

21 March 2018

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By email

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Dear Burnette

WARKWORTH NORTH PRIVATE PLAN CHANGE REQUEST

1. INTRODUCTION

- 1.1 We have been asked to advise SF Estate Limited ("**Applicant**") on the availability of the private plan change process through Schedule 1 of the Resource Management Act 1991 ("**RMA**") for its proposed Warkworth North Plan Change.
- 1.2 We understand that the Applicant has developed a comprehensive structure plan for an area of land in Warkworth North. To enable development on this land, a private plan change ("**plan change**") to the Auckland Unitary Plan (Operative in Part) ("**AUP**") is necessary because the land is currently zoned Future Urban Zone ("**FUZ**"). The FUZ is subject to a restrictive policy framework, which requires avoidance of urbanisation (eg development for residential or business uses) until sites have been rezoned for urban purposes. We have reviewed final drafts of the reports accompanying the plan change, along with your section 32 analysis.
- 1.3 The Council's Future Urban Land Supply Strategy ("**FULSS**") refresh indicated that the Council intended to commence its own structure planning and plan change process in late 2017 and has identified the land as being development ready from 2022. However, little to no progress has yet been made by the Council. The Applicant is ready to undertake development of the land. In recognition of the time involved in undertaking comprehensive planning exercises, and the fact that key infrastructure is intended to be in place in 2021, the Applicant has undertaken its own structure planning process in accordance with the guidelines in Appendix 1 to the AUP.
- 1.4 As the plan change is to be lodged within two years of the AUP becoming operative (in part), the Council has the discretion to accept or reject it under cl

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25(4)(e) of Schedule 1 to the RMA. It may also reject the plan change for other reasons under cl 25(4)(a)-(d), including if the request is frivolous or vexatious, the substance of the plan change has been considered in the past two years, the plan change is not made in accordance with sound resource management practice, or the plan change would cause the operative plan to be inconsistent with Part 5. You have asked us to provide advice on the merits of the Council approving the request for processing and notification.

Executive summary

- 1.5 The Applicant's plan change seeks to provide for a high quality urban environment in the Warkworth North area that is seamlessly connected to the existing urban area in Warkworth; relates to Warkworth's distinctive character; contributes positively to the existing Warkworth town centre, residential community, and Warkworth community; and achieves the intent of the FULSS and the Auckland Plan.
- 1.6 It is lawful for the Applicant to request a plan change prior to the AUP becoming operative in full, given the provisions it will be seeking to amend (ie the Future Urban zoning) are already operative.
- 1.7 We do not consider that the Council is entitled to reject the request on any of the grounds in cl 25(4)(a)-(d).
- 1.8 Equally, there are no valid grounds for rejecting the request on the basis that it has been lodged within two years of the AUP becoming operative (in part), when viewed against both:
 - (a) the Council's criteria (which, importantly, are not mandatory relevant considerations under the RMA); and
 - (b) the key statutory tests (which are).
- 1.9 In our view, the plan change request should be accepted for processing.

Scope / outline of opinion

- 1.10 Our opinion is outlined as follows:
 - (a) Background and context.
 - (b) Planning framework for a request.
 - (c) The statutory framework and factors relevant to the request.
 - (d) Scope for making the request while the AUP is operative in part.
 - (e) Merits of the Council accepting the request for processing.
 - (f) Conclusions.

2. BACKGROUND AND CONTEXT

- 2.1 The Applicant proposes to undertake a substantial rezoning of FUZ land within the Warkworth North area to provide for a range of potential land uses. A mix of zones has been selected, including General Business, Mixed Housing Urban, Mixed Housing Suburban, Local Centre, Single House Zone, and areas of open space land. It is anticipated that the plan change area will provide approximately 800 to 1080 dwellings within those zones, constructed in a staged and careful manner.¹
- 2.2 The plan change area is well-defined and contained. The eastern boundary of the area is the existing State Highway 1. To the north of the area is the proposed Northern Motorway extension. To the west, the area is bordered by the Viv Davie Martin Drive residential development. The Mahurangi River forms the southern boundary.



