

**Before Palmerston North City Council**

**Under** the Resource Management Act 1991

**In the matter of** a proposed plan change to rezone  
land at 611 Rangitikei Line to establish  
the Whiskey Creek Residential Area

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**STATEMENT OF EVIDENCE OF PAUL NORMAN THOMAS  
IN SUPPORT OF FLYGERS INVESTMENT GROUP LIMITED**

**PLANNING EVIDENCE**

**18 MAY 2022**

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## **INTRODUCTION**

1. My full name is Paul Norman Thomas. I have been asked to provide to provide my expert opinion on the changes to the Plan Change sought in the s42A report and the relevant issues raised in submissions. ]

## **Qualifications and Experience**

2. I am currently a Director of Thomas Planning Ltd, a resource management planning consultancy. I have a B.A (Hons) Degree in Urban and Regional Planning from Oxford Brooks University and a Diploma in Business Management from Deakin University in Melbourne. I am a member of the New Zealand Planning Institute, the Resource Management Law Association and a former member of The Royal Town Planning Institute.
3. I have over 40 years' experience in planning and resource management, the last 30 or so years which have been in consultancy. From 1996 to 2016 I was a director of Environmental Management Services (EMS) providing a range of resource management advice and services. Prior to that I was the Manager of the Wellington Planning Group and National Discipline Head of Works Consultancy Services Ltd. In that capacity I was responsible for the development of a team of planners and landscape architects serving a wide range of public and private sector clients and for the technical standards of over 40 planning staff.
4. I am a Commissioner accredited as a Chair by the Ministry for the Environment and have been active as a Commissioner since 2008.

## **Involvement in Proposed Plan Change**

5. I was the primary author of the Private Plan Change Request relying on the specialist expert inputs from within the overall project team. In particular I was responsible for the specific plan provisions contained in the request.

## **Code of Conduct**

6. I have read the Code of Conduct for expert witnesses in the Environment Court Practice Note 2014 and I have complied with it when preparing this evidence. Other than when I state that I am relying on the advice of another person, this evidence is within my area of expertise. I have not omitted to

consider material facts known to me that might alter or detract from the opinions that I express.

### **Scope of Evidence**

7. In this statement I:
  - (a) Outline the approach taken to developing the specific provisions requested.
  - (b) Consider the submission by the requestor.
  - (c) Respond to the changes to the plan provisions proposed in the evidence of Marz Asgar.
  - (d) Respond to certain issues raised in submissions
  - (e) Comment on matters relating to the Regional Policy Statement and National Policy Statement on Urban Development (NPSUD).

### **EXECUTIVE SUMMARY**

8. The Palmerston North District Plan provides for the development of new Greenfield Residential Areas through a dedicated section in the District Plan on subdivision and additional provisions in the Residential Zoine.
9. The provisions in these parts of the Plan dictate the form and style of incorporating additional Greenfield Residential Areas.
10. This evidence outlines the key provisions that will apply to the Whiskey Creek Residential Area when incorporated and the process of identifying what additional or altered provisions are required to address the development issues of the area. It also summarises the changes proposed in the Plan Change which focus around the leading instrument being the Structure Plan.
11. The evidence then focusses on the changes proposed in the evidence of Mr Asgar which rely on a range of technical evidence prepared for that purpose.
12. In relation to stormwater performance standards I do not agree that additional provisions are required for Whiskey Creek Residential Area over and above the existing provisions. In particular I don't support requirements

that apply additional requirements over and above the Council Engineering Standards for Land Development.

13. In terms of flood management I do not support most of the additional performance standards recommended which relate to modelling as these can be addressed through normal consenting assessment requirements. I do however support changes to insert a minimum floor level requirement at the 1 in 200 year level and that modelling demonstrate that flood levels shall not increase by more than 50 mm in a 1 in 200 year event.
14. I also do not support retention of the flood prone overlay over the land that will not be flood prone. As proposed in the Plan Change this should take effect once earthworks have been completed in accordance with consent requirements.
15. In terms of additional policies, I support the retention of two separate policies, the first based on the critical requirements and outcomes and the second setting out the design principles of the Structure Plan which should be had regard to in assessing future consent applications. I consequently disagree with the recommendation that the combined policy should led by "ensure that".
16. Within this policy I support the amendment proposed by Ms Fraser in relation to the road cross sections.
17. The one wider fix that the Plan Change seeks to address relates to the neighbourhood centre rule which is clearly within scope and in my assessment is not fit for purpose. A minor amendment disconnecting the rule from subdivision is recommended.
18. The position regarding water supply is problematic but does not justify the additional provisions proposed. My evidence is that the existing provisions are adequate to address the issue. If the panel finds that additional provisions are warranted, then the submission scope to make that change requires determination.
19. A change to the "design principles" policy is recommended to expressly provide for further consultation with mana whenua regarding reserve development and management planning.

20. In terms of amenity enjoyed by existing Meadowbrook Drive residents, there will be changes to those amenity values but in relation to sun and view these changes are far less than those enabled by the Rural Zone provisions. Additional rules have been proposed from the outset recognising these issues. However, a further boundary set back rule not exceeding 3m could also be considered even though not recommended by the s42A report.
21. The proposal is consistent with the City View objectives of the District Plan and the higher order documents of the Regional Policy Statement and NPS UD. Albeit that a future minor amendment to the Map at Schedule J of the RPS will be required in the future.

