

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

**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 a revised version of the Ohinewai plan provisions¹ 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. The extent of the amendments to be made is at Ambury's discretion, but must, as a minimum, address the matters set out in paragraph 4 above.*

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 has prepared a revised version of the Ohinewai plan provisions, attached as **Attachment A** ("the revised provisions"). This document is necessarily a working version which will be refined in consultation with the parties before the final proposed provisions are filed on 27 November 2020.

1 The latest version of which were attached to Mr Olliver's rebuttal evidence dated 24 August 2020.

Purpose and scope of memorandum

- 1.3 The purpose of this memorandum is to outline the measures adopted to date to comply with the Panel's directions and to provide an overview of the revisions to the Ohinewai plan provisions made to date.
- 1.4 Specifically, we:
- (a) Provide an overview of the approach adopted by APL to collaboration with the Waikato District Council ("WDC") and other parties in the preparation of the revised provisions (Section 2);
 - (b) Summarise the amendments to the Ohinewai plan provisions (Section 3); and
 - (c) Identify next steps in terms of the development of the revised provisions and consultation (Section 4).

2. COLLABORATION WITH WAIKATO DISTRICT COUNCIL AND OTHER PARTIES

- 2.1 The Directions indicated that APL should collaborate with other parties as much as possible in the preparation of the revised provisions. In this regard, the Directions state:

10. We have made no specific Directions regarding consultation, but would encourage the parties to collaborate as much as possible during the process set out in paragraphs 7 - 9 above, noting also that the timeframes we have set are intended to allow sufficient time for meaningful engagement.

- 2.2 APL has made significant efforts to collaborate with other parties. Progress to date is summarised in the following paragraphs.

Participants in the drafting process

- 2.3 On 20 October 2020, counsel for APL emailed all parties who filed written pre-circulated evidence or presented evidence at the hearing to invite them to engage with APL in the development of the revised provisions.
- 2.4 Responses were received from the following parties ("the interested parties"), with an indication of the representatives that would be involved in engagement on the Ohinewai plan provisions:
- (a) Waikato Regional Council and Waka Kotahi New Zealand Transport Agency² - Ian Mayhew, planning consultant;
 - (b) Ohinewai Lands Limited - Ben Inger, planning consultant;
 - (c) Future Proof Implementation Committee - Ken Tremaine, planning consultant and Future proof co-ordinator;
 - (d) Fish and Game - David Klee; and
 - (e) Ohinewai Area Committee - David Whyte.

2 WRC and NZTA indicated that their participation in the process is without prejudice to their overall position on APL's submission, including their right to appeal the matter to the Environment Court and their preference to comment on one set of plan provisions rather than "drafting by committee".

2.5 No response was received from:

- (a) Waikato-Tainui;
- (b) Mercury Energy;
- (c) The Ralph Estates.

Approach to drafting

2.6 A key driver in the drafting exercise to date has been the helpful guidance provided in paragraph 4 of the Panel’s Directions, distilled as follows:

- (a) Need a stand-alone set of provisions that do not rely on district-wide yet-to-be settled provisions.
- (b) Objective 4.1.19, Policies 4.1.20(a)(i) and (ii) are too imprecise.
- (c) Policy 4.1.20(a)(v) should refer to industrial development only being located in Ohinewai East.
- (d) RDA rules read as performance standards and should be clearer.
- (e) Preconditions relating to the provision of infrastructure (especially wastewater) should be more robust.
- (f) Staging provisions should be more precise.
- (g) Departure from the Ohinewai Structure Plan (“OSP”) should be a non-complying activity.

2.7 Mr Olliver developed a memorandum dated 22 October 2020 explaining the philosophy and approach to drafting the amended provisions. which was forwarded to Ms Trenouth for WDC and the interested parties along with a set of draft amended provisions. A copy of that memorandum is attached as **Attachment B.**

Progress to date

2.8 Since the first set of revised provisions was circulated to the interested parties the following progress has been made:

- (a) Mr Olliver held a videoconference with the planning consultants (or other representative) of the interested parties on Friday 23 October 2020 to identify issues of interest to them and to review the first draft;
- (b) A second draft of the revised provisions was circulated to Ms Trenouth and the interested parties on 27 October 2020 and a further videoconference was held on Thursday 29 October 2020 to review the second draft and discuss issues of concern. Particular issues discussed were:
 - (i) The details of the Infrastructure Upgrade table and the need for objectives and policies that support the infrastructure constraints and staging;
 - (ii) Amendments to the Structure Plan and Staging Plan to ensure they are clear and consistent.