Figure 1: Structure Plan Area

¹ The actual number will depend in large part on the mix of single site and medium density, multi-unit residences that are constructed in the final design.

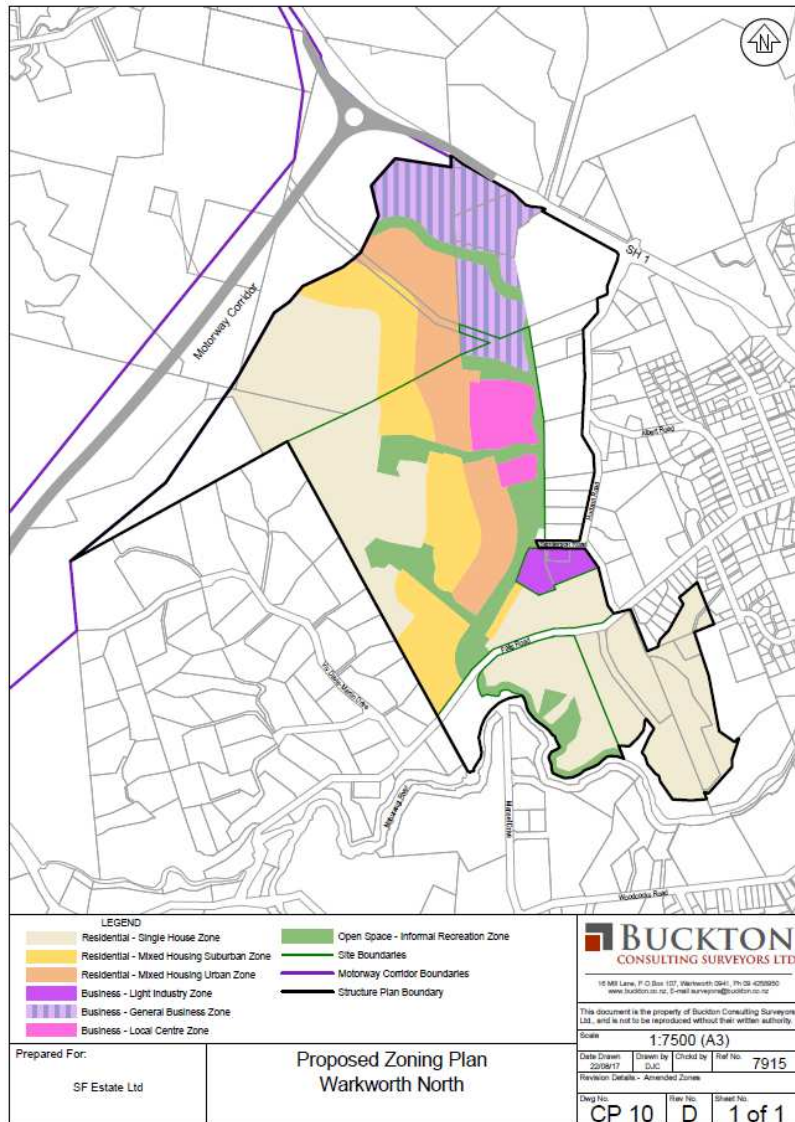
- 2.3 The land within the plan change area is predominantly rural, with the exception of the existing industrial strip that fronts Hudson Road, and the existing General Business zoned land on the corner of Hudson Road and State Highway 1. The land is mostly steep, although the land adjoining the existing State Highway 1 is of a gentle contour. There are watercourses and geo-technical challenges in some areas.

Why is the Applicant seeking the plan change?