## **THE EXISTING PLAN PROVISIONS AND THE APPROACH TO THE PROPOSED PLAN CHANGE**

22. By way of introduction it is helpful to summarise the statutory considerations that apply to this plan change request being the same as if it were a Council led Plan Change. These were set out in *Colonial Vinyard v Marlborough District Council [2014] (NZEnvC 55)* as follows:

### **A General Requirements**

1. *A district plan (change) should be designed to accord with, and assist the territorial authority to carry out its functions so as to achieve the purpose of the Act.*
2. *The district plan (change) must be prepared in accordance with any regulation and any direction given by the Minister for the Environment;*
3. *When preparing its district plan (change) the territorial authority must give effect to any national policy statement or New Zealand Coastal Policy Statement.*
4. *When preparing its district plan (change) the territorial authority shall:*
  - (a) have regard to any proposed regional policy statement;*
  - (b) give effect to any operative regional policy statement.*
5. *In relation to regional plans:*
  - (a) the district plan (change) must not be inconsistent with an operative regional plan for any matter specified in section 30(1) or a water conservation order; and*
  - (b) must have regard to any proposed regional plan on any matter of regional significance etc;*

6. When preparing its district plan (change) the territorial authority must also:

- have regard to any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations to the extent that their content has a bearing on resource management issues of the district, and to consistency with plans and proposed plans of adjacent territorial authorities;
- take into account any relevant planning document recognised by an iwi authority; and
- not have regard to trade competition or the effects of trade competition;

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

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

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

#### **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;

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

(i) the benefits and costs of the proposed policies and methods (including rules); and (ii) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods; and

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

#### **D. Rules**

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

12. Rules have the force of regulations.

13. Rules may be made for the protection of property from the effects of surface water, and these may be more restrictive than those under the Building Act 2004.

14. *There are special provisions for rules about contaminated land.*

15. *There must be no blanket rules about felling of trees<sup>54</sup> in any urban environment.*

**E. Other statutes:**

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

23. Section 32AA also requires further evaluation to be carried out where further changes to the provisions are proposed. The Section 32 disciplines, therefore, sit squarely at the heart of this process.
24. Having said that the nature of a Plan Change is that it is fundamentally seeking a change to an existing District Plan. The existing District Plan has a style and approach that dictates how the plan change is required to be approached. It is not a matter of starting with a blank sheet of paper, indeed quite the opposite. So the starting point is the overall structure of the existing District Plan. Importantly the structure has a chapter that deals with subdivision across the whole City (Chapter 7) and then a separate Chapter dealing with Greenfield Residential Areas. As the land concerned with this Plan Change is currently zoned rural it qualifies as a Greenfield Residential Area and that is the principal home for the provisions for this growth area.
25. Provisions for development of the land for residential activities is covered in a separate section being Section 10. Within this section are subsections dealing specifically with buildings and structures in Greenfield Residential Areas. (R10.6.1.5 and R10.6.3.2).
26. Section 7A seeks to provide a blend of provisions that apply commonly to all Greenfield Residential Areas plus additional provisions where these do not adequately address matters that are particular to one specific Greenfield Residential Areas. The Council has specifically sought for this section to be the home for new greenfield residential areas as they come to fruition. Currently the Chapter only deals with two, being The Whakarongo Residential Area and the Kikiwhenua Residential Area. However, as stated in Michael Duindam's evidence, Council is working on a number of new Greenfield Residential Area Plan Changes that will go into this section.
27. In each case the framework for guiding the development of the area is set out graphically in a Structure Plan. This establishes the intended overall land use pattern, primary roads, areas of open space, infrastructure features and

constraints that influence how the effects of development are to be managed.

28. Different District Plans use different tools in this regard with Structure Plans being at the broad end of the spectrum through to Master Plans at the more detailed end.
29. The existing Structure Plans in the Palmerston North District Plan are in indicative plan form only, with no narrative explanation or expansion.
30. The Structure Plan that has been prepared has had specific regard to the policies that the existing provisions are intended to achieve.
31. Hence, the overall approach has been to adopt as much of the existing plan provisions as is appropriate and only change or add to the provisions where there are issues, constraints and opportunities that need to be addressed.
32. Existing Policy 1.2 is to ensure that subdivision and development is undertaken in accordance with the areas relevant structure plan.
33. Policy 2.1 sets out the design principles that are to be balanced with meeting the needs of future users. There are 11 elements to this policy.
34. Policy 2.2 is relevant to Whiskey Creek as it seeks to enhance and restore the natural features of the site through sensitive integration of stormwater design.
35. Policy 2.4 relates to public open spaces and is also relevant. As is Policy 2.5 which addresses neighbourhood centres.
36. State Highway 3 abuts the Whiskey Creek area so Policy 2.6 relating to noise is also relevant. Policy 3.1 relating to natural hazards is also relevant given the flood ponding role of part of the site. Finally, Objective 4 and its policies relating to stormwater where generic are also relevant.
37. All these policies are proposed to apply to the Whiskey Creek Residential Area.
38. The rule framework to give effect to these policies uses subdivision as the trigger for development and classes subdivision as a restricted discretionary for all other than minor matters.



39. There is then an extensive list of what are called Performance Standards for Restricted Discretionary Activities. This is led by a standard that requires that the proposal is “in general accordance with the areas relevant Greenfield Structure Plan.” To demonstrate this a wide range of information is required to be submitted as part of what is termed a “Comprehensive Development Plan” (CDP). The CDP is required to detail the proposal as is required frankly in any resource consent application but must also include, amongst other matters:
- A geotechnical report covering potential erosion, falling debris, subsidence, slippage, alluvium or presence of hazardous contaminants.
  - A hydraulic report on potential avulsion or inundation.
  - An urban design statement
40. The next set of performance standards relates to essential services being sewer, stormwater and water supply. Other standards relate to existing buildings, proposed lot sizes, and cul-de-sacs. If that is all successfully navigated then determination of the subdivision consent is then subject to some 22 generic assessment criteria and the two existing greenfield residential areas also have additional area specific criteria.
41. If the proposal fails to meet any of the performance standards then it is classed as a Discretionary Activity. There are no Non Complying Activities.
42. Once the subdivision stage is completed use of the land for the intended activities is addressed through the Residential Zone Section being Chapter 10.
43. Importantly, this also includes specific objectives and rules for Greenfield Residential Areas. Objective 9 and its policies deal with design matters and dwelling mix. Objective 10 and its policies deal with neighbourhood centres within Greenfield Residential Areas and Objective 11 and its policies deal with natural hazards which includes flood risk.
44. The associated rule regime is also specific to Greenfield Residential Areas. The permitted activity regime cross references to a large number of the generic residential zone performance standards with some additional standards such as:

