

**Public Excluded**

<b>To</b>	Waikato District Council
<b>From</b>	Jim Ebenhoh Acting General Manager Community Growth
<b>Date</b>	28 January 2020
<b>Prepared by</b>	Will Gauntlett Resource Management Policy Team Leader
<b>Chief Executive Approved</b>	Y
<b>Reference #</b>	GOV1301 / 2473183
<b>Report Title</b>	Appointment of Hearing Commissioners for Private Plan Change 22, Builtsmart Property Partnership

**This resolution is made in reliance on section 48(1)(a) and 48(2)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by sections 6 or 7 of that Act which would be prejudiced by the holding of the whole or the relevant part(s) of the proceedings of the meeting in public are as follows:**

<b>Reason for passing this resolution</b>	<b>Ground(s) under section 48(1) for the passing of this resolution</b>
<b>Good reason to withhold exists under section 7(2):</b>	<b>Subject to subsection (3), a local authority may by resolution exclude the public from the whole or any part of the proceedings of any meeting only on 1 or more of the following grounds:</b>
<b>(a) Protect the privacy of natural persons, including that of deceased natural persons</b>	<b>(a) that the public conduct of the whole or the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist</b>

**I. EXECUTIVE SUMMARY**

Council received a request for a private plan change from Builtsmart Property Partnership ('BPP') for an area of land in Huntly South adjacent to the Placemakers business and between State Highway 1 and the Waikato River. The request is to change the Operative Waikato

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District Plan. The applicant also has a submission on the Proposed District Plan seeking a similar outcome, but is wanting certainty ahead of the timeframe for the Proposed District Plan. This Plan Change is herein referred to as Plan Change 22.

Plan Change 22 was publicly notified on 23 October 2019. Five submissions were received. No further submissions were received. A hearing is now required to consider the submissions received.

The purpose of this report is to seek approval to establish a hearings panel to hear submissions on Plan Change 22. It is recommended that the hearings panel comprises one independent expert commissioner as chair, and one independent expert commissioner bringing an understanding of tikanga Maaori and of the perspectives of local iwi and hapuu.

This report also seeks to delegate to the hearings panel the authority to make decisions on Plan Change 22.

## **2. RECOMMENDATION**

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**THAT the report from the Acting General Manager Community Growth be received;**

**AND THAT Council appoints Mr David Hill as an independent commissioner and as Chair of a two-person hearings panel;**

**AND FURTHER THAT Council appoints Mr Shane Solomon as an independent commissioner bringing an understanding of tikanga Maaori and of the perspectives of local iwi and hapuu to the hearings panel;**

**AND FURTHER THAT Council delegates to the hearings panel all powers, duties and functions under the Resource Management Act 1991 to consider, hear, deliberate and decide on all submissions and further submissions received on Plan Change 22 to the Operative Waikato District Plan.**

**AND FURTHER THAT the staff report and resolution be released into the open meeting.**

## **3. BACKGROUND**

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Builtsmart Property Partnership (BPP) lodged with Council a request for a Private Plan Change on 10 September 2019 (Plan Change 22). The site to which the plan change relates is a 2.45ha area comprising a number of existing Certificates of Title located between State Highway 1 and the Waikato River, immediately south of Jackson Road, Huntly. BPP presented Plan Change 22 to a Councillor workshop on 9 September 2019.

The purpose of the plan change is to enable the land to be utilised for light industrial purposes. A small area of land adjacent to the plan change site is already used for this purpose and the plan change will enable the applicant to increase production of

transportable houses from its current 60 houses per year to approximately 400 houses per year.

The costs associated with a private plan change can be on-charged to the applicant. Because of this, and because of the staff focus on the Proposed District Plan Hearings, staff have contracted BBO to process Plan Change 22.

Plan Change 22 was publicly notified on 23 October 2019. Five submissions were received. A summary of the five submissions was published on 4 December 2019 along with a request for further submissions. No further submissions were received. Only one submission opposes the plan change.

The main issues emerging from submissions are as follows:

- Support plan change, provided transport issues are appropriately addressed
- Support plan change, as it ensures lower residual risk from natural hazards
- Positive economic benefits and addresses negative effects on neighbours
- Concerns about potential for dust nuisance
- Concerns about access for operational traffic
- Property values adversely affected.

A hearing is required to consider the submissions received. A hearing has been scheduled for 5 March 2020, and the Riverside Rooms at the WDC Huntly Service Centre have been booked.

## **4. DISCUSSION AND ANALYSIS OF OPTIONS**

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### **4.1 DISCUSSION**

The role of a hearings panel is to consider all submissions received, hear the evidence of those submitters who wish to be heard, and make recommendations or decisions (depending on the delegation given to the panel). For Plan Change 22 it is recommended that a two-person panel be established to consider, hear, deliberate and make decisions (not just recommendations) on the plan change.

### **4.2 DECIDING ON COMMISSIONERS**

Council has two accredited hearing commissioners: Cr Sedgwick and Cr Gibb. Both of these Councillor commissioners are on the hearings panel for the Proposed District Plan. Given that the applicant for Plan Change 22 is also seeking the same relief through the Proposed District Plan, it is considered that it would put these Councillor commissioners in a conflicted position if they were appointed to this hearings panel. That is, they would in effect be pre-determining the outcome of submissions on the PDP that they will hear and decide on at a later date. It is not recommended that either Cr Sedgwick or Cr Gibb sit on the Plan Change 22 hearing.

BBO, on behalf of staff, has liaised with a number of hearing commissioners who have previously sat on hearings for Waikato District Council and Franklin District Council. Based

on experience, conflicts and availability, the recommended hearing commissioner, and chair, is Mr David Hill.

