and policies "require" planning decisions is not identified in the decision, although the Court did expressly state that Objective 3 and Policy 3 are provisions that are to be implemented by Councils.
- 6.13 It is submitted that Objectives 2, 5 and 7 and Policies 1 and 6 which (as identified by the Court) do in fact contain the phrase "planning decisions", are therefore provisions which "require" planning decisions.
- 6.14 In addition, Objective 6 and Policy 8 of the NPSUD concern "local authority decisions" as follows:
- "Objective 6:** *Local authority decisions on urban development that affect urban environments are: a) integrated with infrastructure planning and funding decisions; and b) strategic over the medium term and long term; and c) responsive, particularly in relation to proposals that would supply significant development capacity.*
- Policy 8:** *Local authority decisions affecting urban environments are responsive to plan changes that would add significantly to development capacity and contribute to well-functioning urban environments, even if the development capacity is:*
- (a) *Unanticipated by RMA planning documents; or*
- (b) *Out-of-sequence with planned land release."*
- 6.15 It is submitted that this language clearly anticipates the application of this objective and this policy in the context of "planning decisions". Indeed, it is difficult to see what the purpose of these provisions could be at all if they were not to be given effect to in decision making on private plan changes.
- 6.16 These provisions were not addressed by the Court but it did reference Subpart 2 (Clause 3.8) which in turn gives effect to Policy 8. Clause 3.8 is as follows:

"3.8 Unanticipated or out-of-sequence developments

⁴⁶ Ibid at [20].

- (1) *This clause applies to a plan change that provides significant development capacity that is not otherwise enabled in a plan or is not in sequence with planned land release.*
- (2) *Every local authority must have particular regard to the development capacity provided by the plan change if that development capacity:*
 - (a) *would contribute to a well-functioning urban environment; and*
 - (b) *is well-connected along transport corridors;*
 - (c) *and meets the criteria set under subclause (3); and*
- (3) *Every regional council must include criteria in its regional policy statement for determining what plan changes will be treated, for the purpose of implementing Policy 8, as adding significantly to development capacity."*

6.17 The Court's observation in respect of this provision was that:

"[18] From that clause it may be found that some provisions of the national instrument may be considered in a "planning decision" on the merits of a requested plan change including on appeal to the Environment Court."

6.18 It follows that the Court must have considered that provisions "requiring" planning decisions included Clause 3.8 and its associated objective and policy.

6.19 Having regard to the above, it is submitted that the decision in *Eden Epsom* indicates that Objectives 2, 5, 6 and 7, Policies 1, 6 and 8 and Subpart 2 of the NPSUD must be given effect in PC7. It is noted that the section 42A report agrees with this assessment, other than with respect to Objective 7.

NPSUD – planning assessment

6.20 The evidence of Ms Fraser-Smith and Mr Tollemache comprehensively assesses PC7 against those relevant provisions of the NPSUD.⁴⁷ On the basis of that assessment, they conclude as follows:⁴⁸

"Overall, we consider the proposal to be consistent with the objectives and policies of the NPSUD and will also assist the Council to fulfil its functions and responsibilities to provide for sufficient growth."

6.21 The section 42A report also contains a detailed assessment of the relevant provisions from the NPSUD and having regard to that assessment, concludes as follows:⁴⁹

"In my view the proposed plan change (as revised in 2021) represents a robust and suitable response to the NPSUD. The plan change is strongly supported by Policy 8 in particular as an 'out of sequence' development. More broadly the plan change is considered to be consistent with the policy direction and outcomes promoted by the NPSUD, and that the outcomes achieved will be in accordance with the objectives of the NPSUD and acceptable."

6.22 On the basis of the above, it is submitted that PC7 as proposed is consistent with those objectives and policies of the NPSUD deemed to apply to plan changes in accordance with *Eden Epsom*, and that PC7 will assist the Council to fulfil its functions and responsibilities to provide for sufficient growth.

⁴⁷ EIC Tollemache and Fraser-Smith at [7.4] – [7.16].

⁴⁸ Ibid at [7.16].

⁴⁹ Supra Note 14 at [5.9].

Submission - statutory/planning framework applicable to PC7

- 6.23 On the basis of Green Seed's evidence, particularly that of Mr Tollemache and Ms Fraser-Smith, it is submitted that it is safe and appropriate for the Panel to conclude that PC7:
- (a) Complies with the requirements of all applicable statutory provisions; and
 - (b) Has appropriately accounted for all relevant policy/planning instruments.
- 6.24 This conclusion is supported by the section 42A report, which (at paragraph 5.62), states as follows:

"Subject to the district plan amendments satisfactorily delivering on the intent of the plan change, the plan change is considered to be supported by the evolving wider statutory planning framework."