- accessory building set backs to roads and boundaries
- maximum net site area
- outdoor amenity area requirements
- accessory building to be set back behind dwelling façade.
- Fence height on road frontage and to open space
- Flood hazard

45. This is also where standards related to specific Greenfield Residential Areas are located such as acoustic insulation and setback.
46. Non compliance with any of these standards triggers a restricted discretionary consent in relation to that non compliance and stated assessment criteria have been included.
47. This is the existing plan framework that the proposed Plan Change must fit into. The Whiskey Creek Residential Area does have different characteristics to the existing Greenfield Residential Areas. In particular, it is proposed to change the zone of only part of the area zoned rural between Flyers Line, Meadowbrook Drive and Rangitikei Line. For that area that is to be changed it involves two zones, the Residential Zone over an area of 13 hectares and

Conservation and Amenity Zone over 10 hectares. Further, the land is also currently affected by the Flood Prone Area overlay.

48. So given the above, the approach to the Plan Change is to develop a Structure Plan that addresses the key issues associated with the development of the land and then identify what additional or amended provisions are required to give effect to the Structure Plan. This was then subject to section 32 evaluation leading to the Plan Change proposed.
49. The provisions were not changed by the Council prior to public notification.
50. I will address the specific matters raised in the s42A report in subsequent sections. However, the following changes to the provisions were found to be appropriate and necessary given the existing plan framework.
- The change to the Plan Maps to show amended zonings and amend the flood prone overlay once the land zoned residential is not flood prone.
  - Amend definitions to name the area and include the area in the pressure sewer areas.
  - In Section 7A Include a subdivision policy that is specific to the important development issues of the Whiskey Creek Residential Area.
  - Alongside this, add a limb to the key issues in this section to recognise that the Lower Manawatu Drainage Scheme is a key issues.
  - Insert the Structure Plan
  - Provide for a higher average density of development than other Greenfield Residential Areas, and provide for a larger lot for the neighbourhood centre.
  - In order to match the existing use of assessment criteria, insert specific assessment criteria for subdivision that match the site specific policy issues
  - In Section 10 include a policy to enable multi unit housing as an overlay in the area shown on the Structure Plan.

- Insert a building height performance standard for lots abutting Meadowbrook Drive.
- Insert a performance standard requiring a 20 m set back from the gas for habitable buildings.
- Insert permeable area performance standards depending on lot size.

Other minor technical amendments to trigger the existing multi unit rules and add specific standards for this area relating to building height, recession plane and fencing.

51. Finally, it is specifically sought to amend rule 10.7.3.5 to correct what we identified as a more generic rule construction problem.
52. The planning evidence for the Council has been prepared as a s42A report. However, Council also lodged a submission in support of the Plan Change subject to being satisfied that the provisions are appropriate. The submission does not seek any specific changes to the provisions.
53. The Council's Planning evidence is structured around the key issues raised by submissions and then other statutory consideration. To best assist the Panel, I will follow that structure in my evidence below which includes consideration of the requestor's submission to the Plan Change.

#### **FLOODING AND STORMWATER**

54. Firstly, in relation to Stormwater technical evidence on this matter is provided by Mr Paul Mitchell. He prepared the Stormwater Management Plan which formed part of the Plan Change Request. The s42A report recommends that the existing performance standard requiring a Stormwater Management Plan be extended to include the Whiskey Creek Residential Area.
55. In addition, the s42A report recommends that further requirements are added requiring compliance with the Engineering Standards for Land Development and also a number of additional standards which I understand exceed the requirements of the Engineering Standards.
56. Section 7A of the Plan already includes reference to the Engineering Standards for Land Development which are applied in full at the Engineering

Approval stage of development and also need to be had regard to in the process leading up to this, including subdivision consent.

57. I have a number of concerns about whether the recommendation to include additional standards is justified. The key issue here is whether there are particular matters or circumstances where the existing plan provisions are not adequate to address those issues through the subdivision consent process.
58. I am not aware that management of stormwater from development of the site raises issues that mean that a higher standard should be imposed at this location than anywhere else in the City.
59. If Mr Preston considers that there are technical shortcomings in the Engineering Standards for Land Development that can be addressed through the regular review of that document. The current version is referenced at Fourth Edition Version 3 Effective from 1 August 2021 which clearly reflects the evolving nature of these Standards.
60. Further, the recommended the express reference to the Engineering Standards applying specifically to Whiskey Creek Residential Area implies that they do not apply to the Kikiwhenua Residential Area which is not likely the intent.
61. In principal as a planner I do not oppose the extension of the existing performance standard headed Water Sensitive Design in the Kikiwhenua Residential Area to apply to Whiskey Creek. However, such a change must be subject to further evaluation under s32AA and this must take account the effectiveness of the existing provisions.
62. Relevant to this, the exiting provisions include:
- The requirement to provide, as part of the Comprehensive Development Plan a report that :*"demonstrates how the proposed Water Sensitive Design measures will ensure hydraulic neutrality is achieved and ensure there is no increase in stormwater effects on surrounding areas."* (R7A5.2.2(a)(xiii))
  - The performance standards relating to essential services that require availability within 30 m of the land being subdivided , stormwater connected to new lots, and subject to "innovative/low impact

stormwater designs", and essential services to be in public service corridors and vested in Council. (R7A5.2.2(b))

