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Dear Mya

Response to valuations received by the Commission

1. Valuations by Turley & Co Ltd and Knight Frank

1.1 CWH and NZWSI (the **parties**) have had the opportunity to review the valuations received by the Commission from Knight Frank (**Knight Frank**) and Turley & Co Ltd (**Turley**) (together described as the **Commission's Valuers**) and have provided the respective valuation to the valuer who valued the properties on behalf of CWH and NZWSI. Letters from each of these valuers critiquing the valuations received by the Commission are attached. The parties highlight in this letter the more significant issues arising from these letters, as well as drawing attention to major issues which have led to the several discrepancies described below. The following critiques of the Commission's Valuation Reports are attached: Telfer Young Letter dated 23 June 2015 (Clive Valuation) attached as Appendix 1, Logan Stone Letter dated 19 June 2015 (Whakatu Valuation) attached as Appendix 2 and Telfer Young Letter dated 19 June 2015 (Kaputone Valuation) attached as Appendix 3.

2. General comments

- 2.1 The first point the parties wish to make is that the process adopted has resulted in material discrepancies which require serious review and reconciliation to achieve correct valuation outputs.
- 2.2 The second point is that each of the valuations received by the parties were carried out for reasons unrelated to the Authorisation Application: the Kaputone valuation was carried out **[REDACTED]** and the other valuations were carried out **[REDACTED]**. For that reason the valuations cannot be suggested to be inflated in order to enhance the public benefits claimed.
- 2.3 Further, post authorisation, both the Clive and the Whakatu sites will be separated from the merged entity **[REDACTED]**. Accordingly, both parties to the merger transaction were incentivised to ensure that the valuations represented independent market value.
- 2.4 Given the points made in paragraphs 2.1 and 2.2, the Commission must address the valuations received from its valuers with considerable concern regarding the accuracy of their outputs, particularly once it takes into account the erroneous assumptions which have been made by the valuers and which alone account for most of the considerable differences in value.
- 2.5 There are three principal errors in the valuations carried out by the Commission's Valuers.

- (a) [REDACTED].
- (b) [REDACTED].
- (c) [REDACTED].

2.6 In reviewing the independent valuation process fully, the parties believe that part of the reason for these errors is due to the instruction brief from the Commission inadvertently raising problematic issues, such as "...the current valuations provided by Cavalier and NZWSI may not take into account a number of factors which could potentially alter the final valuation" - while not describing what those factors might be. In the parties' view, the brief would have been sufficient if it included a simple request to each valuer to carry out a vacant possession valuation of the property taking into account all relevant factors. By stressing that the parties' valuations might not have taken account of a number of factors, the Commission's Valuers were inadvertently directed to look for special and unusual factors and give them special attention, and they did so.

2.7 Overall, the parties consider the Commission's brief invites its valuers to search for a conservative valuation, not a true market valuation which would reflect the value of the release of each site as a valuable resource in the manner discussed by Justice Mallon in the High Court in *Godfrey Hirst v Commerce Commission* High Court, Wellington, CIV-2011-485-1257 [23 November 2011] (the **High Court Decision**). The parties consider that has led the valuers to introduce a number of factors (e.g. [REDACTED]) that they do not have the expertise to determine or to address and to [REDACTED].

2.8 In addition, from correspondence between the Commission and William Blake, it is clear there were significant time pressures placed on the valuers, with which they were not comfortable. The parties believe these time pressures also likely contributed to the adoption of the sometimes erroneous assumptions made by the valuers.

3. Clive valuation

3.1 There are a number of erroneous propositions adopted by the Turley Valuation of Clive, each of which is addressed below.

3.2 CWH has attached to this submission a report [REDACTED] (Appendix 4), which refers to an [REDACTED].

[REDACTED]

3.3 The Turley Valuation of the Clive scour site states that there is [REDACTED].

3.4 [REDACTED].

3.5 [REDACTED].

3.6 [REDACTED].