7. CONSULTATION AND STAKEHOLDER ENGAGEMENT

- 7.1 For Green Seed, a key element of developing PC7 has been to ensure this involved robust and meaningful engagement with all stakeholders, including neighbours and the local community that Green Seed wishes to become a part of. As identified in Mr Noland's EIC,⁵⁰ this consultation will be ongoing, but to date as has included the following:
- (a) Consulting with the local community, including holding a community Consultation Open Day at the Rotokauri School in 2019, at which Green Seed presented the proposed masterplan for the PC7 land, as well as explained the plan change and rezoning process. Ongoing discussions have continued between Green Seed and individual landowners adjacent to and within the PC7 land, since that time.
 - (b) Establishing a TWWG between Green Seed and Waikato-Tainui iwi and hapū, which has formed the foundation for respectful and transparent collaboration regarding PC7. It is intended that this relationship will continue through to completion of construction and beyond.
 - (c) Green Seed's consultant team has been constructively engaging with HCC regarding Rotokauri North since as early as 2017. This has included facilitating meetings and workshops, ongoing liaison between individual experts, and jointly engaging independent experts to provide advice on some matters (such as ecology and stormwater), to ensure that all options and optimal solutions were identified.
 - (d) The western and northern edges of the PC7 site are adjacent to the boundary between HCC and WDC; Green Seed's consultants have therefore also engaged with WDC councillors and staff, particularly with respect to stormwater management methods.
 - (e) Ongoing consultation and dialogue with Waka Kotahi since as early as August 2017, given PC7 adjoins SH39 and is in close proximity to SH1.
 - (f) Negotiations with the Ministry of Education ("MoE") since 2018, to keep them updated on the potential timeframes for developing Rotokauri North and enable MoE to plan for the provision of appropriate educational facilities. As Mr Noland will confirm, MoE has now identified an appropriate site for a primary school within the PC7 land and Green Seed is in the final stages of negotiating the purchase of this land with MoE.

⁵⁰ Supra Note 12 at [6.1].

7.2 In summary, Green Seed considers that robust consultation and collaboration with the local community and key stakeholders is essential to achieving the type of well-functioning, vibrant urban communities that it seeks to establish. Green Seed therefore puts such consultation at the forefront of its development process. For Rotokauri North, Green Seed is very pleased that this approach has once again proved both beneficial in ensuring a very high quality proposal, and successful in significantly narrowing any outstanding areas of disagreement with key stakeholders.

8. **SITE SUITABILITY AND POTENTIAL SITE CONSTRAINTS**

8.1 The PC7 area comprises 140 hectares of undeveloped, predominantly greenfield, land which is currently used for agriculture and some rural-residential lifestyle dwellings. Per standard practice, geotechnical and contamination assessments were undertaken by HD Geo to ensure the land is ultimately suitable for urban development and to identify any potential site constraints.

8.2 The conclusions of and recommendations from these assessments have also informed the ultimate design of PC7 and will continue to do so in the subsequent resource consent process (should PC7 be approved). In summary, the outcomes from the HG Geo assessments is as follows.

Geotechnical

8.3 Mr Holland's geotechnical assessment included a desktop study, a site investigation and scattered intrusive testing to characterise ground conditions.⁵¹ The predominant geotechnical hazard identified on the PC7 land is high liquefaction potential, particularly across the plains area, and a possibility of soft soils.⁵²

8.4 Mr Holland's evidence is that this is a common hazard in the Hamilton Basin and that the risks associated with liquefaction can be mitigated through:

- (a) Appropriate subdivision design; and
- (b) A range of construction measures including shallow ground improvement, reinforced raft foundations, piles to non-liquefying layers, dewatering and setbacks or barrier piles.⁵³

8.5 Mr Holland⁵⁴ agrees with the section 42A report that, from a geotechnical perspective, the PC7 land is:

- (a) Generally suitable for urban development; and
- (b) That any geotechnical effects are acceptable, as they can be appropriately managed at subdivision stage.⁵⁵

8.6 No submitters have raised specific geotechnical or land stability concerns.

8.7 As such, there are no outstanding areas of disagreement regarding geotechnical matters as between Green Seed, HCC or any submitters.

Potential site contamination

8.8 The PSI undertaken by HD Geo in 2018 was designed to identify and evaluate whether any activities on the Hazardous Activities and Industries List ("HAIL") may have

⁵¹ EIC Holland at [4.1].

⁵² Ibid at [5.3].

⁵³ Ibid at [5.4].

⁵⁴ Ibid at [6.1].

⁵⁵ Supra Note 14 at [4.76].

previously been undertaken on the site. The methodology used for the PSI included undertaking a desktop study and reviewing aerial footage of the site and site topography, to inform a targeted in-person site inspection.⁵⁶

- 8.9 The conclusion from the PSI was that additional investigation was required for specific activities, including site buildings, potential HAIL activities, and pastures where superphosphate fertiliser could have resulted in soils having elevated cadmium levels.⁵⁷
- 8.10 A DSI was therefore conducted in 2019. This concluded that with three exceptions, the contaminants detected in all samples (including cadmium present in pastures) were below guideline values for residential land use under the National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health ("NESCS").⁵⁸ The exceptions were findings of lead above guideline values in three samples, associated with two sheds, which are both designated pieces of land under the NESCS.
- 8.11 Based on the PSI and DSI, Ms Nicholson has made the following recommendations, which Green Seed has adopted:
- (a) The lead-impacted soil be removed, and either properly managed on site or disposed of off-site.
 - (b) A further DSI be undertaken for potentially contaminating activities at the time of future development, subdivision or earthworks.⁵⁹
- 8.12 The section 42A report agrees with the conclusions reached in the HD Geo report that no further action is required at plan change stage. As such, the report concludes that any contamination effects associated with PC7 are acceptable, as they can be appropriately managed at subdivision stage.⁶⁰ Ms Nicholson confirms that she supports HCC's position.⁶¹ No submitters have raised specific concerns regarding PC7 related to potential contamination issues.
- 8.13 As such, there are no outstanding areas of disagreement regarding contamination matters as between Green Seed, HCC or any submitters.

9. PROVISION FOR THREE WATERS INFRASTRUCTURE

- 9.1 The provision of three waters and infrastructure has been assessed in detail by Mr Vodjansky. The outcomes of his assessment are summarised as follows.

