

IN THE 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 in respect of the rezoning of land at Ohinewai

**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").
- 1.2 The Directions required the preparation of a revised version of the Ohinewai Precinct provisions that could "stand alone" and would not rely on other parts of the Proposed Waikato District Plan ("PWDP") which are not yet settled.
- 1.3 In accordance with the Directions, APL filed a revised version of the Ohinewai Precinct 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").
- 1.4 Feedback from a number of other parties was received on 13 November 2020. The Directions required that APL file a final version of the Ohinewai Precinct provisions on 27 November 2020.
- 1.5 The 30 October provisions were based on the PWDP as notified. 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 Prior to filing the final Ohinewai Precinct provisions APL received feedback from Waikato District Council's ("WDC") solicitor, Ms Parham, and planning consultant, Ms Wratt, in relation to that approach. They expressed a strong preference that the provisions be based on the latest section 42A recommendations rather than the notified version.
- 1.7 By way of a memorandum of counsel dated 27 November 2020, APL sought further time to prepare a revised set of Ohinewai Precinct provisions consistent

with that approach ("27 November memorandum"). On Monday, 30 November 2020, the Panel confirmed that APL was to file its final set of Ohinewai Precinct provisions by 18 December 2020.

- 1.8 Further time was required to take account of feedback from Ms Trenouth and Ms Wratt on the set of provisions provided to them on 14 December 2020 so, by memorandum dated 18 December 2020, APL sought a further extension to 23 December 2020, which was granted.
- 1.9 The final set of 'stand-alone' plan provisions for the Ohinewai Precinct, amended as appropriate to take account of feedback from WDC is attached as **Attachment A**.

Procedural fairness

- 1.10 As set out in Section 4, the final set of provisions contain provisions that would allow Ohinewai wastewater discharges to be discharged to the Huntly Wastewater Treatment Plant ("WWTP") provided that the effluent improves the Huntly discharge (as a result of dilution) or is neutral in that regard (in the sense that the Ohinewai wastewater makes no difference to the level of compliance).
- 1.11 This "Ohinewai neutral" concept (as an alternative to requiring that the Huntly WWTP achieve full compliance before accepting wastewater from Ohinewai) has emerged relatively recently in light of advice received from John Crawford of Beca. This concept has not been discussed with WRC or Waikato-Tainui (or any party other than WDC). On that basis, APL has no opposition to the Panel issuing directions that give WDC and the parties the opportunity to comment on this proposal.

Purpose and scope of memorandum

- 1.12 The purpose of this memorandum is to provide an overview of the revised provisions and the amendments made by APL in response to feedback from WDC and other parties. Specifically, this memorandum:
 - (a) Provides a brief update in respect of collaboration between APL and other parties (Section 2);
 - (b) Provides an overview of the final Ohinewai Precinct provisions (Section 3);
 - (c) Addresses changes made to Table 29B.1.2 relating to connection of the development to the Huntly WWTP (Section 4);
 - (d) Provides some brief concluding comments (Section 5).

2. COLLABORATION WITH OTHER PARTIES - UPDATE

- 2.1 The 27 November memorandum provided an update in respect of collaboration between APL, WDC and other parties in the preparation of the final provisions.
- 2.2 Since that date, Mr Olliver has had further discussions and correspondence with Ms Trenouth and Ms Wratt on behalf of WDC, Mr Mayhew on behalf of Waikato Regional Council/Waka Kotahi and Mr Donald on behalf of Waikato-Tainui.
- 2.3 A near final draft Ohinewai Precinct provisions were provided to WDC (Ms Trenouth and Ms Wratt) on 14 December 2020 for review and further changes were made to the provisions in response to their feedback.

2.4 A final draft of the Ohinewai Precinct provisions was provided to Ms Trenouth and Ms Wratt on 21 December 2020, and the final version of the Ohinewai Precinct provisions takes appropriate account of their final comments has been filed with this memorandum.

3. **FINAL PROPOSED OHINEWAI PRECINCT PROVISIONS – STRUCTURE**

3.1 As indicated above, the Ohinewai Precinct plan provisions comprise a stand-alone set of provisions based on the latest version of the provisions for each relevant topic.

3.2 A new Chapter 29, Ohinewai Precinct has been prepared. It applies only to the land area sought to be rezoned by APL and coincides with the boundaries of the Ohinewai Structure Plan area.

3.3 Chapter 29 is as self-contained as possible, including a specific set of objectives and policies, a specific set of infrastructure rules, and three specific zones, comprising:

- (a) The Ohinewai Precinct Residential Zone;
- (b) The Ohinewai Precinct Industrial Zone; and
- (c) The Ohinewai Precinct Business Zone.