63. Corresponding assessment criteria that refer expressly to water sensitive design and detention that ensure hydraulic neutrality is achieved. (R7A5.2.3(a))(x) and (xi).
64. Given these provisions I consider that you need to be satisfied that there are sound technical reasons why the Kikiwhenua standards should be extended to Whiskey Creek. I am not presently persuaded that such reasons exist.
65. Further, you should reject the proposed additional provisions because the Engineering Standards are already referenced and amending them by way of a performance standards for a particular site is not justified and should be addressed if necessary through future review of the Standards.
66. Additional performance standards are also recommended by Mr Preston and adopted by Mr Asgar in relation to flood management. Mr Preston concludes that management of flood flows from the Flyers Spillway that overflow across State Highway 3 into the site can be managed to avoid more than minor adverse effects, which he describes as "tolerable local changes in flood levels".
67. Most of the requirements relate to the modelling of flood flows and this is addressed by Mr Wallace in his evidence.
68. While it can be helpful to indicate the nature of information and assessment requirements in Performance Standards, I consider that the level of detail proposed here, even if technically justified, is in excess of what is necessary in terms of Section 32.
69. The Act provides wide ranging powers to request further information in the process of determining consent applications on a case by case basis. It is simply not necessary to provide a full technical scope specification as part of District Plan rules.
70. Having said that I do support providing greater certainty regarding finished ground level for occupied structures. Mr Preston has recommended that Rule 10.6.1.5 (i) be extended to apply to Whiskey Creek. I agree with that recommendation but it has not been adopted in Mr Asgars evidence instead it has been added to the compendium performance standards.

71. The one aspect of the subdivision performance standard that was recommended and adopted by Mr Asgar that I consider has potential merit is the standard to specify a tolerable increase in flood levels demonstrated by the modelling. However, the wording needs to be simplified to be more effective and certain.
72. The wording would be as follows:

**(g) Whiskey Creek Residential Area Flood Management.**

*Flood modelling shall demonstrate that any earthworks shall not increase flood levels by more than 50mm for a 1 in 200 year event.*

73. Mr Asgar has also recommended that the existing flood prone overlay not be amended to match the flood position once the earthworks have been completed. Clearly it is important to the success of the development that potential purchasers of lots have accurate information regarding flood risk to the properties. Unless there is some mechanism to amend the plan which is efficient and effective and triggered when the land is above the 200 year flood level, Mr Asgar's recommendation would place the whole viability of the development in jeopardy. The Horizons submission seeks that the earthworks is completed ahead of any further development and that is the intent. The earthworks will be completed in one stage and consents for the earthworks have been lodged but not completed. It is therefore efficient to put the mechanism proposed by the requestor in place as proposed.

**LIQUEFACTION AND GEOTECHNICAL**

74. Two assessments have been provided on geotechnical risks and lateral spread. The latter influence the Structure Plan which includes an annotation indicating that there should be a minimum distance of 55m between the developed land and the ephemeral stream bank. Mr Asgar has concluded that the existing plan provisions are adequate to address geotechnical risks.
75. I agree with that conclusion and draw the Panel attention to the requirement for a geotechnical assessment as part of the Comprehensive Development Plan. The requirements for this are set out in detail in R7A.5.2.2 (a) (xii) and are comprehensive.

## **NOISE**

76. Noise matters are addressed in the evidence of Nigel Lloyd. He explains his two differences with Mr Woods assessment, and this is consistent with the overall recommendations of Mr Asgar. Mr Lloyd notes that the existing provisions for commercial activities shown on a Comprehensive Development Plan located at Restricted Discretionary Rule R10.7.3.5 includes a performance standard that links to the Local Business Zone noise performance standards.
77. The existing rule framework is therefore in place to address noise associated with the Neighbourhood Centre.
78. I agree with the recommendation to add Whiskey Creek Residential Area to the heading of Rule R10.6.1.5 (e ) and indeed this was expressly sought in the Plan Change Request.

## **URBAN DESIGN**

79. The evidence of Mr Asgar recommends the deletion of proposed Policy 2.8 and amalgamation of that policy into a strengthened version of the policy proposed in the requestors submissions.
80. This requires some explanation. The framework of the Plan has been outlined earlier in this evidence. While many of the development design matters are covered in existing objectives and policies, there are some issues that are specific to this residential area that make it different from the norm.
81. Undertaking my initial Section 32 evaluation I considered that it was important that the critical deliverables from this development concept be enshrined in a Whiskey Creek specific policy. In my assessment the critical deliverables related to the functioning of the Lower Manawatu Drainage Scheme, restoration of the ephemeral tributary of Whiskey Creek, safety of the natural gas pipeline and connectivity to Benmore Avenue and Rangitikei Line.
82. Following the public consultation a further element was added reflecting the preference for adjoining neighbours at Meadowbrook Drive to have just one lot to the rear of each property rather than staggered boundaries.



83. Consequently, the plan change request proposed a new policy 2.8 as follows:

*To ensure that subdivision in the Whiskey Creek Residential Area:*

- *Avoids, remedies or mitigates adverse effects on the Lower Manawatu Drainage Scheme*
- *Provides for restoration of the ephemeral tributary of Whiskey Creek as recreational reserve with quality recreational links.*
- *Provides appropriate setbacks of buildings from the natural gas pipeline that traverses part of the area and locates the pipeline within a public service corridor.*
- *Provides for vehicle access to both Benmore Avenue and Rangitikei Line.*
- *Has regard for the existing residential subdivision boundaries where it abuts Meadowbrook Drive.*

84. These are what I would call the “must dos” and hence the policy uses the term “ensure” as the directive.

85. Following acceptance of the plan change request pursuant to Clause 25 of the Schedule there was discussion with Council officers about the need for greater certainty around the Structure Plan. This is because in Rule R7A.5.2.3 the first Assessment Criteria is worded *“The extent to which the design and layout of the subdivision is in general accordance with the area’s relevant Structure Plan, including how the proposal contributes to the overall design principles for the area.”*

86. The matter of concern to Council was that this assessment criteria makes specific reference to “the overall design principles”. The Council considered that it would be more effective if there was a statement of the design principles that sat alongside the Structure Plan.

