

IN THE MATTER

of the Resource Management Act
1991

AND

IN THE MATTER

of a submission by **AMBURY PROPERTIES LIMITED** in respect of the **PROPOSED WAIKATO DISTRICT PLAN** pursuant to Clause 6 of Schedule 1 of the Act seeking rezonings and amendments to the provisions to plan provisions relevant to Ohinewai

MEMORANDUM OF COUNSEL FOR AMBURY PROPERTIES LIMITED SEEKING ADJOURNMENT OF HEARING - "19: OHINEWAI REZONING AND DEVELOPMENT"

MAY IT PLEASE THE HEARING PANEL

Introduction

1. This memorandum is filed on behalf of Ambury Properties Limited ("APL") and seeks:
 - (a) An adjournment of the hearing of submissions on the Proposed Waikato District Plan ("PWDP") seeking the rezoning of land at Ohinewai from the current start date of Monday, 8 June 2020 to Tuesday, 8 September 2020. (Waikato District Council officers have indicated the week of 7 September 2020¹ and the following are available for hearing, should the Panel grant the adjournment.)
 - (b) A commensurate adjustment in the directions relating to the timetable for the filing of evidence and other procedural steps in the lead-up to the hearing.
2. The purpose of this memorandum is to set out the reasons for the request and, for the Panel's consideration, a suggested new timetable.

Current directions

3. We respectfully refer to the minute and further directions issued by the Hearings Panel on 20 August 2019 concerning the hearings on Ohinewai rezoning ("the Directions"). The Directions included the following timetable:²

"23. *Each of the Ohinewai submitters requesting rezoning is to provide all technical reports and supporting documents, including section 32AA assessments, to the Council and all submitters and further submitters on the Ohinewai rezoning requests no later than 5 pm on 1 December 2019.*

¹ Excluding 7 September 2020 itself.

² Minute and Further Directions of the Hearing Commissioners dated 20 August 2019, paragraphs 22-29.

24. *The Council is to prepare and release its section 42A report on the Ohinewai rezoning requests no later than 5 pm on 13 March 2020.*
 25. *The Ohinewai submitters requesting rezoning are to file their evidence for the hearing no later than 5 pm on 2 April 2020.*
 26. *All submitters and further submitters are to file their evidence for the hearing no later than 5 pm on 7 May 2020.*
 27. *Any rebuttal evidence for the Ohinewai submitters requesting rezoning is to be filed no later than 5 pm on 18 May 2020.*
 28. *The Council is to file an updated section 42A report to address matters arising from the evidence of the parities, no later than 5 pm on 28 May 2020.*
 29. *The hearing will commence on or shortly after Monday 8 June 2020, with specific details to be provided in due course.”*
4. On Friday, 6 December 2019,³ APL filed a comprehensive suite of technical reports addressing the following matters:
- (a) Civil design / Three Waters;
 - (b) Stormwater / flooding;
 - (c) Urban design;
 - (d) Acoustics;
 - (e) Contamination;
 - (f) Geotechnical matters;
 - (g) Ecology;
 - (h) Landscape and visual;
 - (i) Traffic and transportation;
 - (j) Social impact;
 - (k) Archaeology;
 - (l) Economic effects;
 - (m) Planning (including 32AA analysis and AEE).
5. The preparation of statements of evidence from the relevant experts is well underway with a view to filing this evidence, as directed, by 2 April 2020.

Request for adjournment

6. The Section 42A Report was issued on 13 March 2020. This report has identified a significant number of matters in respect of which further information would be helpful to Ms Trenouth (and by inference the Panel and parties). In that regard, we note that:
- (a) Some of the information that APL wishes to include in its evidence is dependent on the outcome of discussions with third parties or agencies, e.g., New Zealand

³ In accordance with a one-week extension granted by the Hearing Panel.

Transport Agency, Waikato Regional Council, Future Proof and Watercare Serviced Limited Waikato ("WSLW") that are likely to be hindered somewhat by adherence to Alert Level 4 restrictions to contain the Covid 19 virus.