3.4 This allows for most development to be undertaken by reference only to Chapter 29. This approach is similar to the Rangitahi Peninsula Zone (Chapter 28 of the PWDP). The main difference is that the Ohinewai Precinct contains three zones rather than one.

3.5 In order for the Ohinewai Precinct provisions to stand alone, a suite of wider PWDP provisions have also been included. These include some selected district-wide objectives and policies, infrastructure and natural hazards provisions, and definitions. The rationale is that any development within the Ohinewai Precinct will be able to rely on the District-wide rules such as for network utilities, without having to replicate those provisions in each of the Ohinewai Precinct zones.

3.6 By 'ring-fencing' them in this document they provide a fixed current planning framework, unaffected by future hearings and decisions on other parts of the PWDP.

3.7 The suite of wider PWDP provisions adopted are the 'most advanced' available PWDP text. For most sections of the PWDP, this is the text contained in the recommendations in the WDC section 42A Rebuttal reports; however, there are some exceptions. In the case of:

- (a) Hazardous Substances, the version from the Commissioners' minute and directions dated 25 June 2020 has been included.
- (b) Natural Hazards, the text of Variation 2, notified on 27 July 2020 has been included.

3.8 A large number of sections of the PWDP are not relevant to development in the Ohinewai Precinct. For example, zones such as the Rural Zone and the Country Living Zone are not contained in the precinct so are not relevant. Similarly, there are no heritage items or Identified Areas so those chapters are not relevant. These provisions have therefore been excluded from the wider suite of provisions.

4. **FINAL PROPOSED OHINEWAI PRECINCT PROVISIONS – AMENDMENTS MADE IN RESPONSE TO DIRECTIONS AND FEEDBACK FROM OTHER PARTIES**

4.1 As signalled in the 30 October and 27 November memoranda, APL has made a number of amendments to the text of the plan provisions to:

- (a) Address the matters raised by the Panel at paragraph 4 of the Directions;
- (b) Respond to feedback from the other parties.

4.2 The final Ohinewai Precinct provisions attached as **Attachment A** utilise strikethrough and underlining in order to identify amendments to the provisions. Colours and comment boxes are used to identify the source of the text as follows:

- (a) Black text is the version of the PWDP recorded in s42A Rebuttal reports, except for Chapters 6 and 14 which are the s42A recommendation versions, Chapter 10 which relies on the Commissioners minute and directions dated 25 June 2020 and Chapter 15 which is the notified version of Stage 2 (Natural Hazards and Climate Change).
- (b) Red text is text included in the 30 October 2020 version of the plan provisions circulated to the parties on 30 October 2020.
- (c) Blue text is text added or amended as a result of amendments sought by parties in their documents circulated on 13 November 2020 or by subsequent discussions with the parties.
- (d) Comments boxes record the source of the blue text amendments and where appropriate a brief explanation.
- (e) Items that are not agreed or where there is uncertainty over agreement are identified by comments boxes that are highlighted yellow.

5. **OHINEWAI CONNECTION TO THE HUNTLY WWTP**

5.1 It is proposed that the wastewater from the Ohinewai development will be treated with other municipal wastewater at the Huntly WWTP and discharged as part of WDC's normal operation. However, the Huntly WWTP is not complying with the conditions of its discharge permit, as regards levels of suspended solids and ammonia.

5.2 As the Panel may recall, the first stage of the Ohinewai development, being the foam factory, is self-sufficient from a wastewater perspective. Ohinewai does not need to connect to Huntly WWTP until 2023.

5.3 A full upgrade or replacement of the Huntly WWTP will be required at some time in the future, noting that the consent for that plant expires in 2029.

5.4 WRC and Waikato-Tainui oppose in principle connecting the Ohinewai development to the Huntly WWTP while the plant is failing to comply with its resource consent conditions. On that basis, they are requesting a plan rule that prohibits a connection to Huntly WWTP until the plant is fully compliant.

5.5 It is acknowledged that the Joint Witness Statement of Experts in relation to Water Supply and Wastewater Servicing records that:

"3.2 The experts agreed that prior to any wastewater discharge from OSP into the HWWTP there needs to be a

mechanism in place to ensure compliance with its existing consent – both in respect of future growth, volume and contaminant concentration/loadings.