87. To respond to this concern I prepared an additional policy in consultation with our team and provided to Council to incorporate in the notified plan change. However, Council did not incorporate it in the notified version. To enable scope for this hearing to consider the matter the requestor lodged its own submission seeking amendment to include that additional policy.

88. The policy is quite detailed and is worded:

2.9 To ensure that subdivision in the Whiskey Creek Residential Area has regard for the following design principles which have been incorporated into the Structure Plan:

*Stormwater and flooding*

- *adverse effects on the Lower Manawatu Drainage Scheme are avoided, remedied or mitigated.*
- *sustainable urban drainage solutions either within the street network or within the reserve are provided.*
- *design of the stormwater detention pond shall have regard to visual amenity and ecological benefits whilst achieving hydraulic neutrality.*
- *The feasibility of supplementing flows within Whiskey Creek with stormwater discharges is explored.*

*Open space and Reserves*

- *the design provides for:*
  - *ecological restoration of the ephemeral tributary of Whiskey Creek as recreational reserve.*
  - *a dry formal equipped play area and a flat open space for informal recreation.*

*Gas pipeline*

- *appropriate setbacks of buildings from the natural gas pipeline are provided and the pipeline is located within a public service corridor.*

*Streets and linkages*

- *vehicle access is provided to Benmore Avenue and left in/left out access to Rangitikei Line.*
- *all streets shall interconnect with no cul-de-sacs.*
- *The cycle and pedestrian links shown on the Structure Plan are provided.*
- *Street design and planting shall adopt the structure plan street cross sections for Local and Local Collector Roads.*

*Subdivision design and integration*

- *For lots adjoining existing Meadowbrook Drive properties:*
  - *the subdivision design shall maximise alignment with existing lot boundaries for Nos. 7 to 31 Meadowbrook Drive.*
  - *a 1 storey height standard shall apply.*
- *a positive city edge is achieved by ensuring all lots adjoining the reserve enable dwellings fronting the reserve.*
- *the extent to which lots enabling dwellings fronting streets is maximised.*
- *the street and block layout provides for a fine grain walkable block structure as shown on the Structure Plan.*

*Typology and density*

- *Multi Unit Housing is enabled in the location shown on the Structure Plan, allowing for development up to 11m in height while ensuring reasonable sunlight access to adjacent properties is maintained.*
- *Commercial activities are enabled near the Benmore Ave connection that provide:*
  - *a positive relationship to the reserve and attenuation area*
  - *amenities and services for the local neighbourhood*
  - *an active frontage at the street edge.*

89. The term “have regard to” was intentionally used because the assessment criteria is exactly that, it is about assessment and not compliance. The purpose of the policy is to inform this assessment by setting out the design principles that apply. The recommendation from Mr Asgar is that this policy is expressed as “ensure that”. I disagree with that recommendation. There are must dos and there are matters that should be given a greater degree of flexibility into the detailed design process. The proposed Structure Plan is already a much more detailed Structure Plan than any other in the District Plan. To add a policy that says all design elements must be ensured is not justified and is not efficient and effective. This partly comes about by combining the two policies. It effectively confuses and conflates the critical outcomes in my proposed policy 2.8 with the wider design principles in my proposed policy 2.9 which are much broader.
90. For example Mr Asgar’s proposed rewording seeks to ensure that the multi unit housing area is all developed for multi unit housing and has active frontage to Road 1. To require that this area must be multi unit housing is a dramatic change in approach for the District Plan and is not justified. The tool used to enable multi unit housing in the District Plan is an overlay approach which provides additional higher density opportunities where owners and developers wish to take advantage of them. The same approach is proposed for this area and the provisions proposed are designed to achieve that.
91. It is also unnecessary in any of the limbs of Policy 2.9 to cross reference to the Structure Plan because that is already clearly stated in the first part of the Policy.
92. I also consider that Mr Asgar’s recommendation of an additional bullet point at the end of the “Subdivision design and integration” section to be unnecessary. The subject matter of housing mix is already covered in Policy 2.1 and otherwise all the additional bullet point does is state the activities provided for in the Structure plan.
93. Mr Asgar also seeks that there be a separate average lot size for the multi unit housing area of 250 m<sup>2</sup> – 350 m<sup>2</sup>. If the opportunity for multi unit housing is taken up for all or part of this area, then Rule R10.6.3.3 will apply. This requires a minimum notional site area of 150 m<sup>2</sup> and a gross floor area for each unit of a minimum of 60 m<sup>2</sup>. These rules are correctly in the Residential Section and

not the Subdivision section. The reality of multi unit development is that it is comprehensively designed and constructed with subdivision often coming late in the development process. To locate a rule requiring an average lot size in the subdivision section is neither effective or efficient. The multi unit area will likely be subdivided off from the rest of the more standard density lots as a separate project and development consented separately. The preliminary subdivision will not have an average size as sought by Mr Asgar because it will effectively be creating the development site or sites.

94. Finally, Mr Asgar has recommended the addition of the words "and encourage" to the proposed additional policy 9.7 which relates to the multi unit housing area. I have no difficulty in adding the words encourage however it would be helpful to understand what Councils intentions are to implement this part. What forms of encouragement are proposed? Will this be incorporated for example into the development contributions policy providing a material discount?