Water supply

- 9.2 The PC7 land is not currently serviced by a reticulated water supply and there is no viable connection to the HCC domestic reticulation adjacent to the site boundary. A 450mm bulk main and a 250mm trunk main will therefore be extended from the future East-West arterial alignment to the Rotokauri North development. This bulk main will then be extended through the PC7 land site from east to west, designed and constructed in accordance with HCC standards.⁶²
- 9.3 Within the PC7 site itself, three main water networks are proposed, comprising the:
- (a) Rotokauri South Water Network;

⁵⁶ EIC Nicholson at [4.1] - [4.2].

⁵⁷ Ibid at [4.8].

⁵⁸ Ibid at [5.8].

⁵⁹ Ibid at [6.1] - [6.2].

⁶⁰ Supra Note 14 at [4.54].

⁶¹ Supra Note 56 at [7.3].

⁶² EIC Vodjansky at [4.2].

- (b) Te Otamanui Water Network; and
 - (c) Ohote Water Network.⁶³
- 9.4 The ICMP has also provided for land outside of PC7 but covered by the ICMP, to enable water supply connections.⁶⁴ Mr Vodjansky therefore confirms that the PC7 area can feasibly be supplied with potable water.
- 9.5 This is accepted and agreed in the section 42A report, which notes (at paragraph 4.16) as follows:

"In respect of water, there is a high level of acceptance of the proposals as these have been refined through meetings direct with Council water asset staff...Water supply capacity will be sufficient to service the Rotokauri North development as it progresses."

- 9.6 No submitters have raised specific concerns regarding PC7 related to the feasibility of providing water supply. As such, there are no outstanding areas of disagreement regarding water supply matters as between Green Seed, HCC or any submitters.

Wastewater

- 9.7 The PC7 land is not currently serviced by wastewater infrastructure and there is no viable connection to the HCC domestic reticulation adjacent to the site boundary. Therefore, a 450mm bulk main will be extended along the future East-West arterial alignment to the Rotokauri North development. This bulk main will then be extended through the PC7 land site from east to west, designed and constructed in accordance with HCC standards.⁶⁵
- 9.8 Based on alignment of the wastewater main and the required number of pump stations, the Rotokauri North development has been divided into four wastewater sub-catchments, being:
- (a) Rotokauri South WW, which will be serviced by a gravity main;
 - (b) Managaheka WW, which will be serviced by a gravity main;
 - (c) Te Otamanui WW, which will be serviced by a pumpstation connected via rising main to the upstream manhole of the gravity main; and
 - (d) Ohote WW, which will be serviced by a pumpstation connected via rising main to the upstream manhole of the gravity main.
- 9.9 Again, the ICMP has also provided for land outside of PC7 but covered by the ICMP, to enable waste water connections.⁶⁶ Mr Vodjansky therefore confirms that the PC7 area can feasibly be serviced for wastewater infrastructure.
- 9.10 This is accepted in the section 42A report, which notes (at paragraph 4.18) as follows:

"There are not considered to be any other wastewater network concerns and the proposal is considered robust and acceptable."

- 9.11 No submitters have raised concerns regarding PC7 related to the feasibility of providing wastewater infrastructure. As such, there are no outstanding areas of disagreement regarding wastewater matters as between Green Seed, HCC or any submitters.

⁶³ Ibid at [4.4].

⁶⁴ Ibid at [4.5].

⁶⁵ Ibid at [5.3].

⁶⁶ Ibid at [5.5].

Stormwater

- 9.12 As noted by both Mr Vodjansky⁶⁷ and in the section 42A report,⁶⁸ stormwater management within Rotokauri North has been a challenge due to the relatively flat topography, high water table and underlying soil conditions. This has resulted in extensive discussions between Green Seed and HCC experts over several months (including via expert conferencing), to review and revise the acceptable solutions for stormwater management.
- 9.13 The outcome of this work was the revised ICMP that was provided to HCC in August 2021 and now formally forms part of PC7. The stormwater management outlined in the revised ICMP is premised on the four stream catchments within the PC7 site, being the catchments for the Ohote, Te Otamanui, Mangaheka and Rotokauri (South) streams. As noted by Mr Miller,⁶⁹ the watercourses within the site are highly modified. Mr Vodjansky confirms that the ICMP proposes to re-establish the ecological value of these waterways to both manage stormwater and to create environmental benefits.⁷⁰
- 9.14 The primary goals of the stormwater management system proposed for Rotokauri North include mitigation of downstream effects, flood control, treatment of stormwater runoff from developed areas and safe conveyance of flow from upstream land, while restoring natural more natural stream functions and habitat for the Ohote Stream and the Te Otamanui Tributary. To achieve this, the key elements of the stormwater mitigation system include:⁷¹
- (a) Extended detention volume;
 - (b) Flood control and storm attenuation;
 - (c) Treatment of runoff from downstream land; and
 - (d) Safe conveyance of flow from upstream land.
- 9.15 Overall, Mr Vodjansky confirms that stormwater can be appropriately managed, and presents an opportunity to re-establish watercourses and result in positive ecological effects.⁷²
- 9.16 This is accepted in the section 42A report, which states (at paragraph 4.14) as follows:
- "The stormwater effects of the plan change are considered to be effectively managed through the revised RNICMP submitted and I consider are less than minor given the proposed approaches and implementing district plan provisions recommended."*
- 9.17 Specific concerns regarding stormwater matters are raised in the submission from Mr Ruske. Mr Vodjansky confirms that these issues have been adequately addressed via the revision to the ICMP that he has undertaken.⁷³ We also note that no submitters have filed expert evidence regarding stormwater management matters.
- 9.18 As such, it is submitted that all stormwater issues raised by HCC and submitters have been adequately addressed via the amendments to the ICMP that is now before the Panel for consideration.

