

MATTER

of the Resource Management
Act 1991

AND

IN THE MATTER

of a submission in respect of
the **PROPOSED WAIKATO
DISTRICT PLAN** by **AMBURY
PROPERTIES LIMITED**
pursuant to Clause 6 of
Schedule 1 of the Act

**MEMORANDUM OF COUNSEL FOR AMBURY PROPERTIES LIMITED
IN RESPONSE TO PANEL DIRECTIONS DATED 14 OCTOBER 2020**

1. INTRODUCTION

- 1.1 This memorandum is filed on behalf of Ambury Properties Limited ("APL") in compliance with the Panel's Directions dated 14 October 2020 ("the Directions") which direct APL to prepare an amended version of the Ohinewai plan provisions ("OP provisions") in accordance with the following timetable:

"7. *Ambury is to provide the parties referred to in paragraph 6 and the Hearings Administrator with a revised version of the Ohinewai provisions ("revised version") by 5 pm on Friday 30 October 2020 ...*

8. *Any party referred to in paragraph 6 above that wishes to propose amendments to the revised version is to provide a redlined/strikeout version to Ambury and the Hearings Administrator no later than 5pm on Friday 13 November 2020.*

9. *Ambury is to provide the parties listed in paragraph 6 and the Hearings Administrator with a consolidated set of Ohinewai provisions no later than 5pm on Friday 27 November 2020. All areas of agreement and disagreement are to be clearly identifiable."*

- 1.2 In accordance with the Directions, APL filed a revised version of the OP provisions on 30 October 2020 ("the 30 October provisions") together with a memorandum of counsel providing an overview of the process followed by APL to consult with other parties and next steps ("30 October memorandum").

- 1.3 Feedback from a number of other parties was received on 13 November 2020. Since then, APL has continued to liaise with the parties and had prepared a further set of plan provisions.

Approach to drafting to date

- 1.4 The 30 October provisions were based on the Proposed Waikato District Plan ("PWP") as notified.

- 1.5 The rationale for using the 'as notified' provisions as a starting point was that, although many provisions are the subject of section 42A reports and recommendations, in the absence of an interim version of the PWDP that shows what provisions are challenged, relying on the section 42A reports would require an undesirable degree of speculation.
- 1.6 We sought feedback from WDC's solicitor, Ms Parham, and planning consultant, Ms Wratt, in relation to that approach. They expressed a strong preference that:
- (a) A stand-alone set of provisions be developed; and
 - (b) These provisions be based on the latest section 42A recommendations rather than the notified version.

Revised approach to drafting and request for further time to file final provisions

- 1.7 In light of that feedback, APL has elected to recast the provisions on that basis. However, APL will require more time to prepare such provisions on the basis that:
- (a) Developing a set of provisions based on the section 42A recommendations will be a significant undertaking.
 - (b) The final section 42A recommendations on Chapters 6 and 14 – Infrastructure and Energy of the PDP are not due to be released until Friday, 4 December 2020. Those provisions are obviously of fundamental importance so should be included.
- 1.8 On that basis, APL respectfully requests that the Panel allow a further period of 15 working days for Mr Olliver to develop a stand-alone set of provisions based on the section 42A reports and liaise with WDC representatives in that regard. The final set of provisions would therefore be filed on Friday, 18 December 2020.
- 1.9 Significant progress has been made on addressing issues relating to water and wastewater issues. Further time will provide an opportunity to liaise with WDC and other parties (in particular, the Waikato Regional Council ("WRC") and Waikato-Tainui "W-T"). At this stage, WRC and W-T oppose the proposed PDP provisions. A further three weeks will enhance the likelihood that they will be satisfied with the proposed PDP provisions in that regard.

Purpose and scope of memorandum

- 1.10 Assuming that APL's request will be accepted, this memorandum only addresses issues that do not relate to the drafting of the PDP. Against that background, the purpose of this memorandum is to identify the matters that can be addressed at this stage.
- 1.11 Specifically, this memorandum:
- (a) Provides an update in respect of collaboration between APL, the Waikato District Council ("WDC") and other parties in the preparation of the final provisions (Section 2);
 - (b) Outlines the relationship of the Ohinewai Precinct provisions with the district-wide provisions of the PDP (Section 3);
 - (c) Addresses changes to the Ohinewai Structure Plan sought by OLL (Section 4); and

(d) Sets out our concluding comments (Section 5).