- 2.4 Auckland is projected to reach a population of more than 2.4 million by 2047,² and it is currently anticipated that approximately 400,000 new dwellings and 277,000 additional jobs will be needed.³ The 15,000 ha of FUZ land identified in the AUP is intended to provide for approximately 137,000 of those dwellings.
- 2.5 As identified above, Warkworth North has been identified as a growth area for future urban expansion in the FULSS. The significant growth identified is intended to align with the completion of the Northern Motorway extension from Puhoi to Warkworth (currently anticipated to occur in 2021), and associated upgrades to the local roading network. The Snells Beach Wastewater treatment plant, and associated pipeline infrastructure, is also expected to be implemented over the next five to six years. The development of this land has been prioritised over other FUZ land in more southern parts of Warkworth, owing to those accelerated growth factors identified above.
- 2.6 The Applicant's vision for the plan change is to create a high quality urban environment in the Warkworth North area that:
- (a) is seamlessly connected to the existing urban area in Warkworth;
 - (b) relates to Warkworth's distinctive character;
 - (c) contributes positively to the existing Warkworth town centre and the wider Warkworth community; and
 - (d) achieves the intent of the FULSS and the Auckland Plan.
- 2.7 The proposed zoning of the plan change area is shown below.

² Future Urban Land Supply Strategy ("FULSS") dated July 2017 at p 4.

³ Ibid.



- 2.8 It shows a mixture of Single House Zone, Mixed Housing Suburban Zone, Mixed Housing Urban Zone in three rough corridors from north to south, with some General Business Zone land to the north-east, and a new Local Centre Zone to the west of the existing Industrial and General Business Zone land. Informal Recreation zoned land is proposed around existing watercourses. This mix of uses and spatial distribution of zones is supported by detailed technical and evidence-based assessments provided by the Applicant.
- 2.9 Developing the land in this manner will provide much-needed housing to accommodate some of the anticipated demand for the area. The mix of housing types proposed is appropriate to provide a range of living opportunities at affordable prices and to utilise the land resource in an efficient manner. The location of the plan change area close to major transport networks provides an opportunity for higher density development balanced with business activities on the gentler contour land, consistent with the general approach taken in the AUP.

- 2.10 With the population growth and greater demographic diversification in Warkworth, there will also be a demand for business and professional service activities that have not traditionally located in Warkworth. Parts of the plan change area are also well-placed to help meet some of that demand.

What does the Applicant hope to achieve through the plan change?

- 2.11 The Applicant has a number of objectives for the plan change, including to:
- (a) achieve an optimal urban development outcome consistent with the regional policy direction in the AUP;
 - (b) achieve a compact urban form that responds to the physical characteristics and constraints of the Warkworth North area;
 - (c) define and enhance existing and future business areas to support anticipated residential growth;
 - (d) provide for a range of living choices (including affordable options) with a high level of amenity that is respectful to Warkworth's identity;
 - (e) protect and enhance, to the extent practicable, key landscape and ecological elements;
 - (f) provide for well-integrated development, especially in relation to pedestrian, cycling, and vehicular connectivity.
- 2.12 To achieve those objectives, the Applicant either now owns or has interests in land within the plan change area to bring forward the anticipated development of the land in a manner that is consistent with the FULSS and the Auckland Plan.
- 2.13 In addition to the plan change area, there is another 204 ha of FUZ land in Warkworth North that will be developed over the next four to five years. Approximately 2,300 dwellings are anticipated in the total 324 ha of FUZ land available to be rezoned in Warkworth North.

Timing of the Council's structure planning process

- 2.14 The original version of the FULSS indicated that the Council structure planning process for the wider Warkworth area would not take place until 2022-2026. The plan change was developed against that background, and the counter-factual, which was that land that could be made development-ready much earlier, would sit fallow for a number of years while the Council undertook structure planning processes in other areas as a matter of priority.
- 2.15 The Council has since reviewed and released a refreshed FULSS in July 2017, part of which it brought the structure planning process for Warkworth forward to 2017, with Warkworth North now to be "development-ready" by 2022. It is also understood that it is Council's intention for live zoning to be introduced to Warkworth North "by early 2021" at the latest, at least one year earlier than

indicated and coinciding with the provision of key infrastructure referred to above.⁴

- 2.16 The Council's refreshed FULSS has accelerated the urban development of Warkworth North (subject to the Council meeting its self-imposed timeframes for delivery). However, the Council has accepted that it is open to privately initiated structure plans and plan changes for FUZ land, as can be seen from its recent approval of the Auranga plan change request at Drury West.⁵ Like Warkworth North, Drury West has been brought forward from the 2022-2026 block to 2018-2022 in the Council's refreshed FULSS, with Stage 1 of the Drury West area also to be "development ready" from 2022. In those ways, there is a certain similarity to the background for this plan change request and the recently accepted plan change request for Stage 1 of the Drury West development that is unaffected by the recent changes in the Council's own structure planning process.