⁶⁷ Ibid at [6.1].

⁶⁸ Supra Note 14 at [9.4].

⁶⁹ EIC Miller at [3.4].

⁷⁰ Supra Note 62 at [6.3].

⁷¹ Ibid at [6.3] - [6.9].

⁷² Ibid at [6.10].

⁷³ Ibid at [8.6].

Submission – provision for three waters infrastructure

- 9.19 On the basis of the evidence referred to, it is submitted that the Panel can be satisfied that PC7 can be adequately serviced for three waters infrastructure.

10. PROVISION FOR ROADING AND TRAFFIC INFRASTRUCTURE

- 10.1 Traffic and transportation matters relating to PC7 have been comprehensively addressed for Green Seed by Mr Hills who has undertaken extensive modelling (using a 2021 base scenario and a 2041 future scenario) to determine the likely traffic generation from development of the PC7 land and therefore, potential traffic effects on the surrounding road network. Mr Hills has also participated in four expert conferencing sessions with the respective transportation and planning experts for HCC, Waka Kotahi, WRC and landowner submitters.

Agreement reached as to required road upgrades

- 10.2 As a result of this work, Mr Hills considers that the following road upgrades are required within the PC7 land to appropriately address the traffic impacts of development on that land:⁷⁴
- (a) Construction of a roundabout at the intersection of SH39 and the new collector road within PC7, required prior to the first new dwelling/lot in the PC7 land being occupied;
 - (b) Road frontage upgrades to specified sections of Exelby Road (eastern side) and Burbush Road (both sides), required when the first connection is made to these roads from PC7; and
 - (c) Specified walking and cycling connections from PC7 to the SH39/Burbush Road roundabout and SH1 shared pathway, required prior to the first new dwelling/lot in the PC7 land being occupied.
- 10.3 The nature and timing of those upgrades has also now been agreed with all relevant parties, as outlined in Standard 3.6A.4.2f) of PC7 attached to the reply evidence of Mr Tollemache and Ms Fraser-Smith.

Transport related matters that remain outstanding

- 10.4 As noted in Section 3 above, the only transport related matters that remain outstanding as between Green Seed and HCC or submitters are as follows:
- (a) The nature and timing of road upgrades required for rural roads outside (south) of the PC7 area;
 - (b) The need (and responsibility) to address existing traffic safety issues on the roading network surrounding PC7;
 - (c) The appropriateness of the transport modelling Mr Hills has undertaken for PC7;
 - (d) The need for additional provisions in PC7 to manage construction traffic effects, including the need for CMPs to be prepared to support resource consent applications for development within the PC7 land (rather than as a condition of such consents);
 - (e) Appropriate speed limits on the road network surrounding PC7; and

⁷⁴ EIC Hills at [2.3].

(f) Additional provision for walking and cycling.

10.5 We address each of these as follows.

Road upgrades required for rural roads outside (south) of the PC7 area

10.6 Mr Hills considers that the following road upgrades are required once development within the PC7 land reaches 500 lots or once the first dwelling/lot is occupied with access to Burbush Road (as outlined in Standard 3.6A.4.2f) of PC7 attached to the reply evidence of Mr Tollemache and Ms Fraser-Smith):

- (a) Seal widening to achieve a 7.7m sealed width (5.7m carriageway plus 1m sealed shoulders) on Exelby Road south of Burbush Road, and Burbush Road between Rotokauri Road and Exelby Road; and
- (b) Upgrade of the Exelby Road/Burbush Road intersection to a single priority intersection with right-turn bay.

10.7 For HCC, Messrs Black and Gray agree with Mr Hills' position. However:

- (a) They consider the PC7 provisions should also require upgrading of the following:
 - (i) The Exelby Road/Rotokauri Road intersection to a roundabout; and
 - (ii) Exelby Road north of Burbush Road.
- (b) They have questioned the final level of traffic on the Burbush Road/Exelby Road link at full build out of PC7 (2,000 dwellings) and whether further upgrades are required before this level of development is achieved.

10.8 On behalf of various landowner submitters, planning consultant Ms Perring considers that all proposed traffic upgrades outside of the PC7 land (i.e. those agreed to by Mr Hills and the additional upgrades proposed on behalf of HCC) should be undertaken before any development occurs within the PC7 land.

10.9 As regards these remaining areas of disagreement with HCC and Ms Perring regarding appropriate road upgrades and the triggers for those, Mr Hills' evidence⁷⁵ is as follows:

- (a) In accordance with the modelling he has undertaken, the traffic generated by PC7 does not result in the requirement to upgrade either the Exelby Road/Rotokauri Road intersection or Exelby Road (north of Burbush Road).
- (b) With all 2000 dwellings occupied, the volume of traffic on the Burbush Road/Exelby Road link is expected to be approximately 5,000 vehicles per day ("vpd") assuming no other links/development of Rotokauri Stage 1 is included (a situation which is very unlikely to eventuate). With this level of development, the upgrade to widen the carriageway to 7.7m would already be triggered and this remains sufficient to cater for 5,000 vpd.
- (c) Ms Perring's concerns on behalf of the landowners largely relate to existing traffic safety issues on Burbush and Exelby Roads (noting that the official crash data does not indicate any specific safety concerns for the area). The modelling demonstrates that there will be a minimal increase in traffic on the Exelby Road/Burbush Road link from developing 500 lots on the PC7 land with only access to SH39. It is only when an internal link to Burbush Road is added within PC7 that this route becomes more attractive to PC7 residents. Hence Mr Hills' recommendation (which the HCC traffic engineers now agree with) regarding

⁷⁵ As set out in Section 3 of his reply evidence.

the appropriate trigger for required transport upgrades on Burbush/Exelby Roads, outside of the PC7 land.