3.7 [REDACTED].

3.8 [REDACTED].

[REDACTED]

3.9 [REDACTED].

3.10 [REDACTED].

3.11 [REDACTED].

3.12 [REDACTED].

3.13 [REDACTED].

3.14 [REDACTED].

[REDACTED].

3.15 [REDACTED].

3.16 [REDACTED].

3.17 [REDACTED].

Issues raised by the valuer for Godfrey Hirst

3.18 The Commission's instruction brief requests that its valuers pay special attention to seismic and environmental issues when reaching their valuations. This suggests that they are special features of these valuations when in fact there is absolutely no evidence to support seismic nor environmental concerns, [REDACTED].

3.19 [REDACTED].

Overall effect on Turley valuation

3.20 The Telfer Young letter (and subsequent correspondence with the Commission) sets out that overall, [REDACTED]. As CWH has set out above, all of these are necessary changes to the valuation assessment to correct invalid assumptions made. [REDACTED]. Attached as part of the Telfer Young letter (Appendix 1) is a rental comparison of the Turley and Telfer Young rental assessments. Note, this rental comparison does not take account of [REDACTED].

4. Whakatu Valuation

4.1 As set out in the attached letter from Logan Stone, while the Turley Valuation [REDACTED].

[REDACTED].

4.2 Land Sale Valuations - Logan Stone notes that the Turley Valuation [REDACTED].

4.3 Building Rental Assessments - In terms of market rent [REDACTED].

4.4 [REDACTED].

4.5 [REDACTED].

4.6 [REDACTED].

Overall effect on Turley evaluation

4.7 The Turley Valuation requires correction in respect of Whakatu to [REDACTED].

5. Kaputone Valuation

[REDACTED].

5.1 As set out in the attached letter from Telfer Young, the Knight Frank and Telfer Young Valuations [REDACTED].

5.2 [REDACTED].

5.3 [REDACTED].

[REDACTED].

5.4 [REDACTED].

Overall effect on Turley evaluation

5.5 The Turley Valuation requires correction in respect of Kaputone to take account of both the [REDACTED].

6. Conclusion

6.1 It is the parties' view that the errors discussed above should be rectified and, only after that has been carried out, the Commission should take a midpoint or higher in respect of each property of the difference between the two resulting valuations. This is on the basis that the valuations of the Commission's Valuers (as amended) and the valuations supplied by the parties provide the range of a potential value and that the likely value given all of the evidence referred to in this letter is an amount midway or higher between the two.

6.2 Taking a midpoint or higher between the valuations received by the parties and the Commission's Valuers (after amendment to correct the errors described above) is consistent with the Commission's treatment of the properties in Decision 725. Further, in the High Court Decision Justice Mallon found that taking a point on a range was the correct approach where there was sufficient evidence for the Commission to conclude that point as the likely point, evidence which in that case the Commission had.¹ This approach by Justice Mallon in the High Court Decision of course adopts the same scenario as applied to allocative efficiency loss in Decision 725 and subsequently upheld in the High Court. Justice Mallon found that the Commission was not in error in using an actual figure for the likely allocative efficiency loss because it had set out various reasons why it had chosen that figure (and also in light of the Court's conclusions that the true figure was likely to be "much lower" if the Commission's findings that any scouring price increases would not have a significant impact on wool production was correct).²

6.3 The weight of evidence supports a finding that the Commission's Valuers have made substantial errors in their valuation assessment of the properties, giving the Commission more than sufficient reason to conclude the likely sales values for each of the properties are those that were determined by the parties' valuers.

¹ See paragraphs 293 to 294 of the High Court Decision.

² See paragraph 186 to 190 of the High Court Decision.

- 6.4 Should the Commission wish to gain additional clarification or comfort, it might be useful for the Commission's Valuers and the parties' valuers to be placed in a "hot tub" situation and given the opportunity to expand on their reasons for reaching their views and potentially agree a final position on each site.

Bell Gully – 23 June 2015