3.4 The experts agreed the HWWTP upgrades have to be done prior to any connection by OSP.”

- 5.6 However, that agreement is not binding on APL and was reached prior to the identification of a treatment option by which wastewater from Ohinewai can be pre-treated before discharge into the Huntly WWTP which would be of such a quality as:
- (a) To improve Huntly WWTP compliance (as a result of increased dilution); or
 - (b) To be neutral in that regard, in the sense of not contributing to or increasing the degree of non-compliance of the Huntly WWTP discharge.
- 5.7 In that regard, senior wastewater engineer, John Crawford of Beca, has been engaged by APL to advise on wastewater issues and to liaise with WDC and Watercare Waikato in that regard. He has advised that there are two (non-mutually exclusive) approaches that could be adopted to achieve an appropriate level of compliance pending the full-scale upgrade. He has prepared a technical memorandum which is attached as **Attachment B**.

Improvements to the Huntly WWTP

- 5.8 It is already proposed by WDC and Watercare Waikato that, this coming summer (2020/2021), the Huntly WWTP oxidation ponds be desludged. It is also proposed that electrical issues capacity upgrades will be implemented that will improve pumping efficiency. The timing of this is less certain. This will improve performance in relation to total suspended solids (“TSS”) but will not result in full compliance with consent conditions.
- 5.9 Mr Crawford has advised that, in addition to necessary sludge removal, there are also other interim measures that could be implemented at the Huntly WWTP to achieve compliance pending the full upgrade. These measures include:
- (a) Installation of membrane aerated biofilm reactor (“MABR”) cassettes in the oxidation ponds to reduce the ammonia in the effluent and thereby achieve compliance with the consent limits for ammonia; and
 - (b) Installation of dissolved air flotation (“DAF”) technology prior to the existing ultra-violet disinfection unit to reduce total suspended solids, phosphorous, and assist with E.coli reduction.
- 5.10 Mr Crawford has also advised that:
- (a) Watercare Waikato has suggested, in the most recent compliance report for the Huntly WWTP, the installation of MABR cassettes to address issues with respect to ammonia. (The current status of this suggestion is unclear and could be confirmed with Watercare.)
 - (b) DAF technology is used effectively on existing oxidation pond treatment plants at Pahiatua and Waihi. Mr Crawford considers that there is no reason to doubt that they would be just as effective at Huntly WWTP. DAF technology is also to be installed at the Waipawa WWTP in Central Hawkes Bay for similar reasons. DAF treatment would not address ammonia issues.

Pre-treatment options

- 5.11 The other option is to pre-treat the Ohinewai effluent to ensure that the effluent that is entering the Huntly WWTP does not increase the plant's level of non-compliance with consent conditions. Such pre-treatment could take place either on-site at Ohinewai or at the Huntly WWTP site.
- 5.12 In that regard, Mr Crawford has advised that:
- (a) A removable package membrane bioreactor ("MBR") treatment plant that would treat all of the APL wastewater to a very high standard (TSS of less than 5mg/L, ammonia of less than 2mg/L, total phosphorous of less than 7mg/L, and E.coli of less than 14cfu/100mL) could be constructed at the Ohinewai site or the Huntly WWTP; and
 - (b) Given a minimum MBR effluent volume (approximately 61 m³/day, assuming a mean Huntly WWTP outflow of no more than 1,100 m³/d but with some additional allowance for a factor of safety), the high quality of the effluent from the MBR treatment plant would:
 - (i) have a dilution effect when combined with the Huntly WWTP effluent, assisting in achieving compliance with existing consent conditions that apply to the Huntly WWTP; and
 - (ii) ensure that the level of non-compliance with Huntly WWTP's consent conditions is not increased.
- 5.13 In other words, as noted above, following such treatment, the contribution of effluent from Ohinewai to Huntly wastewater would be neutral or positive.
- 5.14 Mr Crawford has developed a theoretical example of an upgrade strategy involving interim measures that demonstrates that achieving compliance at Huntly WWTP ahead of a full-blown upgrade or replacement is feasible using conventional wastewater management processes. This would comprise:
- (a) Install a small, removable packaged/containerised MBR WWTP at Ohinewai to treat likely flows out until commissioning of the upgraded or replacement Huntly WWTP. 'Removable' so that in the medium to long term all treatment is done in a single plant and the containerised plant can be on-sold. Targeting 1-2mg/l effluent ammonia, less than 5mg/l TSS and less than 50 cfu/100ml indicator bacteria. Discharge just upstream of the Huntly UV disinfection system;
 - (b) At Huntly, interim corrective measures to the existing system:
 - (i) Desludge the oxidation pond system;
 - (ii) To the extent possible, remove accumulated sludge from the wetland system;
 - (iii) Review and remove any wetland short circuiting and replant areas as necessary;
 - (iv) Review pond loading and provide supplementary aeration as necessary;
 - (v) Electrical and mechanical maintenance and upgrading to make sure that the plant works reliably and at capacity.
 - (c) The interim strategy discussed in (a) and (b) above relies on a minimum flow from the MBR and the underlying treatment conditions

at Huntly WWTP not worsening significantly. An alternative would be to install the packaged MBR at the Huntly site where the availability of flow to match the MBR capacity is guaranteed.