The status of the AUP and appeals on the AUP

- 2.17 As you will be aware, the AUP was prepared in accordance with the Local Government (Auckland Transitional Provisions) Act 2010 ("**LGATPA**"). The AUP went through an Independent Hearings Panel process which heard thousands of submissions and issued a report on the Unitary Plan. The Council's decisions on the Future Urban Zone provisions were not subject to appeal, and are now operative.⁶
- 2.18 The Applicant is not seeking to alter any policies or rules in other sections of the Unitary Plan through its plan change, and therefore it is not necessary to consider any ongoing appeals or the parts of the Unitary Plan that are not yet operative. Appeals on the Urban Growth and Form chapter of the Regional Policy Statement ("**RPS**") are not relevant as the Applicant is similarly not seeking to amend any of the provisions of the RPS through this plan change.

3. STATUTORY FRAMEWORK AND FACTORS RELEVANT TO PLAN CHANGE

- 3.1 Whilst the Unitary Plan was prepared under the LGATPA, any plan changes are to be made in accordance with process set out in cls 21 to 29 of Schedule 1 of the Resource Management Act.⁷

Scope for requesting a plan change to the AUP

- 3.2 Under cl 21 of Schedule 1 of the RMA, private plan change requests can only be made in respect of an operative planning instrument.⁸ The AUP is not fully operative; it has only been made operative in part. However, private plan change

⁴ Evidence of Ross Moffatt for Auckland Council dated 6 October 2017, ENV-2017-AKL-00075, at [4.3].

⁵ Evidence of Ross Moffatt for Auckland Council dated 6 October 2017, ENV-2017-AKL-00075, at [5.12].

⁶ LGATPA, s 160 and RMA, Schedule 1, cl 20(1). See notice in the New Zealand Herald dated 8 November 2016, that the AUP would be operative in part on 15 November 2016.

⁷ LGATPA, s 117(2).

⁸ *Prospectus Nominees v Queenstown Lakes District Council* [1996] 2 ELRNZ 262 (PT).

requests can also be made in relation to a plan that is operative in part, provided that the request relates to a provision that is operative.⁹ Two private plan changes (Auranga B1 (Plan Change 6), and King's College (Plan Change 8)) have been accepted on that basis.

- 3.3 Based on our analysis of the relevant statutory framework and case law, our view is that it is lawful for the Applicant to make a private plan change request prior to the Unitary Plan becoming operative in full, given the provisions it will be seeking to amend (ie the Future Urban zoning of the Site) are already operative.

Options available to Council in considering the request

- 3.4 Under cl 25(2) of Schedule 1 to the RMA, the Council may adopt or accept the private plan change request, convert the request to a resource consent application, or reject it. The Council can only reject the plan change request if one of the criteria in cl 25(4) is met.

- 3.5 Clause 25(4) of Schedule 1 to the RMA states that:¹⁰

The local authority may reject the request in whole or in part, but only on the grounds that –

- (a) The request or part of the request is frivolous or vexatious; or
- [[(b) within the last 2 years, the substance of the request or part of the request –
 - (i) Has been considered and given effect to, or rejected by, the local authority or the Environment Court; or
 - (ii) has been given effect to by regulations made under section 360A; or]]
 - (c) The request or part of the request is not in accordance with sound resource management practice; or
 - (d) The request or part of the request would make the policy statement or plan inconsistent with Part 5; or
 - (e) In the case of a proposed change to a policy statement or plan, the policy statement or plan has been operative for less than 2 years.

⁹ *Kerikeri Falls Investments Limited v Far North District Council* [2010] NZRMA 425 (EnvC).

¹⁰ RMA, Schedule 1, cl 25(4).

4. CAN THE COUNCIL REJECT THE PLAN CHANGE?

Grounds for rejecting the plan change (other than timing) do not exist

4.1 We assess the Application against each of the grounds under cl 25(4) below. In each case, the grounds for rejection are not met.