2. **APL'S COLLABORATION WITH WAIKATO DISTRICT COUNCIL AND OTHER PARTIES**

2.1 As set out in the 30 October memorandum, APL has engaged with the other parties who filed evidence or participated in the hearing of the Ohinewai topic. Mr Olliver has liaised with the following parties via informal phone calls, videoconferences, and email correspondence:

- (a) Waikato District Council – Chloe Trenouth and Carolyn Wratt;
- (b) Waikato Regional Council ("WRC") and Waka Kotahi New Zealand Transport Agency ("NZTA") - Ian Mayhew, planning consultant;
- (c) Ohinewai Lands Limited ("OLL") – Ben Inger, planning consultant;
- (d) Future Proof Implementation Committee – Ken Tremaine, planning consultant and Future Proof co-ordinator;
- (e) Mercury Energy – Angus McKenzie;
- (f) Waikato Tainui – Gavin Donald;
- (g) Fish and Game – David Klee; and
- (h) Ohinewai Area Committee - David Whyte.

2.2 APL has continued this engagement since the 30 October memorandum was filed.

2.3 In addition, in accordance with the Directions on 13 November 2020 APL received formal feedback on the 30 October provisions from the following parties:

- (a) WDC;
- (b) WRC and NZTA;
- (c) Mercury Energy;
- (d) Waikato Tainui; and
- (e) OLL.

2.4 APL has made a number of further amendments to the provisions in response to that feedback.

3. **OHINEWAI PRECINCT PROVISIONS – RELATIONSHIP WITH DISTRICT-WIDE PROVISIONS OF THE PROPOSED DISTRICT PLAN**

3.1 During the hearing and via directions, the Panel sought clarification as to how the plan provisions applying in the Ohinewai Precinct ("OP") in what will be Chapter 29 of the PWDP could be drafted in a way that enables the Panel to make a decision on the OP ahead of the Panel's other decisions on the PWDP.

3.2 That issue was raised in the Panel's Directions dated 14 October 2020 which state:

"As acknowledged by Mr Berry, the Ohinewai provisions need to be recast so that they are a suite of self-contained

provisions, that do not rely on yet to be settled district-wide provisions. We have no opinion on how such amendments should be structured and drafted, and leave that for the parties to further consider..."

- 3.3 To address that issue, the set of provisions circulated on 30 October 2020 incorporated all relevant district-wide provisions based on the 'as notified' version of the PDP.

Feedback from other parties

- 3.4 Feedback received from WRC, NZTA and WDC raised concerns about the approach adopted in the 30 October provisions.

WRC position

- 3.5 On behalf of WRC and NZTA, Mr Mayhew and Ms Davies raised a concern about the feasibility of trying to integrate all of the relevant plan provisions into a stand-alone precinct given the complex nature of the task and the potential for overlap. They also said:¹

"We are also concerned about the vires of incorporating proposed plan provisions into the Ohinewai precinct, when these are subject to wider submissions on the PWDP (including those of the Regional Council and Waka Kotahi).

- 3.6 Mr Mayhew and Ms Davies suggested that:

"In our view, it would be better to focus on the Ohinewai-specific provisions with any subsequent integration being a more mechanical process."

- 3.7 APL considers that this would be a relatively straightforward approach. However, given the feedback received from Ms Parham and Ms Wratt as outlined above, APL has elected to develop a stand-alone set of provisions based on the section 42A recommendations, as outlined above.

WDC position

- 3.8 On behalf of WDC, Ms Trenouth and Ms Makin (WDC planner) suggested that:

"While acknowledging [the] decision to use notified PWDP provisions it would be useful to refer to the s42A reports to identify and reflect any relevant recommendations that could appropriately be picked up in the Ohinewai Precinct."

- 3.9 As noted above, APL has elected to adopt this approach to drafting.