Addressing existing traffic safety issues on surrounding the roading network

10.10 In her evidence,⁷⁶ Ms Perring has raised genuinely held concerns regarding the safety of the road network surrounding PC7, in particular:

- (a) Exelby and Burbush Roads;
- (b) The Exelby Road/Lee Road intersection;
- (c) The Exelby Road/Rotokauri Road intersection; and
- (d) The crossing of Kauri Lane/55 Exelby Road.

10.11 As outlined in Mr Hills' EIC and reply evidence, the crash data does not indicate any specific safety concerns for the area (although he of course accepts there will no doubt be other, minor crashes that are not included in the official data). As such, his evidence is that:⁷⁷

- (a) The traffic upgrades he has proposed for the Exelby/Burbush Road link will ensure the PC7 development does not exacerbate any existing traffic safety issues; and
- (b) Allowing PC7 to proceed out of sequence with the RSP will not have the effect of inappropriately concentrating traffic on existing roads until such time as the RSP roads are delivered.

10.12 As regards the two specific intersections and one crossing identified by Ms Perring in her evidence, Mr Hills' evidence is as follows:

- (a) Any existing upgrade/safety issues with respect to Lee Road fall to be addressed as part of RSP Stage 1 and/or the 'Rotokauri Rise' development, not PC7. Further, the current visibility issues at this intersection also appear to be caused by vegetation within the road reserve, which can easily be rectified by HCC.⁷⁸
- (b) As already noted, the modelling demonstrates that the traffic generated by PC7 does not result in the requirement to upgrade the Exelby Road/Rotokauri Road intersection.⁷⁹
- (c) The crash database does not support any concerns with respect to the crossing of Kauri Lane/55 Exelby Road. As such, there are no issues regarding this crossing that relate to PC7.⁸⁰

Appropriateness of Mr Hills' transport modelling for PC7

10.13 Ms Perring has questioned the appropriateness of the modelling that Mr Hills has undertaken, stating (at paragraph 3.14 of her EIC):

"my professional opinion is that a specific transportation model should have been created to an agreed spatial area of effects, built from baseline physical traffic surveys."

⁷⁶ EIC Perring at [3.10], [4.6] and [4.13] in particular.

⁷⁷ Reply Hills at [3.3] – [3.8].

⁷⁸ Ibid at [3.11] – [3.14].

⁷⁹ Ibid at [4.2].

⁸⁰ Ibid at [3.21].

10.14 With all respect to Ms Perring, she is a planner, not traffic engineer. As noted by Mr Hills,⁸¹ all appropriately qualified traffic engineers who have provided advice on PC7 accept and agree that the Waikato Regional Transport Model that has been used to assess PC7, together with industry standard SIDRA intersection modelling:

- (a) Is fit for purpose; and
- (b) Has been specifically developed by WRC to assess the effects of future developments/land use in the Waikato Region.

Mitigation of effects from construction traffic

10.15 In order to ensure that any potential adverse effects of construction traffic associated with PC7 are appropriately addressed, Ms Perring has requested at PC7 include the following:

- (a) A new standard under Standard 3.6A.4.2, precluding heavy traffic associated with works within the PC7 land from using Exelby or Burbush Roads;⁸²
- (b) An additional assessment criteria specifically requiring assessment of construction traffic;⁸³ and
- (c) A new provision requiring that CMPs be prepared at resource consent stage (rather than as a consent condition).⁸⁴

10.16 These matters are addressed in detail in Mr Hills' reply evidence and also that of Mr Tollemache and Ms Fraser-Smith. Their conclusions regarding those requests are clear, as follows:

- (a) The use of Exelby and Burbush Roads by heavy traffic will be adequately addressed at resource consent stage through the construction traffic management plan that will be required.⁸⁵
- (b) There is no "gap" in the HCDP regarding the assessment and consideration of construction traffic during the resource consent process, which means that PC7 requires a new or more specific provision to address this matter.⁸⁶
- (c) Integrated transport assessments are routinely prepared as part of subdivision consent applications which address all relevant traffic effects from subdivision, including that from construction traffic.⁸⁷

Appropriate speed limits on the road network surrounding PC7

10.17 In order to further address traffic safety issues on the road network, Ms Perring has sought (at paragraph 7.9 of her evidence) that HCC reduce the speed limits on Exelby and Burbush Roads, as well as a section of Rotokauri Road. As the Panel will be aware (and confirmed in the reply evidence of Messrs Hills⁸⁸ and Tollemache and Ms Fraser-Smith⁸⁹), this is an issue for the road controlling authority, HCC. As such, it is outside of Green Seed's control.

⁸¹ Ibid at [3.24].

⁸² Supra Note 76 at [7.3].

⁸³ Ibid at [7.4].

⁸⁴ Ibid at [7.13].

⁸⁵ Supra Note 77 at [3.42].

⁸⁶ Reply Tollemache and Fraser-Smith at [3.4].

⁸⁷ Ibid at [3.6].

⁸⁸ Supra Note 77 at [3.15].

⁸⁹ Supra Note 86 at [3.15].

Additional provision for walking and cycling

- 10.18 In her requested amendments to Table 2 of Standard 3.6A.4.2f), Ms Perring has sought (at paragraph 7.6 of her evidence) that the proposed upgrades to Exelby and Burbush Roads also include a "temporary" footpath. Mr Hills disagrees, for the following reasons:⁹⁰

"In my opinion, a temporary footpath in this rural road environment is unnecessary. There are no other such footpaths in other surrounding rural areas and the key routes from the PC7 land to the wider network have been considered and included in provisions. I note that HCC's traffic engineer Mr Black also does not support such a provision."