The private plan change request is not frivolous or vexatious – cl 25(4)(a)

4.2 The plan change request is not frivolous or vexatious:

(a) It has been thoroughly considered and supported by expert independent opinion, and a fulsome s 32 analysis, and cannot be said to have no reasonable chance of succeeding.

(b) It cannot be viewed as vexatious.

The substance of the request has not been subject to consideration by the local authority within the last two years – cl 25(4)(b).

4.3 In relation to cl 25(4)(b), the plan change seeks to amend the zoning of the land.

4.4 It is accepted that the zoning of the land was considered during the hearings process for the AUP, and rather than live zone the land at the time, the Panel (and Auckland Council) saw fit to zone the land as FUZ.

4.5 In that sense, and at that high level, the same substance (ie zoning) that will be considered during the plan change was considered by the Council within the last two years. However, it is important to note that the situation is different from one where the Council decided to live zone land, only for it to receive a plan change request to change that live zoning within two years. The clear intent of the provision is to allow a plan to settle and be administered following a change.

4.6 However, in the case of the FUZ, the AUP specifically envisages plan change requests being made, evidenced by the structure plan process in Appendix 1 and the objectives and policies that encourage development on that basis. That is precisely what is occurring now, and what has also occurred in Drury West. It would make nonsense of the AUP for it to provide for integrated development of rural land to meet Auckland's desperate need for growth, particularly in greenfield areas that are suitable for urbanisation (as indicated by the location of the FUZ and the RUB), but only after a two-year moratorium has passed under cl 25(4)(b). Such an interpretation would only exacerbate the existing problems.

The request has been made in accordance with sound resource management practice – cl 25(4)(c)

4.7 The Environment Court in *Hall v Rodney District Council* set out a number of relevant factors that may count against a request being made in accordance with sound resource management practice, including if:¹¹

¹¹ *Hall v Rodney District Council* [1995] NZRMA 537 (PT) at page 12.

- (a) the more appropriate means of achieving the statutory purpose is by some other method (eg a forthcoming review);
- (b) the request is (relatively) inefficient and ineffective compared to other means;
- (c) the request has implications for a wider area than the plan change area itself;
- (d) other interests are prejudiced by the local authority adopting or accepting the request; and
- (e) the need for general review.

4.8 However, issues as to timing will not lightly result in an otherwise worthy application being rejected:¹²

In general terms I think it is drawing a long bow to hold that a timing issue (assuming a request's timing is not frivolous or vexatious) will result in an otherwise unobjectionable proposal offending.

4.9 To the contrary, the private plan change request has been made in accordance with sound resource management practice:

- (a) Comprehensive expert assessments and reports state that the proposed zoning of the area is appropriate, consistent with the Auckland Unitary Plan and will achieve the purpose of the RMA. No similar review (other than the Council's own structure planning process) is forthcoming.
- (b) The private plan change has been designed to "tie in" with developments in other areas within Warkworth North, to limit its implications beyond the subject area. In particular, the linking of the request with the roading and wastewater infrastructure upgrades required, and designed, to service the area mean that any wider implications for people within the Warkworth area are limited.
- (c) Similarly, other interests within the plan area will not be prejudiced. The Applicant has also consulted extensively with stakeholders and landowners with interests in land within and adjacent to the plan area and, in large part, the proposal has been revised to address their concerns. Outcomes of that consultation have involved removing some land from the plan change area, the reconsideration of roading improvements, retention of existing industrial land and appropriate setbacks to other (potentially sensitive) activities. Conversations are ongoing in relation to land on either side of the plan area boundary that is currently farmed. Those people will have the opportunity to submit on the plan change request and

¹² *Malory Corporation Limited v Rodney District Council* [2010] NZRMA 392 (HC) at [98].

seek changes to the design. Discussions regarding the necessary infrastructure required to service the proposed development are ongoing.

- (d) As discussed above, there is no need for a more general review of plan provisions in the circumstances where the AUP has been designed specifically to allow for requests of this kind to progressively rezone land for urban development.