## **TRANSPORT**

95. Comprehensive evidence relating to Transportation has been provided by Harriet Fraser. There is a high level of agreement between her evidence and the report of Mr Rossiter.
96. In terms of the provisions Mr Rossiter recommended amendment to the Streets and Linkages section of the proposed "Design principles" policy (my policy 2.9). The issues I have raised above about the role of this policy have some application to the recommend change to the first bullet and in my opinion is better addressed in the manner proposed by the requestor. However, if it is determined that one single policy is to be recommended then this wording is appropriate.
97. Ms Fraser explains the relationship to the revised Engineering Standards and the proposed bespoke cross sections. These are also considered in other design evidence. To be clear the cross sections proposed are included in the Urban Design and Landscape Report and are also shown in Harriet Frasers Transportation Assessment but they were not sought to be included in the District Plan as part of the Structure Plan.
98. Further consideration of this matter by Ms Fraser has concluded that the cross sections now included in the Engineering Standards can be accommodated

and therefore a bespoke cross section is not required. Therefore, the bespoke cross sections do not need to be included in the provisions. Further, in the event that the Panel considers that additional reference to the Council Engineering standards is required within the "design principles" policy, then that can be accommodated with the wording recommended in Ms Frasers evidence which is as follows:

- The Local and Local Collector Roads have a minimum legal road reserve width of 15.5m in accordance with the Council's Engineering Standards.

### **COMMERCIAL ACTIVITY**

99. The proposed Structure Plan and now associated policy includes the provision of a neighbourhood centre close to Benmore Avenue. The location will have the stormwater detention area to the rear and also have a strong connection and outlook to the reserve.
100. Mr Asgar's evidence describes this as a commercial overlay. In this case that is not correct. There is an existing rule framework for neighbourhood centres within a Greenfield Residential Area which means that an overlay as such is not required. This was put in place previously as the Whakarongo Structure Plan includes a Neighbourhood Centre.
101. The Plan Change request also seeks a change to the wording of Rule 10.7.3.5. Mr Asgar's evidence at 3.76 quotes what was said in the Plan Change Request. However, he has determined that it is out of scope. This cannot be correct because the change was specifically requested and not deleted by Council prior to notification. Therefore, it must be within scope but as recognised in the request it has wider application than just Whiskey Creek.
102. The wording of the rule is as follows:

#### *R10.7.3.5 Commercial Activity*

*Any commercial activity, including the construction, alteration or addition to a building or structure within an allotment shown in a Comprehensive Development Plan in accordance with R7A.5.2.2 for use for commercial activity where an application for resource consent is made for the particular commercial activity and the application is included as part of the*

*application for subdivision consent to give effect to the Comprehensive Development Plan is a Restricted Discretionary Activity in respect of:*

103. The request is that the required qualification that the application is included as part of a subdivision consent to give effect to the Comprehensive Development Plan be deleted.
104. This is because, in my assessment, it is highly unlikely that the construction of a neighbourhood centre would be advanced at the same time as development based subdivision. What I would expect, in nearly all cases, would be the creation of the site for the neighbourhood centre through subdivision and then quite separately and probably sometime later once the area is partly developed (creating the necessary local market) the neighbourhood centre project will be advanced and consents sought. It seems frankly nonsensical to limit application of this Restricted Discretionary Rule to circumstances when it will never likely be able to be applied. I, therefore, continue to support this aspect of the plan change.

## **INFRASTRUCTURE**

105. Two aspects on Infrastructure are addressed in the Council evidence. Firstly, wastewater which does not raise any issues to trouble this hearing. This is largely because a pressure sewer system is proposed and is supported by Council.
106. Quite the opposite is the case in relation to Water Supply. The issues raised by Mr Miks report have come as a complete surprise to both the requestor and for that matter the District Plan Policy Section of the Council as demonstrated by Mr Duindam's evidence.
107. Mr Miks report states that the work to improve capacity in this sector of the City is programmed for 2025-2028. However, he has stated that there is the ability to redirect funding to bring this programme forward. With this in place he considers that the required capacity would be in place within 3-5 years. Mr Judd's evidence explores some alternative means of addressing the issue such that development of the land is not delayed. However, clearly the key point in time is when the first constructed dwellings wish to connect to the supply. Given the time to consent and complete the earthworks re contouring, the time to consent and construct the subdivision development works and then construct dwellings, 3 years may be manageable.

108. In response to this issue Mr Asgar has recommended that an additional policy is applied as well as a further performance standard where non compliance of the performance standard would trigger non complying activity status as opposed to Discretionary Activity Status.
109. The question of whether these provisions are justified and meet the tests of section 32 depends heavily on the extent and nature of the existing provisions in Section 7A and Section 10 which I outlined earlier in my evidence.
110. It is correct that the Objectives and Policies do not include provisions relating to water supply, unlike pressure sewer systems. However, despite this restricted discretionary performance standards for essential services clearly require all lots to have water supply services available.
111. The wording of this performance standard is important so is set out below:
- (b) Essential services*
- (i) All essential services must be available for connection within 30 metres of the nearest point of the land being subdivided.*
- (ii) All new lots must have sewer, stormwater and water supply services that are connected to essential services, including innovative/low impact stormwater designs as provided under the requirements for a Comprehensive Development Plan in R7A.5.2.2 and subject to the assessment criteria in R7A.5.2.3(a)(xii).*
- (iii) All new essential services proposed in a subdivision must be located in public service corridors and vested in Council where practical.*
- (iv) Wastewater in Pressure Sewer Areas shall be reticulated with a Pressure Sewer System.*
- For the purposes of R7A.5.2.2(b)(iii), the boundary kit and the pressure sewer pipe network located in public service corridors must be installed at the time of subdivision and vested to Council.*
112. In my opinion this seems clear that water supply services are required to be planned for at the time of subdivision but could be scheduled to be delivered ahead of the subdivision consent but prior to completion of any dwellings.