4. AMENDMENTS TO THE OHINEWAI STRUCTURE PLAN SOUGHT BY OHINEWAI LAND LIMITED

- 4.1 In its feedback on the 30 October provisions, OLL:²

- (a) requested changes to the Ohinewai Structure Plan to identify locations for potential future connections to OLL's land; and

1 Memorandum from Ian Mayhew and Katherine Davies to John Olliver dated 13 November 2020.

2 Memorandum of counsel for OLL dated 13 October 2020, paragraph 12.

- (b) Seeks to identify a "potential future residential growth area including open space" and a "potential future industrial area" over OLL's land.
- 4.2 These changes were sought by OLL in its evidence presented at the hearing. In her section 42A rebuttal report, Ms Trenouth recommended that the Ohinewai Structure Plan be amended to provide the connections sought by OLL.
- 4.3 The rationale for the layout of the Ohinewai Structure Plan is set out in Mr Broekhuysen's evidence in chief dated 9 July 2020. The placement of intersections on Tahuna Road and provision of future access to the OLL land are specifically addressed at paragraphs 9.4-9.6 and 9.14 respectively.
- 4.4 APL's position remains the same as that reflected in Mr Broekhuysen's evidence, that is that the proposed road layout represents the most appropriate location in terms of providing for efficient access to the site.
- 4.5 The roading layout (and indeed, all other aspects of the Ohinewai Structure Plan) do not preclude development of the OLL land at some point in the future should that eventuate. However, to date, OLL has not provided technical evidence to demonstrate that its development aspirations are feasible or appropriate. In that context, APL's position is that it is not appropriate to make the amendments to the OSP sought by OLL.

Location of the neighbourhood centre

- 4.6 Ms Trenouth's feedback on the 30 October provisions also reiterated the recommendation set out in her section 42A rebuttal report that the neighbourhood centre be relocated further east in the residential area.
- 4.7 This matter was addressed by Mr Broekhuysen and Mr Jones at expert conferencing and in APL's evidence. In short, there is a difference of opinion between Mr Jones and Mr Broekhuysen as to the appropriate location of the neighbourhood centre. Mr Broekhuysen addresses the rationale for the location of the neighbourhood centre at paragraph 9.10 of his evidence in chief. He states:

"In my opinion, the updated neighbourhood centre location and design shown in the Ohinewai Structure Plan provide an appropriately centralised commercial/community hub for the following reasons:

- (a) *The neighbourhood centre has been located between the DFO, the industrial area and the residential area, and on the south side of the main central open space. It will be readily accessible from both the residential area and employment area and will form a central community gathering place and heart to Sleepyhead Estate. It also buffers the residential area from the DFO and industrial land uses. The catchment comparison plan (attached as Attachment E) highlights the greater mix of residential, industrial and business areas included in both the 400m and 800m catchment areas of the proposed location compared to Mr Jones's preferred location being in the middle of the residential area. This is important to ensure both people living and working at Sleepyhead Estate (and those that do both) are able to easily access the neighbourhood centre.*

- (b) *The proposed location picks up 69% of all residential areas within a 800m catchment as well as 72% of the industrial area, 100% of the business area and just touches the eastern side of the existing settlement at Ohinewai. Tim Heath discusses the economic considerations based on the location of the neighbourhood centre further in his evidence.*
- (c) *A corner shop will be included in the centre of the residential area as shown on the Masterplan to provide an additional, more central meeting point and opportunity for daily convenience shopping for the residents. This location aligns with Mr Jones preferred neighbourhood centre location and in my opinion, is a more appropriately scaled commercial building for this location.*
- (d) *The design of the neighbourhood centre will be controlled by the requirement to be in accordance with the Business Area Structure Plan."*

4.8 Nothing has arisen since the hearing that alters Mr Broekhuysen's position and APL remains firmly of the view that the proposed location is the most appropriate for the neighbourhood centre.

5. **CONCLUDING COMMENTS**

- 5.1 APL is grateful for the approach that the Panel has adopted in relation to the identification of issues and the preparation and review of the proposed OP provisions. It also appreciates the attention given to the plan provisions by the planning experts, regardless of their clients' position on the rezoning.
- 5.2 If the Panel accepts APL's request, the final set of provisions for the OP will be filed on Friday, 18 December 2020.
- 5.3 This process will enable the development of a set of plan provisions for the OP that, in APL's submission will:
 - (a) Represent the "most appropriate" provisions that could be developed in terms of section 32 of the RMA;
 - (b) Be consistent with and promote the sustainable management of natural and physical resources in terms of section 5 of the RMA; and
 - (c) Be complementary with and workable alongside the rest of the provisions in the PDP.
- 5.4 Once again, APL is grateful for the Panel's management of APL's submission, relevant submissions and further submissions, and for its attention to this memorandum.

Dated this 27th day of November 2020



S J Berry
Counsel for Ambury Properties Limited