The request would not make the AUP inconsistent with Part 5 RMA

- 4.10 Part 5 RMA prescribes the key components and characteristics of planning instruments promulgated under the RMA. It also establishes the hierarchy of documents, from national policy statements down to district and regional plans (or, as in this case, a unitary plan). Nothing in this plan change request would lead to the AUP becoming inconsistent with Part 5 RMA. One of the purposes of plan-making is to assist the Council in achieving the purpose of the Act. Housing, and the efficient and effective use of land (as a natural and physical resource) for that purpose, is clearly a matter that the AUP is intended to address in achieving that purpose.
- 4.11 The process being undertaken is entirely consistent with the structure plan process set down in the AUP to give effect to that purpose. As such, the PPC will not make the Unitary Plan inconsistent with Part 5 of the RMA.

Conclusion on cl 25(4)(a)-(d)

- 4.12 As such, we not consider that the Council is entitled to reject the request on any of the grounds in cl 25(4)(a)-(d).

Clause 25(4)(e) – within two years of the AUP becoming operative

- 4.13 The private plan change request is due to be lodged within two years of the relevant provisions of the AUP having become operative.¹³ Therefore, the Council's discretion to reject a plan change under cl 25(4)(e) will be engaged. However, that discretion is not unfettered. The Court in *Kerikeri Falls* held that:¹⁴

[38] The 2 years in clause 24(4)(e) is a maximum, and the discretion to reject a request is not an unfettered one.

[...]

[42] We agree that the grounds in sub-clause (4), apart from (e) are very narrow, and that there is no sensible basis for holding that (e) suddenly introduces powers of a wide and unrestricted kind.

¹³ The last date on which cl 25(4)(e) would apply to a similar qualifying development would be 15 November 2018. We understand that the Applicant's intentions are to lodge well in advance of this date, in order to comply with its own timeframe to live zoning.

¹⁴ *Kerikeri Falls* at [38].

(Emphasis added)

4.14 Ultimately, the Court held that any such determination must take place on a principled basis, consistent with sound resource management practice (echoing the considerations in cl 25(4)(c) above) and with the purpose of the RMA.

4.15 We understand that the Council's Planning Committee has adopted criteria for determining any requests made within the two year timeframe. The Council's criteria are:¹⁵

- i) any matter specified in cl 25 of the First Schedule of the Resource Management Act 1991;¹⁶
- ii) whether the outcomes of any plan change:
 - align with the Future Urban Land Supply Strategy, and
 - give effect to the Auckland Plan, and
 - follow Appendix 1 – Structure Plan Guidelines of the Auckland Unitary Plan for any structure planning related plan change, and
 - give effect to the environmental outcomes expected and effectiveness of the Auckland Unitary Plan.

Matters specified in cl 25 RMA do not apply

4.16 The matters in cl 25 have been addressed above and will not be repeated here.

The request aligns with the FULSS

4.17 As stated above, the plan change request aligns with the FULSS.

4.18 Similar to Plan Change 6 which has been accepted and notified for submissions, the plan change request relates to an area that was earmarked to be "development ready" in 2022-2026, but has now been brought forward to be "development ready" by 2022. The Council's stated intentions are for the Warkworth North area to be ready even earlier, by early 2021 at the latest. The plan change has been designed to integrate with the key infrastructure developments that are tied to the timing of development for Warkworth North in the FULSS.

4.19 No sufficiently distinguishable characteristics exist between the alignment of Plan Change 6 and the present request. As a local authority exercising public powers,

¹⁵ Auckland Council Planning Committee Minutes of 28 March 2017 meeting at page 9.

¹⁶ We presume this does not intend to refer to cl 25(4)(e), but rather to the other criteria in (a)-(d). Otherwise, the criterion would be self-fulfilling.

the Council is under a duty to act consistently and treat like cases alike.¹⁷ That is a fundamental requirement of the rule of law.