- 5.15 On that basis, APL is confident that Ohinewai wastewater discharges can be connected to the Huntly WWTP in 2023 and that compliance with the existing wastewater consent conditions can also be achieved at the same time. If a failure for Huntly WWTP to comply with its consent conditions arose for reasons unrelated to the proposed development, the Panel can still be satisfied that the Ohinewai contribution to the Huntly effluent is either positive (as a result of increased dilution) or, at worst, neutral.
- 5.16 While we understand the 'in principle' position adopted by WRC and Waikato-Tainui, it is submitted that it would be unreasonable to delay the introduction of treated Ohinewai effluent into the Huntly WWTP until the plant is fully compliant (with consequential delays to the entire Ohinewai development), provided that it can be demonstrated that the effect of the Ohinewai contribution to the compliance situation is neutral or positive.
- 5.17 On that basis, Mr Olliver has drafted a rule that we submit should achieve WRC and Waikato-Tainui's objectives, either by requiring full plant compliance as requested, or requiring APL to demonstrate that the Ohinewai contribution will not result in any increase in the extent of non-compliance with conditions. The proposed rule reads as follows:

29B.1.2 Water & Wastewater

To be provided prior to the occupation and use of Factory Stage F3 or F4 (which is beyond the initial industrial development) and prior to the occupation and use of any other Industrial, Business or Residential development.; and

The wastewater treatment plant must be certified by the Waikato District Council as being compliant in all respects with the conditions of the relevant discharge consent(s) or alternatively, is certified by the Waikato District Council that the bulk main connection from the Ohinewai development will not result in any increase in the extent of non-compliance with conditions.

- 5.18 This is reinforced by an amended and more comprehensive policy 29A.4.2 (d) in the plan provisions that refers to supporting an improvement plan for the plant that aims to achieve compliance, in conjunction with no increase in non-compliance. The proposed policy reads:

(a) *Except for initial subdivision and development which is self-contained, the Precinct is connected to a public reticulated wastewater network that connects to ~~the Huntly~~ a Wastewater Treatment Plant at Huntly and;*

The plant is compliant with its discharge consent conditions; or

The connection is consistent with and supports a suite of planned treatment plant improvements that will result in a compliant plant; and

The connection does not result in any increase in non-compliance with the discharge consent conditions.

5.19 In essence, the proposed rule implements this policy.

Procedural fairness

5.20 As noted above, the alternative "Ohinewai neutral" concept has not been discussed with WRC or Waikato-Tainui or any parties and APL has no opposition to WDC or other parties being given the opportunity to comment on this proposal.

6. CONCLUDING COMMENTS

6.1 APL has used its best endeavours to produce a final set of Ohinewai Precinct provisions which are coherent and workable, stand-alone, and respond appropriately to feedback received. APL is grateful to the parties for their constructive approach to this process.

6.2 APL's submission is that the final Ohinewai Precinct provisions:

- (a) Represent the "most appropriate" provisions that could be developed in terms of section 32 of the RMA;
- (b) Are consistent with and promote the sustainable management of natural and physical resources in terms of section 5 of the RMA; and
- (c) Are complementary to and workable alongside the rest of the provisions of the PDP.

6.3 As indicated in the memorandum of counsel dated 27 November 2020, the Panel may consider that the most efficient way to address the issues raised in this memorandum is to set a date for reconvening the hearing via Zoom. APL would be happy to participate in any such reconvened hearing should the Panel consider that appropriate.

6.4 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.

6.5 We wish the Panel and all parties well for the Festive Season and a happy 2021.

Dated this 23rd day of December 2020



S J Berry
Counsel for Ambury Properties Limited

ATTACHMENT A
FINAL PROPOSED OHINEWAI PLAN PROVISIONS DATED 23
DECEMBER 2020

ATTACHMENT B

**TECHNICAL MEMORANDUM PREPARED BY JOHN CRAWFORD DATED
23 DECEMBER 2020**