Submission – provision for roading and traffic infrastructure

- 10.19 On the basis of the evidence referred to, it is submitted that the Panel can be satisfied that:
- (a) The outstanding issues raised by HCC and Ms Perring with respect to the provision of transport infrastructure are adequately addressed in the PC7 provisions recommended by Mr Hills and which Green Seed supports; and
 - (b) There is sufficient certainty regarding the funding and financing of all required infrastructure, including as a result of the PDA that Green Seed has entered into with HCC.
- 10.20 As outlined by Mr Noland,⁹¹ Green Seed has entered into a private development agreement ("PDA") with HCC, to ensure that all infrastructure required to service the development enabled by PC7 will be provided in a timely manner.

11. MĀORI CULTURAL AND SPIRITUAL CONSIDERATIONS

- 11.1 Māori cultural and spiritual values are highly relevant to PC7, given that it involves Waikato-Tainui's ancestral land⁹² and in light of the requirements in sections 6(e), 7(a) and 8 of the RMA.⁹³
- 11.2 In recognition of these matters, the TWWG prepared a Cultural Impact Assessment ("CIA") for PC7, through which the following set of key pou/mitigation objectives were identified:⁹⁴
- (a) Rangatiratanga;
 - (b) Waahi Taaonga;
 - (c) Ngaa Wai Ora;
 - (d) Mahinga Kai; and
 - (e) Kotahitanga.
- 11.3 These objectives have set the foundation for developing PC7, which include the ongoing good faith collaboration and partnership between Green Seed and the TWWG, as well

⁹⁰ Supra Note 77 at [3.38].

⁹¹ Supra Note 12 at [5.2].

⁹² EIC Hill at [7.1].

⁹³ The decision of *McGuire v Hastings District Council* [2002] 2 NZLR 577 (PC) at [21]-[22] has held that these sections are strong directions to be "borne in mind" at every stage of the planning process.

⁹⁴ CIA (Attachment 18 to the AEE) at page 15.

as maintaining an ongoing role for Waikato Tainui via the TWWG and the intention that the CIA is a living document that will be continually updated and added to.⁹⁵

- 11.4 Mr Hill of Te Hira Consultants Ltd has provided evidence on the engagement and consultation process undertaken by Green Seed to identify potential cultural effects of PC7 and how they are to be appropriately managed.⁹⁶ Mr Hill details the issues of concern to mana whenua, before identifying the mitigation measures that TWWG have had input into and collaborated on, which include the following:
- (a) Specific measures identifying and acknowledging places values of heritage and cultural significance to tangata whenua to reaffirm whakapapa;⁹⁷
 - (b) The ICMP, which provides an overall solution to wastewater and stormwater issues, which also seeks to provide for ecological enhancement; and
 - (c) The creation of a formal cultural reserve by way of covenanting Kereru Reserve, which reaffirms cultural connectivity and whakapapa to place and space.
- 11.5 Mr Hill confirms that, subject to the implementation of these identified measures, the concerns of tangata whenua will be appropriately addressed.
- 11.6 Mr Tollemache and Ms Fraser-Smith conclude that PC7 is consistent with the policies and objectives of the Waikato Tainui Environmental Plan and the Hamilton-Waikato Metropolitan Spatial Plan (insofar as they relate to tangata whenua values), thereby ensuring the outcomes from PC7 give effect to cultural values.⁹⁸ Mr Noland also confirms Green Seed's intention to continue to work in partnership and good faith with the TWWG to ensure cultural concerns continue to be provided for and positive outcomes achieved.⁹⁹
- 11.7 On the basis of the above, it is accordingly submitted that Green Seed has undertaken extensive and ongoing consultation, in a partnership of good faith with the TWWG, to ensure that Māori cultural and spiritual values are a core principle for Rotokauri North. It is submitted that tangata whenua values have sought to be provided for in ways identified in partnership with the TWWG and that Green Seed intends to continue this partnership as PC7 progresses.
- 11.8 This is similarly confirmed by the conclusions at paragraph 4.58 of the section 42A report, which are as follows:

"I consider that the mana whenua engagement has been robust and effective in managing potential cultural effects associated with urban development within Rotokauri North. Accordingly the extent of cultural effects in respect of cultural matters are considered acceptable."

12. OTHER POTENTIAL ENVIRONMENTAL EFFECTS

- 12.1 The other potential environmental effects associated with PC7 that call for comment relate to:
- (a) Economic effects (associated with the proposed Neighbourhood Centre);
 - (b) Ecological effects;

⁹⁵ Ibid at pages 15 - 19.

⁹⁶ Supra Note 92 at [1.7].

⁹⁷ Ibid at [7.12].

⁹⁸ Supra Note 47 at [8.6] and [8.13].

⁹⁹ Supra Note 12 at [6.9] - [6.11].

- (c) Archaeological effects; and
- (d) Landscape/visual effects.

12.2 We address each of those matters in turn.

Economic effects

12.3 Mr Heath addresses any potential economic effects arising from development of the proposed neighbourhood zone on the B6Z land. His clear and uncontested conclusion is that the proposed neighbourhood centre is appropriate in light of the scale, type, location and growth components and proximity to centre competition. As such, the proposed neighbourhood centre will not generate significant adverse retail distribution effects on surrounding centres. Mr Heath further concludes that the proposed activities are appropriate and fit within the function of a neighbourhood centre.¹⁰⁰

12.4 With respect to the B6Z and proposed neighbourhood centre, the section 42A report states (at paragraph 4.78) as follows:

"The proposal to zone Business 6 land for a future neighbourhood commercial centre is supported. The Rotokauri Structure Plan similarly had a commercial/community node within the northern part of Rotokauri to provide for local commercial need. The conclusions at Section 6.10 of the plan change document and Property Economics Limited retail economic review are supported given the scale of the land to be rezoned and the Business 6 Zone provisions to be applied."