113. This is not however, the approach taken in the proposed additional performance standard which requires the supply to be available "at the time of subdivision". The standard proposed is a direct copy of that applied to the Pacific Drive Extension Area and is located in Chapter 7 as a Controlled Activity Standard. Mr Judd's evidence is that there are potential interim options to provide the required level of service for water supply ahead of additional bore supply. One realistic scenario is completing the subdivision works in two stages allowing space for tank storage of water on the undeveloped stage or even retaining sufficient titles in the developer's ownership to accommodate tank water storage. ....
114. In my opinion, the issue is adequately covered by the existing performance standards quoted above. However, if the Panel finds that is not the case then the standard proposed is generally appropriate but should be located with the other essential services standards at R7A.5.2.2(b). There is one exception to that and that is the wording "*at the time of subdivision*". Firstly, it is not clear exactly what point in the process that is referring to, and secondly as stated above it is completion of construction of dwellings that is the key point in time to ensure services are available. While generally it would be expected that water services would be available at the point of seeking approval pursuant to section 224 of the Act, in this case, there appears to be justification for a different approach based on "prior to completion of any dwellings". Clearly resource consent conditions can also address the detail of how this is to be delivered.
115. Given the above, I do not consider it efficient or effective to potentially cast the whole subdivision consent application into the non complying activity class of consent. The restricted discretionary / discretionary regime will remain effective at addressing this issue. I, therefore, do not support the recommendation that a non complying activity rule is inserted.
116. On this issue I also need to raise the question of whether there is scope from a submission to make any changes assuming you find that they have merit.
117. Mr Asgars evidence references the submission by Murray and Sally Rasmussen but then does not discuss that submission at all, just Mr Miks report. In reviewing that submission I acknowledge that there is a paragraph relating to "Lack of facilities for new housing residents". This covers a long list "the list goes on", which includes reference to "water" amongst many others. To



proceed in accordance with Mr Miks' and Mr Asgar's evidence, you would need to be satisfied that this is sufficient to establish scope for any changes and then further consider s32AA.

## **CUTURAL IMPACT**

118. A Cultural Impact Assessment by Rangitane o Manawatu was commissioned as part of the plan change development and was part of the formal plan change request. In addition, Ngati Turanga is a submitter. Further discussions have been held with both of these parties.
119. One of the matters further discussed is the desire from Rangitane o Manawatu to have further consultation on the detailed design and management of the proposed reserve area.
120. This is referred to at para 3.110 of Mr Asgars evidence. While Rangitane o Manawatu are not a formal submitter, the submission from Ngati Turanga refers to their inability to exercise mahinga kai and manakitanga obligations.
121. We have proposed to Rangitane o Manawatu that this issue is best addressed by amendment to the design principles policy proposed in the requestors submission.
122. This would add a further sub bullet under the heading Open space and Reserves so that it reads as follows:

### *Open space and Reserves*

- *the design provides for:*
    - *ecological restoration of the ephemeral tributary of Whiskey Creek as recreational reserve.*
    - *Consultation with Rangitane o Manawatu in relation to the design and preparation of a Management Plan for this area.*
    - *a dry formal equipped play area and a flat open space for informal recreation.*
123. This has been communicated to Rangitane o Manawatu and a further update on this is expected to be able to be provided at the hearing.

## **CONSERVATION AND AMENITY ZONE**

124. The issues raised by Council advisers are limited and not controversial. For clarity the stormwater detention area is not proposed to be located within the Conservation and Amenity Zone. It is proposed to be within the

Residential Zone. Also for clarity the Structure Plan as proposed shows this area in blue. The key to the Plan labels this as "Wetland / stormwater detention". There is no reference to this area being used for recreation functions. Further the "design principles" policy proposed by the requestor as submitter and discussed earlier does not include any reference that the detention area be used for recreation or open space purposes.

## **OTHER MATTERS**

125. The evidence of Mr Asgar covers off a number of other matters raised in submissions under the heading "Other Matters" . For the record, I agree with his assessments and recommendations relating to construction effects, versatile soils, water quality and the detention pond.
126. However, it is also important to address the common theme within submissions from neighbouring properties regarding adverse effects on their amenity. Amenity means different things to different people but there is of course a legal definition in the Act which is:
- Amenity values means those natural and physical qualities and characteristics of an area that contribute to peoples appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.*
127. This definition is very broad and sums up a wide range of what people see as positive as opposed to negative attributes of their location. This includes their individual property as well as their wider neighbourhood.
128. A common theme in the submissions is one factor in amenity and that is the loss of north westerly distant views over the plan change site and a loss of sunlight access from the proposed residential development. That concern is entirely understandable. Meadowbrook Drive properties adjoining the site have had the benefit of this distant view because the land has been used to grow maize crops and, between those crops, pasture. For residents at the northern end of Meadowbrook Drive there is a tall shelter belt of evergreen trees only 100 metres from their property and blocking distant views. The effect of that shelter belt reduces as you move south down Meadowbrook Drive.
129. The development for dwellings will change those amenity attributes to varying degrees depending on the individual property. However, so also

would a decision by the landowner to plant additional shelter belts or plant a tree crop. The District Plan rural zone expressly permits plantation forestry subject to a boundary set back of 5 m from any property boundary. The District Plan Rural Zone therefore does not protect either private views or sun access to neighbouring residential properties.