4.20 The Council has previously relied upon a distinction between this application and Plan Change 6 on the basis that the Supporting Growth document identifies the plan change area as "Potential Business", rather than residential.¹⁸ It has made the point that the proposed zoning for Plan Change 6 was consistent with the potential zoning identified in Supporting Growth.¹⁹

4.21 A number of points can be made here regarding the lack of assistance that Supporting Growth provides:

- (a) The Council has limited itself to consideration of the FULSS (and the Auckland Plan, to be discussed below). It does not rely on inconsistency with Supporting Growth as a criterion for rejection of a plan change request, nor does it tie into the FULSS or the Auckland Plan. To that extent, Supporting Growth is an irrelevant consideration that should not be taken into account.²⁰
- (b) Supporting Growth has not been subject to the same level of rigour or community engagement that would be expected of a plan change, or a spatial plan like the Auckland Plan. The community engagement involved focused solely on potential transport network improvements, and requested feedback on those improvements. It did not explicitly call for feedback on whether the potential zonings and related land uses were, in fact, appropriate. It would be inappropriate to rely on Supporting Growth as the community's view of future development potential in Warkworth North.
- (c) The potential zoning identified in Supporting Growth is a snapshot taken as at July 2016. There is no rationale for the date of that snapshot, other than (as best we can tell) that it was around the time that the material for Supporting Growth was being prepared. Considerable time has passed since that date, and a number of changes have not yet been factored into that assessment (eg the FULSS Refresh in July 2017) which, as a consequence, is likely to be outdated.
- (d) Supporting Growth itself states that the land use (and, therefore, potential zoning) it has applied is "subject to further investigation, as well as resolution of appeals and statutory process [sic] arising from the Unitary Plan process". The reference to "statutory process[es]" is quite clearly code for the structure plan and plan change processes (as well as any

¹⁷ See eg *Patel v Chief Executive of the Department of Labour* [1997] 1 NZLR 102 (HC); and *Waikato Regional Airport Ltd v Attorney-General* [2003] UKPC 50, [2004] 3 NZLR 1.

¹⁸ Evidence of Ross Moffatt for Auckland Council dated 6 October 2017, ENV-2017-AKL-00075, at [4.5], [7.7], and [8.2].

¹⁹ *Ibid* at [5.15].

²⁰ The Courts have held that decision-makers make reviewable errors of law where they misinterpret or fail to apply guidelines which they have voluntarily adopted: *Chiu v Minister of Immigration* [1994] 2 NZLR 541 (CA).

consenting required), and the document makes plain that it is not attempting to pre-judge the outcome of any finer-grained analysis.

- (e) Documents released by the Council, such as the draft Warkworth Business Land Assessment produced by Market Economics, state that Supporting Growth:
- (i) "identified **at a very high level** which parts of the FUZ **might** be appropriate for different activities";
 - (ii) "is only an **indication**" of potential future business land; and
 - (iii) "provides some **initial baseline**" only for the assessment that followed.

(emphasis added)

The reservations in the Assessment reflect the level of care that should be taken with Supporting Growth. It is unlikely to form a sound basis for the rejection of a private plan change alone, absent other, more compelling analysis.

The request will give effect to the Auckland Plan

- 4.22 The Auckland Plan provides a high level strategic framework for growth and development in the Auckland region over a 30 year time period. The Plan, which was initially drafted in 2012 and is now subject to review, anticipated the staged release of land for urban development from the current urban core extending out the extent of the Rural Urban Boundary that was included in the notified version of the AUP.
- 4.23 The request is consistent with, and will give effect to that approach as the plan change area adjoins the existing urban area, and adjoins a wider area of land that is zoned FUZ. In that sense, it falls within the "Years 1 to 10" area identified in the Auckland Plan, and therefore urbanisation of that land within the current timeframe is anticipated.
- 4.24 The proposal to provide housing (including affordable housing) aligns with the key strategies to combat the growth challenge facing Auckland as set out in the Auckland Plan. Importantly, the only indication given that the land is to be used for industry or business activities comes from Supporting Growth, which (as explained above) is an irrelevant consideration for accepting or rejecting a plan change request, and, in any event, is unlikely to be particularly reliable.
- 4.25 Based on the various technical reports commissioned for the structure plan and plan change; Ms O'Connor undertook an analysis of the alternative options to ensure that the best and most practicable land use option was selected, based on the experts' opinion and also with consideration to the relevant statutory requirements for a plan change process. The other options she assessed were; retaining FUZ, rezoning the entire area to light industry, or some other business zoning as indicated in Supporting Growth, rezoning the land with a mix of

General Business and Local Centre on the flatter land with Residential – Single House scattered around, and the current proposal. Taking all relevant matters into account, she concluded that the chosen option is the optimal outcome.