12.5 No submissions raise concerns regarding the proposed neighbourhood centre. As such, there are no outstanding areas of disagreement regarding economic matters as between Green Seed, HCC or any submitters.

Ecological effects

12.6 The main ecological assessment for PC7 has been undertaken by Morphum, effectively on a joint basis for HCC and Green Seed. As set out in paragraph 4.44 of the section 42A report, Morphum's assessment concluded that the ecological effects associated with PC7 are acceptable, subject to specific further provisions being included in PC7. As outlined in the version of the PC7 provisions attached to the reply evidence of Mr Tollemache and Ms Fraser-Smith, these provisions are now all agreed as between HCC and Green Seed.

12.7 Mr Tollemache and Ms Fraser-Smith also summarise the ecological values of the site based on the various ecological assessments that have been undertaken. Collectively, these assessments demonstrate that there are no high value ecological features on the site, in particular:

- (a) No high quality watercourses;
- (b) No rare or threatened species recorded;
- (c) Few native plants, birds, or land based indigenous ecology values; and
- (d) No high value vegetation other than Kereru Reserve, protected by a Significant Natural Area overlay.¹⁰¹

12.8 A key feature of the proposed RNSP is the "green spine", which is a proposed green network based on the enhanced stream network running through the site related to the stormwater catchments with natural watercourses and will provide for stream

¹⁰⁰ EIC Heath at [5.3].

¹⁰¹ Supra Note 47 at [5.14].

enhancement works in conjunction with stormwater management.¹⁰² Mr Tollemache and Ms Fraser-Smith also confirm that the PC7 provisions will enable a high quality ecological environment (and significant ecological restoration), as a result of the proposed green spine and stormwater management methods.¹⁰³

- 12.9 As stated in the section 42A report (at paragraph 4.43), there were no specific ecological issues raised in submissions. As such, there are no outstanding areas of disagreement regarding ecological matters as between Green Seed, HCC or any submitters.
- 12.10 In addition to Morphum's work, Mr Miller undertook two specific ecological investigations to support PC7, being a "Stream Classification Report" and a "Bat Survey Report".¹⁰⁴ We briefly summarise these as follows.

Stream Classification Report

- 12.11 Mr Miller confirms the ecological characteristics of the PC7 land as a result of the land historically being a wetland, which has been drained to enable agricultural practices, and as such contains numerous watercourses.¹⁰⁵ Mr Miller confirms that none of the watercourses on site are completely unmodified:¹⁰⁶
- (a) The Otamanui tributary is an artificial watercourse; and
 - (b) The Ohote tributary comprises a modified watercourse.

- 12.12 The ecological value of the watercourses are therefore considered to be degraded and of low value.

Bat survey

- 12.13 While no bats were detected during the two bat survey that were undertaken, Mr Miller confirms that he cannot rule out the potential for bats to periodically travel through or use the PC7 land for roosting.¹⁰⁷ This matter has accordingly been addressed via the inclusion of a specific reference in PC7 which addresses the protection of long-tailed bats by the Wildlife Act 1953, as well as indigenous birds and lizard species (see Appendix 1, Rule 1.2.2.23(d)).

Archaeological effects

- 12.14 Mr Cruickshank has prepared an archaeological assessment of the PC7 land. As outlined in his EIC, his investigation methodology included a desktop study, followed by a targeted field survey which focused on areas where drains, erosion, fence lines, animal damage, and tree throw have exposed soil.¹⁰⁸
- 12.15 Mr Cruickshank confirms that no evidence of pre-1900 archaeology or heritage, or significant 20th century heritage within the PC7 land was found. Mr Cruickshank's opinion is that there are no archaeological constraints to rezoning the land as sought by PC7.¹⁰⁹
- 12.16 The section 42A report similarly confirms that there is a low risk of exposing pre-1900 archaeological deposits or features, and there is no need to apply for archaeological authorities prior to works.¹¹⁰ The section 42A recommendation is that with the

¹⁰² Ibid at [5.7] and [10.102].

¹⁰³ Ibid at [5.15], [8.6(c)] and [10.102].

¹⁰⁴ Supra Note 69 at [1.6].

¹⁰⁵ Ibid at [3.2].

¹⁰⁶ Ibid at [3.5] - [3.8].

¹⁰⁷ Ibid at [3.13].

¹⁰⁸ EIC Cruickshank at [4.1] - [4.3].

¹⁰⁹ Ibid at [5.1].

¹¹⁰ Supra Note 14 at [4.47].

imposition of standard consent conditions regarding accidental discovery protocols, any adverse archaeological effects will be appropriately managed and acceptable.¹¹¹

- 12.17 No submissions raise archaeological matters. As such, there are no outstanding areas of disagreement regarding archaeological matters as between Green Seed, HCC or any submitters.