BBO, on behalf of staff, has engaged with iwi to discuss participation in decision-making on Plan Change 22. There are obligations for WDC to do so under Schedule C of the Joint Management Agreement (“JMA”) with Waikato Tainui and under section 34A of the RMA. This engagement included discussion on whether it is appropriate to appoint a commissioner who understands tikanga Maaori and the perspectives of local iwi and hapuu. Waikato Tainui and staff believe that the perspective of local iwi and hapuu is important with this plan change because of, among other things, the proximity of the site to the Waikato River. Waikato Tainui has recommended that Mr Shane Solomon sit on the hearings panel for Plan Change 22.

In addition to establishing a hearings panel, there are two options to consider when delegating authority: to make recommendations; or to make decisions on the submissions.

### **4.3 DECIDING ON DELEGATIONS**

#### ***Delegating to the hearings panel the authority to make decisions:***

- Advantages: Delegating the authority to the hearings panel to make decisions on submissions will help to streamline the planning process. The hearings panel will have the necessary skills and experience to make such decisions. Having heard the submitters and weighed up the evidence, the hearings panel is best placed to make the decisions on submissions. Delegating the authority to the hearings panel will give a stronger voice to tikanga Maaori and the perspectives of local iwi and hapuu. The power to give final approval to the Private Plan Change, pursuant to clause 17(1) of Schedule I of the RMA, once the submissions and any subsequent appeals are addressed, will remain with the Council. This power cannot be delegated.
- Disadvantages: Council will not have the ability to make decisions on individual submissions and further submissions on the Plan Change.

#### ***Delegating to the hearings panel the authority to make recommendations:***

- Advantages: The full Council will retain the power to make decisions on all individual submissions and further submissions on the Plan Change.
- Disadvantages: Upon receiving the recommendations from the hearings panel, the Council will be required to make final decisions on all submissions. However, without hearing the evidence presented in the hearings, Council cannot review the recommendations of the hearings panel or seek to make a different decision to that contained in the recommendation without re-hearing the particular submissions and evidence on those submissions. To do otherwise would be contrary to the principles of natural justice. Any required rehearing of submissions and evidence will be procedurally inefficient and will not enable the Council to meet the timeframes the developer is hoping for.

It is recommended that the Council elects Option 1 and delegates to the hearings panel all the necessary powers, duties and functions under the RMA to consider, hear, deliberate and make decisions on all submissions and further submissions on the Plan Change.

#### **4.4 OPTIONS**

##### **Commissioners**

Option 1: That Council appoints Mr David Hill (Chair) and Shane Solomon as commissioners to hear Plan Change 22. This is the recommended option.

Option 2: That Council appoints Cr Sedgwick or Cr Gibb and Shane Solomon as commissioners to hear Plan Change 22. This is not the recommended option, primarily because of the actual or perceived conflict of interest it would generate.

##### **Delegations**

Option A: Delegate to the hearings panel the authority to make decisions. This is the recommended option.

Option B: Delegate to the hearings panel the authority to make recommendations. This is not the recommended option, primarily because it creates significant procedural inefficiencies.

## **5. CONSIDERATION**

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### **5.1 FINANCIAL**

The costs of the commissioners, as well as other costs, including the preparation of the planner's report, will be borne by BPP, in accordance with Council's current fees and charges policy. Council will be responsible for costs associated with any appeal process that may ensue following completion of the plan change process.

### **5.2 LEGAL**

There are no significant legal implications of establishing the hearings panel and providing delegations to it for decisions on Plan Change 22.

The processing of a Private Plan Change must follow the Schedule 1 process of the Resource Management Act 1991.

### **5.3 STRATEGY, PLANS, POLICY AND PARTNERSHIP ALIGNMENT**

Appointing Mr Shane Solomon as a commissioner implements one of Council's obligations under the Joint Management Agreement (JMA) with Waikato Tainui. Specifically, Item 7 (p.3) of Schedule C to the JMA addresses the potential for Waikato Tainui to participate in making decisions on an RMA Planning Document.

The processing of a private plan change gives appropriate weight to other statutory and non-statutory plans such as the Regional Policy Statement.

## 5.4 ASSESSMENT OF SIGNIFICANCE AND ENGAGEMENT POLICY AND OF EXTERNAL STAKEHOLDERS

The applicant has undertaken consultation with neighbours and potentially affected parties and stakeholders as part of the preparation of the application. The Private Plan Change has been publicly notified for submissions and further submissions.

Highest levels of engagement	Inform	Consult	Involve	Collaborate	Empower
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The table below outlines external stakeholders that have been or will be engaged with:

Planned	In Progress	Complete	
		Yes	Internal - BPP have been working with Waters and Property staff.
		Yes	Staff are not aware of any direct engagement with Community Boards/Community Committees. The Huntly Community Board is aware of the proposal and has made a submission.
		Yes	Waikato-Tainui/Local iwi - BPP have completed this engagement with Waahi Whaanui Trust and Waikato-Tainui.
		Yes	Households - BPP have completed consultation with all neighbours.
		Yes	Business - The public notification covers businesses, although they are not considered a key party to engage with.
		Yes	BPP have completed consultation with other stakeholders including NZTA, Waikato Regional Council, Future Proof, Mercury Energy Ltd.

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## 6. CONCLUSION

This report seeks support to appoint two external hearings commissioners to a hearings panel for Plan Change 22.

It is recommended that the panel be made up of two external independent hearings commissioners, including one commissioner with an understanding of tikanga Maaori and of the perspectives of local iwi and hapuu.

This report also seeks to delegate to the hearings panel the authority to make decisions on the plan change.

## 7. ATTACHMENTS

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Nil

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