

Before Hearing Commissioners
at Waikato District Council

under: the Resource Management Act 1991

in the matter of: the Proposed Waikato District Plan

Between: **Mercury NZ Limited**

Submitter 730

and: **Waikato District Council**

Territorial Authority

Memorandum of Counsel on behalf of Mercury NZ Limited in
relation to Topic 25 Rezoning hearings

Dated: 21 May 2021

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MEMORANDUM OF COUNSEL ON BEHALF OF MERCURY NZ LIMITED

May it please the Commissioners:

INTRODUCTION

- 1 Counsel acts for Mercury NZ Limited (*Mercury*), a submitter and further submitter on the Proposed Waikato District Plan (*PWDP*), for both Stages 1 and 2 (submitter numbers 730 and 2053).
- 2 As the owner and operator of the Waikato Hydro Scheme, Mercury works closely with the Waikato Regional Council (*WRC*), the Statutory Flood Manager. At times during high flow events, the volume of inflows into the Waikato Hydro Scheme can be more than the design capacity, and therefore the Scheme is not physically able to prevent all flooding. The Waikato River, its catchment and tributaries, are a major waterway with significant inflows - flooding during times of high flows is a natural and expected occurrence. There will always be a need for the Waikato River to utilise the natural floodplains that exist downstream of Lake Taupo.
- 3 Against that context, Mercury would like to ensure that urban land use and development in the Waikato District only occurs in locations where there is an acceptable or tolerable level of flooding risk exposure. However, ultimately, under the RMA, the responsibility for this lies with Council and the WRC.
- 4 At Stage 1, Mercury lodged a number of further submissions in relation to rezoning submissions:
 - 4.1 Opposing those rezoning submissions until it is understood whether the zone is appropriate from a risk exposure perspective; and
 - 4.2 Seeking that the Stage 1 process be put on hold until the natural hazard provisions were developed, and for land use intensification to then be revisited in light of those provisions.
- 5 Rather than filing evidence and legal submissions with respect to Topic 25 (Rezoning), Mercury considers a more pragmatic approach is to file this memorandum of counsel, so that, as a matter of fairness:
 - 5.1 Rezoning submitters are made aware of the matters raised in Mercury's Stage 1 and Stage 2 submissions and evidence; and
 - 5.2 The Hearing Commissioners turn their minds to the impact that Mercury's Stage 2 relief may have on specific rezoning proposals before it eg within the Flood Plain Management Area Overlay.

- 6 The very real practical issue for submitters is how they reconcile the natural hazards provisions with what they have already submitted on in Stage 1. Submitters have relied on the notified Stage 1 provisions, and may also have sought changes to those provisions and planning maps.

Mercury’s submissions – Stage 1 and Stage 2

- 7 Mercury is concerned to ensure that decisions on the management and control of land use in the District (particularly change in land uses and intensification) are based on an accurate understanding of flooding risks.
- 8 Mercury lodged submissions on Stage 1 of the PWDP raising concerns with the staged approach to the natural hazards provisions.¹ Once the natural hazard provisions were developed (as Stage 2), Mercury sought that a district-wide flood risk assessment be undertaken to evaluate risks associated with flood events and anticipated land use change and development.²
- 9 The Council decided to progress with the Stage 1 hearings without undertaking a district-wide flood risk assessment. It did however decide to defer the Rezoning topic hearing until after the Natural Hazard Topic 27 hearings, and to not make any decisions on the PWDP until after the conclusion of all hearings.
- 10 The issue which Mercury wishes to point out, particularly for the benefit of submitters, is that a number of Stage 1 submitters propose that various areas be up-zoned for residential intensification. However, if Mercury’s proposed changes to the natural hazards provisions are accepted, this may result in that land being subject to greater controls to address flooding risk.
- 11 It is not for Mercury to resolve this issue, but the proponent of the up-zoning and Council, and ultimately the Commissioners may need to ‘reassess’ the Stage 1 proposal in that circumstance. It may be that some up-zoning proposed in the PWDP or sought by a submitter, is, in simple terms, in the wrong place.
- 12 Mercury’s position and the relief sought with respect to the natural hazard provisions are more fully explained in:
- 12.1 Mercury’s opening submissions dated 26 September 2019
 - 12.2 The evidence of Stephen Colson for Topic 2 (Plan Structure and All of Plan) dated 23 September 2019;
 - 12.3 Mercury’s legal submissions for Topic 27 (Natural Hazards) dated 7 May 2021; and

¹ Mercury’s submission dated 15 July 2019.

² Mercury’s Stage 2 submission, at Section 3.

12.4 The evidence of Dr Grant Webby and Mr Angus McKenzie for Topic 27 (Natural Hazards) dated 16 April 2021.

- 13 Mercury respectfully seeks that this memorandum be tabled and available on the PWDP website under the Topic 25 Evidence 'tabs'.

A handwritten signature in blue ink that reads "C Somerville-Frost". The signature is written in a cursive style.

Catherine Somerville-Frost / Jo Pereira
Partner / Special Counsel
21 May 2021