The request follows the Structure Plan Guidelines

- 4.26 The plan change request follows Appendix 1 – Structure Plan Guidelines of the AUP ("**Guidelines**"). In particular:
- (a) The level of analysis contained is appropriate to the type and scale of development, which is a significant residential and business mixed development in a predominantly greenfield area close to an existing urban area.
 - (b) It takes into consideration:
 - (i) the Auckland Plan (as discussed above);
 - (ii) relevant national policy statements, especially the National Policy Statement on Urban Development Capacity (discussed further below);
 - (iii) the AUP (discussed further below);
 - (iv) the Council's long-term plan and its implementation programmes;
 - (v) local board plans and area plans;
 - (vi) infrastructure providers' plans, strategies, codes of practices and programmes, and particularly the Regional Land Transport Plan, Auckland Transport's Integrated Transport Programme, and Watercare Services Limited's Asset Management Plan; and
 - (vii) iwi planning documents and Treaty settlement legislation;
 - (viii) Auckland Council's Parks and Open Space Strategy Action Plan, the Auckland Design Manual, and Code of Practice for Land Development and Subdivision.
 - (c) It investigates and comprehensively addresses the matters set out in section 1.4 of the Guidelines, particularly urban growth and development, natural resources, transport and infrastructure requirements, and feedback from key stakeholders.
 - (d) It includes the necessary specialist reports required under section 1.5 of the Guidelines, appropriate to the scale and complexity of the process.

The request gives effect to the expected environmental outcomes and effectiveness of the AUP

- 4.27 The request gives effect to the expected environmental outcomes and effectiveness of the AUP. Those expected environmental outcomes, and the effectiveness of the AUP itself, are largely safeguarded by the detailed structure planning process required under Appendix 1 (discussed in detail above).
- 4.28 However, the objectives and policies of the AUP, particularly in relation to urban growth and form, also play an important role in determining the appropriateness of any plan change request to rezone FUZ land for urban development (as any change in zoning will need to be the most appropriate means of achieving those objectives under s 32(1)(b) RMA). We have reviewed the section 32 analysis supporting the plan change request and, without repeating its contents, confirm our view that the assessment you have undertaken is robust, and the correct approach has been taken to that assessment (in particular, that the benefits of the proposed approach have been assessed against its costs, informed by the directions contained in the objectives of the AUP).
- 4.29 In our view, the plan change request would not result in any plan integrity issues, or concerns relating to the efficient administration of the Council's functions under the AUP. We also note that acceptance of the plan change for processing does not make the resulting process a *fait accompli*. The application will still need to be assessed on its merits,²¹ and will stand or fall on its consistency (or otherwise) with the key tests for plan changes established following the Supreme Court's decision in *Environmental Defence Society Inc v The New Zealand King Salmon Company*.²²
- 4.30 On that basis, and viewed against the Council's criteria (which, importantly, are not mandatory relevant considerations under the RMA) and the key statutory tests (which are), there are no valid grounds for rejecting the request under cl 25(4)(e).
- 4.31 In our view, the plan change request should be accepted for processing.

5. CONCLUSION

- 5.1 As discussed above, we consider that there are no grounds for the Applicant's request to be rejected under cl (25)(4). As such, we consider that the application should be accepted (or adopted) and notified for public submissions so that it can be considered on its merits.

²¹ *Malory Corporation Limited* (HC), above n 12 at [65].

²² *Environmental Defence Society Inc v The New Zealand King Salmon Company* [2014] NZSC 38; [2014] 1 NZLR 593.

5.2 Please let us know if you wish to discuss this further.

Yours faithfully
RUSSELL McVEAGH

A handwritten signature in blue ink, appearing to be 'Bronwyn Carruthers' or 'Aidan Cameron', written in a cursive style.

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