- (iii) How the requirement for subdivision and development to be “in accordance with the structure plan” may be assessed when the structure plan itself is indicative.

3. **SUMMARY OF AMENDMENTS TO OHINEWAI PLAN PROVISIONS**

- 3.1 Amendments have been made to the Ohinewai plan provisions in order to:
 - (a) Address the matters identified in paragraphs 4(a)-(i) of the Directions;
 - (b) Address a number of recommendations included in Ms Trenouth’s rebuttal report;
 - (c) Address several items of evidence that arose during the hearing that APL considers can be helpfully included in the plan provisions; and
 - (d) Respond to feedback from the interested parties provided during the consultation process
- 3.2 The rationale for each amendment is identified in comments in the Ohinewai plan provisions document.

Stand-alone provisions - the Ohinewai Precinct

- 3.3 As discussed at the hearing and requested at paragraph 4(a) of the Directions, the Ohinewai plan provisions have been recast to create a “stand-alone” set of provisions that do not rely on district-wide provisions that are yet to be settled.
- 3.4 The revised provisions establish the “Ohinewai Precinct” (“OP”) which will comprise a new Chapter 29 in the Proposed Waikato District Plan (“PWDP”). This approach (i.e., the use of a multi zone precinct) is consistent with the approach adopted in the National Planning Standards.
- 3.5 Provisions from the PWDP have been imported into the OP that will allow development to commence, either as permitted activities or via resource consents, without reference to any other parts of the District Plan. This means that the Ohinewai Precinct includes:
 - (a) All relevant permitted activity rules, e.g. district wide infrastructure, network utilities, transport, hazardous substances, and definitions.
 - (b) All relevant objectives, policies and guidelines that may be referred to for guidance in the processing of a resource consent.
- 3.6 The OP is therefore a large document. For ease of drafting / reference, and to assist in the future if a variation is undertaken to ‘tidy up’ the provisions, the documents in Attachment A are in two parts, comprising:
 - (a) The Ohinewai-specific provisions.
 - (b) The general or district-wide provisions that will apply to Ohinewai, also incorporating the above Ohinewai-specific provisions.
- 3.7 It is clear that the interested parties are more interested in the former, and they were the subject of evidence at the hearing. In the consultation exercise it was found to be more efficient to collate the Ohinewai-specific provisions in a smaller separate document to avoid having to work through large sections of the PWDP which are essentially only included to ensure the Ohinewai Precinct is self-contained.

The Ohinewai-specific provisions

- 3.8 The 'Ohinewai-specific' provisions include the three relevant zones (Residential, Business and Industrial), the Ohinewai objectives from the Urban Environment chapter, and related policies, and the Infrastructure staging table and road cross-sections. They also include updated Structure Plans and the updated Staging Plan. A copy of the zoning plan is also included for completeness as that provides the information that will support any amendments to the Planning Maps.

The general or district wide provisions that will apply to Ohinewai

- 3.9 The second part comprises all of the district-wide objectives, policies and rules that would influence development within the Ohinewai Precinct (the 'General provisions'). It incorporates parts or all of thirteen chapters or other sections of the PWDP. For completeness it also incorporates the Ohinewai-specific provisions referred to above. Four of the Appendices from the PWDP have been adopted in full (Appendices 3.1, 3.3, 3.4 and 5). They are not included in the package in Attachment A as there are no changes to them.
- 3.10 The PWDP provisions that have been imported are the "as notified" version of those provisions. APL acknowledges that the provisions are subject to change through the hearing process and that section 42A reports and recommendations (and some Commissioners' minutes) have been issued in respect of a number of topics. However, any such proposed amendments remain too uncertain to be relied upon for the Ohinewai provisions.

4. NEXT STEPS

- 4.1 The Directions require any other party who wishes to do so to file a redlined/strikeout version of the revised provisions by Friday 13 November 2020. APL will continue to engage with the interested parties (including via weekly videoconferences) during the period to 13 November 2020 and beyond in order to advance discussions to the extent possible.
- 4.2 In accordance with the Directions, APL will then file a final set of proposed Ohinewai provisions by Friday 27 November 2020.
- 4.3 Counsel is grateful to the Panel for its consideration of this memorandum.

Dated this 30th day of October 2020



S J Berry
Counsel for Ambury Properties Limited

ATTACHMENT A

REVISED OHINEWAI PLAN PROVISIONS DATED 30 OCTOBER 2020

ATTACHMENT B

**MEMORANDUM FROM JOHN OLLIVER TO INTERESTED PARTIES
DATED 22 OCTOBER 2020**