- (b) Some of APL's experts are undertaking further analysis in order to provide a comprehensive response to the issues raised in the section 42A report.
7. The upshot of the above is that, although APL's evidence could mount a highly credible case if filed on 2 April 2020, APL would prefer to delay the hearing for 10 - 12 weeks to enable these discussions and analysis to be completed.
8. Further advantages of a delay of this during are:
- (a) WSLW's mid-Waikato Water and Wastewater Study will become available in June in advance of the hearing.
 - (b) Stage 2 of the PDP (containing the Natural Hazard provisions) will have been notified prior to the Rezoning submitters evidence being filed.
 - (c) It enhances the likelihood that it will be possible to hold the hearing in person in spite of Covid 19 issues. In that regard, APL welcomes the advice in the Panel's minute dated 27 March 2020 that hearings will be held via Zoom. If we are still in lockdown in September 2020, APL would avail itself of that option but would prefer to be heard in person given the number of witnesses and the complexity of the issues arising.
9. APL is acutely aware that it requested an accelerated hearing and decision. The rationale for that request remains valid for the reasons contained in the legal submissions of counsel and affidavits that were filed for the purpose of the pre-hearing on 5 August 2019, in the sense that an early hearing and early decision is still necessary so that APL can proceed once the rezoning is approved (should that be so).
10. However, APL is able to make arrangements to manage a delay of this duration and considers it to be of paramount importance that the Panel, Ms Trenouth and parties have the most complete and comprehensive evidence available. The adjournment sought will enable that to occur.

Amended timetable requested

11. In light of the above, APL respectfully requests the Panel to direct that the following timetable be adhered to:
- (a) The Ohinewai submitters requesting rezoning are to file their evidence for the hearing no later than 5pm on 2 July 2020.
 - (b) All submitters and further submitters are to file their evidence for the hearing no later than 5pm on 6 August 2020.
 - (c) Any rebuttal evidence for the Ohinewai submitters requesting rezoning is to be filed no later than 5pm on 17 August 2020.
 - (d) The Council is to file an updated section 42A report to address matters arising from the evidence of the parties, no later than 5pm on 27 August 2020.
 - (e) The hearing will commence on 7 September 2020, with specific details to be provided in due course.

Submissions of counsel

12. This timetable provides for the same time periods as that originally directed by the Panel. It will ensure that all parties have the benefit of ample time to consider evidence,

that all experts have sufficient time to take into consideration the issues raised in the section 42A report and adequately respond to and address these issues, and will give the Panel sufficient time to review all evidence before the hearing.

13. It is respectfully submitted that:

- (a) the amended timetable will not cause any procedural prejudice to any parties; and
- (b) is beneficial insofar as it will ensure that more complete and comprehensive information can be put before the Panel. In that regard, APL is grateful to Ms Trenouth for the clear guidance provided in the section 42A report.

14. In considering this request, the Panel may be assisted by considering the matters that are relevant under section 37A of the Resource Management Act 1991 ("RMA") that apply to requests for waivers and extensions. In that regard, APL's respectfully submits that:

- (a) No persons will be adversely affected by the extensions of time for the filing of evidence in terms of section 37A(1)(a) of the RMA by adjourning the hearing. The adjournment will give all parties a further eight weeks from the original timetable to prepare and file their evidence, so no party will be prejudiced or receive less time than another in which to prepare.
- (b) In terms of section 37A(1)(b) of the RMA, the interests of the community in achieving an adequate assessment of the effects of the proposal will not be adversely affected by the extension of time and, indeed, will be enhanced by the ability to ensure that all parties' expert statements of evidence are consistent, comprehensive and provide full coverage of the matters identified by Ms Trenouth., and that all parties have the same amount of time in which to consider and respond to other parties' evidence.
- (c) The extension is not contrary to the Council's duty to avoid unreasonable delay in terms of section 37A(1)(c) of the RMA in the context of a plan review process that is taking many months in any event.

15. Counsel is grateful to the Panel for its consideration of this matter and would be happy to provide the Panel with any further information it may require.

DATED this 27th day of March 2020



S J Berry

Counsel for Ambury Properties Limited