130. Notwithstanding this, the requestor heard these concerns during the public engagement and decided that the scale of change could be mitigated by adding greater controls than are applied to the Residential Zone in general. This is specifically
- (a) a permitted activity standard requiring height of buildings to be a maximum of 5 metres instead of 9 m where lots abut Meadowbrook Drive properties and
  - (b) a subdivision policy seeking to maximise the extent to which lot boundaries extend existing property boundaries on Meadowbrook Drive.
131. This will reduce building dominance, provide views from upper floors where they occur and provide a higher level of sun access than is required elsewhere in the residential zone.
132. Mr Burns evidence explores the sun access analysis in more detail. However, fundamentally these proposed provisions will reduce the potential extent of amenity change and indeed protect Meadowbrook Drive residents from the potential effects of tree planting if the land remained Rural.
133. Any analysis of amenity values must also take into account wider positive effects from the proposed development of the land. Of particular significance is the proposed stream reserve which will enhance amenity, recreation and habitat values, and also the provision of improved local facilities at the proposed neighbourhood centre.
134. A number of submitters have suggested that a walkway reserve be established at the rear of the Meadowbrook Drive properties as an additional measure to protect amenity. That is not supported by Council and in my opinion is not a practical measure to adopt. A walkway in this location would raise public safety concern and if not managed as a walkway would likely become a maintenance liability with adverse effects on amenity. In my opinion, it is better left in private control as gardens.

135. The existing plan rules require dwellings to comply with existing overlooking standards and separation distances. This requires any dwelling to be a minimum of 1.5m from the rear boundary and accessory buildings to be at least 1m from the rear boundary. Mr Burns assessment shows that the Structure Plan layout has been designed so that Road 2 allows for larger lots along most of this interface. An option available to the Panel is to impose a larger rear boundary set back for buildings. While this has potential to create design challenges at the southern end of this interface Mr Burns' evidence is that this can be accommodated if a wider yard of 3m was adopted.

### **DISTRICT PLAN OBJECTIVES**

136. The fit with District Plan objectives are considered in the Plan Change Request and in the evidence of Mr Asgar.
137. The evidence of Mr Duindam addressed residential capacity needs and strategic fit. This shows the urgency of additional short term supply which this plan change is capable of contributing to and lends weight to the need to reallocate funding to resolve the water supply constraint.
138. The wider context is also important which is that the Whakarongo Residential Area is now advanced but key future greenfield capacity plan changes at Aokautere and Kakatangiata are yet to be completed and publicly notified.
139. In terms of City View objectives Mr Asgar correctly draws attention to Objective 2 being:
- The provision of infrastructure, particularly within identified growth areas, shall be efficient, timely, environmentally sensitive and economically sustainable.*
140. The key terms here are "efficient" and "timely". As discussed earlier I consider the existing provisions are adequate to address the timing of development connections to water supply and any additional provisions should not prevent subdivision consent being granted with conditions addressing timing.
141. The water supply concerns seem to have only become apparent to Council only recently, and therefore consideration of solutions is understandably somewhat preliminary. To meet Objective 2 in the context of current housing land capacity Council needs to urgently reprioritise and put in place the

necessary works or agree that there are acceptable interim solutions as discussed by Mr Judd.

142. Mr Asgar also discusses Objective 5 being “A variety of high quality residential living environments are provided to satisfy the needs of all residents.” He considers this supports his recommended changes regarding the multi unit housing and related matters.
143. I disagree. This objective is about the City as a whole, it is a “City View Objective” about a City wide variety of living environments. Whiskey Creek makes up a very small part of that City wide environment. The proposed provisions include an average lot size of 400 m<sup>2</sup> to 500m<sup>2</sup> plus the enabled muti unit housing at the specified location.
144. This contrasts with both Whakarongo and Kikiwhenua which both have an average lot size of 500 m<sup>2</sup> to 550 m<sup>2</sup>. In advancing a higher density the Plan Change is in its small way actively promoting a greater variety of living environments.
145. With regard to the existing residential zone objectives, the important consideration is whether any of the provisions proposed conflict with these objectives. This is because these will also proposed apply to the Whiskey Creek Residential Area at the stage of dwelling development. In my assessment there is no conflicts.
146. In response to Mr Asgar’s comments at 4.18 regarding the proposed additional provisions for flood modelling. I have earlier stated that in accordance with Horizons submission it is proposed to complete the earthworks ahead of subdivision development and these will be consented separately from subdivision.

## **REGIONAL POLICY STATEMENT**

147. Mr Asgar at 4.31 states that he generally agrees with the assessment of the RPS provided with the plan change request. He rightly draws attention to Policy 9-2 which is the “outside floodway hazard avoidance policy”. A number of submitters have questioned the application of this policy which is set out in full at para 4.36 of Mr Asgar's evidence.

148. The essential issue here is that development should not occur on land that is subject to flooding in a 1 in 200 year flood event, with some specific exceptions. The proposal is that all land that will be developed for housing will be above the 200 year flood level plus freeboard prior to the subdivision development occurring. This fully meets the requirements of the RPS in terms of flood avoidance and I have supported some of the recommended additional provisions regarding minimum floor levels to make this even clearer.
149. A future adjustment to the Map at Schedule J of the RPS to fit the future flood prone area will be required as a consequence of the changes to ground levels.

### **NATIONAL POLICY STATEMENT ON URBAN DEVELOPMENT**

150. The NPS UD is also considered in the Plan Change Request and focuses on achieving well functioning urban environments. The assessment noted that Policy 8 of the NPS UD requires Councils to be “responsive” to plan changes that would add significantly to development capacity and contribute to well functioning urban environments, even if the development capacity is:
- Unanticipated by the RMA planning documents
  - Out of sequence with planned land release.
151. In this regard Mr Duindam's evidence is relevant in that Council considers that it is neither unanticipated nor out of sequence other than the newly identified constraint of water supply. The Council has been responsive to the plan change request and it is supported subject to a number of now proposed provision changes which are examined in this evidence.

### **PART 2**

152. Mr Asgar has also considered Part 2 matters and concluded that there are no matters that prevent this plan change being approved. The debate for the hearing therefore is largely about detailed matters of the provisions addressed in this evidence.

**Paul Norman Thomas**

**18 May 2022**