Landscape and visual effects

- 12.18 The key landscape features of the PC7 site in its current state are identified by Mr Pryor, who confirms that the surrounding landscape can be currently characterised as an open rural landscape.¹¹²
- 12.19 Mr Pryor assesses the PC7 site as being a highly modified rural lifestyle environment, comprising flat lying plains and rolling hill terrain, with vegetation predominantly consisting of grazed pasture grasses and exotic tree species used as hedging and shelter belts.¹¹³ Mr Pryor also identifies the significant stand of kahikatea in the north-eastern corner of the site, being a Significant Natural Area (Kereru Bush).¹¹⁴
- 12.20 Mr Pryor confirms that the proposed development will inevitably change the existing rural character to one of mixed urban, although notes that this type of development on this site is anticipated.¹¹⁵ The present visual landscape is of low natural character value, and relatively low visual amenity, and so the only negative outcome will be the loss of the remaining rural character.¹¹⁶
- 12.21 The proposed future development of the site has been designed in accordance with best practice urban design principles, to ensure high visual amenity within the urbanised environment and to assist with integration with the semi-rural surrounding environment.¹¹⁷ The visual effects of the proposed development are considered to be gradual, as the land will be modified and built in stages, extending over some time, which will reduce the impact of the change.¹¹⁸
- 12.22 Overall, Mr Pryor concludes that the recommended RNSP and district plan provisions are sufficient to ensure a high quality landscape and appropriate visual outcomes for Rotokauri North.
- 12.23 The section 42A report (at paragraph 4.36) confirms that landscape and visual effects of PC7 can be appropriately managed and are acceptable. No submissions raise specific concerns regarding the proposal's landscape or visual effects. As such, there are no outstanding areas of disagreement regarding landscape or visual matters as between Green Seed, HCC or any submitters.

Submission – other environmental effects

- 12.24 Having regard to the above, it is submitted that the Panel can be satisfied that there are no other economic or environmental effects arising from development of the PC7 land that cannot and will not appropriately managed, and that the proposed rezoning is appropriate from that perspective.

¹¹¹ Ibid at [4.49].

¹¹³ Ibid at [3.2].

¹¹⁴ Ibid at [3.2].

¹¹⁵ Ibid at [5.1].

¹¹⁶ Ibid at [5.3].

¹¹⁷ Ibid at [5.6].

¹¹⁸ Ibid at [5.12] - [5.13].

13. **PLANNING ASSESSMENT**

13.1 Mr Tollemache and Ms Fraser-Smith's evidence comprehensively addresses the following:

- (a) The planning approach taken to preparing PC7;
- (b) The amendments to the HCDP sought by way of PC7 (including the RNSP) and how these will operate in conjunction with existing district plan provisions to ensure optimal planning outcomes;
- (c) The evaluations (and assessment of alternatives) that have been undertaken for PC7 in accordance with section 32 and 32AA of the RMA; and
- (d) An assessment of PC7 against all relevant statutory and non-statutory planning documents, concluding that PC7 is consistent with and supported by this wider statutory planning framework (including all higher order planning documents, specifically the NPSUP, FPS and WRPS).

13.2 Following lodgement of PC7, HCC staff sought a range of amendments to the plan change, primarily to ensure consistency with the HCDP and their preferred drafting protocols. Following extensive discussions between the parties, Green Seed is pleased to advise that these matters have now all been resolved, as shown in the updated version of PC7 attached to the reply evidence of Mr Tollemache and Ms Fraser-Smith.

13.3 As such, the only outstanding issues regarding the provisions of PC7 are the various amendments sought by Ms Perring on behalf of landowners, to address transportation and traffic matters. Green Seed's position on those amendments has already been outlined in Section 10 above.

14. **PRINCIPAL SUBMISSION**

14.1 In light of the conclusions reached in the evidence, Green Seed's fundamental position is that there is no impediment to PC7 proceeding and that significant benefits will ensue if it does proceed.

14.2 In this regard, Green Seed submits that:

- (a) The objectives and policies sought to apply to the PC7 land:
 - (i) Appropriately give effect to all applicable higher order planning instruments (including all national policy statements and national environmental standards, and regional policy statements); and
 - (ii) Are not inconsistent with any directive objectives, policies or constraints from such higher order instruments.
- (b) The rules that will apply to the PC7 land as a result of the change in zoning appropriately implement the policies sought to apply to the site.

14.3 Green Seed further submits that it is appropriate that the above submission be accepted, on the basis that:

- (a) In terms of section 32 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 HCDP.

- (b) Acceptance of the submission would result in changes to the HCDP that are in accordance with HCC's functions under section 31 of the RMA.
- (c) Approving PC7 would be consistent with and promote the sustainable management purpose of the RMA, particularly as:
 - (i) Any potential adverse effects can be avoided, remedied, or mitigated as necessary through:
 - Appropriate siting of the proposed zones;
 - Introduction of clear and directive, site-specific objectives and policies;
 - Application of the rules applying to each zone; and
 - Conditions at the resource consent stage.
 - (ii) Use and development of the site as proposed by PC7:
 - Represents an efficient use and development of the site and its natural and physical resources; and
 - Can be undertaken in a manner that ensures that its values and the quality of the environment are maintained or enhanced.

14.4 Relevant factors in that regard are that:

- (a) PC7 will enable high quality residential development, consistent with the RSP and RNSP, which will connect seamlessly to development of the surrounding land, when that occurs.
- (b) All relevant infrastructure is available to service the site.
- (c) PC7 gives effect to relevant statutory documents including the NPSUD, FPS and WRPS.

14.5 In closing, counsel and the Green Seed team would like to express their gratitude to the Panel and all stakeholders who have engaged so successfully and constructively with Green Seed, to work through and narrow the issues. Green Seed is particularly grateful to the Panel for endorsing and enabling the various expert conferencing sessions that occurred and to Ms Oliver for her most effective facilitation of that conferencing.

Dated 18 October 2021



S J Berry



H C Andrews

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