

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 regarding Stage 2 and Variation 2 Natural Hazards.

STATEMENT OF EVIDENCE OF STUART MATTHEW PENFOLD

1. INTRODUCTION

- 1.1 My name is Stuart Matthew Penfold. I am a planning consultant and Senior Planner at Bloxam Burnett & Olliver (BBO), a firm of consulting engineers, planners and surveyors based in Hamilton. I have been employed by BBO since January 2018.

Qualifications and experience

- 1.2 I hold a Bachelor of Resource Studies degree which I obtained from Lincoln University in 2003. I am an Associate Member of the New Zealand Planning Institute (NZPI) and a member of the Resource Management Law Association (MRMLA). I have 18 years' experience in the field of planning and resource management in New Zealand.
- 1.3 My planning and resource management experience has been gained on a wide range of projects, including leading planning, consenting and engagement programs for nationally significant projects for the NZ Transport Agency, large capital projects for Auckland Transport and various large land development projects, such as Long Bay in Auckland.
- 1.4 I have experience in plan changes, including providing expert evidence at Auckland Unitary Plan hearings and participation in mediation. I was part of the team that enabled a plan change on behalf of Waikato Regional Airport Limited to enable business park development and integration with terminal operations.

- 1.5 In the Waikato and Bay of Plenty regions I have been involved in consenting transport infrastructure for the NZ Transport Agency, Tauranga City Council and Hamilton City Council.

The 'Sleepyhead Estate' project

Stage 1 Proposed Waikato District Plan – Ohinewai Rezoning

- 1.6 BBO was engaged by Ambury Properties Limited ("APL") in 2019 to provide planning input and advice in relation to submissions to the Proposed Waikato District Plan (PWDP) for the rezoning of approximately 178ha of land located in Ohinewai from the current rural zoning to a mix of industrial, commercial and residential zoning.
- 1.7 APL lodged submissions on Stage 1 of the Proposed Plan seeking to rezone the property to Industrial, Business and Residential, to include an Ohinewai Structure Plan (**OSP**) and revised zoning maps within the District Plan framework, and to amend or include new Objectives, Policies and Rules to recognise and support the appropriate use and development of the property.
- 1.8 Significant evidence was presented to the Hearings Panel to support APL's submission and evidence on behalf of other submitters was also presented. A hearing on those submissions (Hearing 19) was held between 14-16 September 2020. A decision on those submissions has yet to be made.
- 1.9 As part of the project development, and in preparation of my evidence on behalf of APL on submissions on Stages 1 and 2 PWDP, I have attended:
- (a) Several technical meetings with APL's technical experts, submitters (including Mercury Energy) and regulatory authorities (Waikato Regional and Waikato District Councils) as part of the project's engagement activities.
 - (b) Several hui organised as part of the Tangata Whenua Governance Group established between APL and the tangata whenua for the overall Sleepyhead project.
 - (c) A public open day for members of the Huntly and Ohinewai community at the local Ohinewai Community Hall on 31 October 2019.
- 1.10 I have also managed the resource consenting process for Stage 1 of the development programme, including applications to the Waikato District Council and Waikato Regional Council for bulk earthworks. In February and

March 2021, resource consents were granted for earthworks across Stage 1 of the site in preparation for planned industrial development and site works are now underway.

- 1.11 The Sleepyhead Foam Factory that is planned as the first stage of industrial development on the site has been confirmed as a Referred project by the Minister of the Environment under the COVID-19 Recovery ('Fast-track Consenting) Act 2020. An application will be lodged with the Environmental Protection Authority (EPA) in April/May 2021.

Purpose and scope of evidence

- 1.12 I have been requested to present expert planning evidence pertaining to the proposed Stage 2 and Variation 2 Natural Hazards Plan provisions on behalf of APL, in particular with respect to the implications on APL's proposed development sought via the Stage 1 rezoning. My evidence does not repeat evidence produced at Hearing 19 but focuses on any new issues raised by Stage 2.

Other relevant evidence

- 1.13 My evidence draws on evidence presented by Mr Ajai Desai for the Stage 1 Ohinewai Rezoning Hearing, however Mr Desai does not intend to present additional expert evidence for Stage 2 given the extensive evidence on flooding having been heard by the Hearings Panel in Hearing 19. Mr Desai will however be available for Hearing 27C if required in order to respond to any questions raised by the Panel.

Expert Witness Code of Conduct

- 1.14 I have read the Code of Conduct for Expert Witnesses, contained in the Environment Court Consolidated Practice Note (2014) and I agree to comply with it. I can confirm that the issues addressed in this statement are within my area of expertise and that in preparing my evidence I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

2. CONSIDERATION OF PROPOSED STAGE 2 PROVISIONS AND S42A REPORTS

Objective 15.2.1

- 2.1 With regards to the s42A report¹, I concur with Janice Carter's recommendation that the request from Mercury NZ Limited (submission point 2053.20) be rejected. Objective 15.2.1 as notified, appropriately addresses the requirements for development of resilient communities to avoid or mitigate natural hazards.

Mapping of flood plain adjacent to Lake Waikare

- 2.2 I also concur with the s42A report² with respect to the infilling of land adjacent to Lake Waikare and the recommendation that Policy 15.2.1.13 is satisfactory, with minor amendments.
- 2.3 I acknowledge Mercury's submission³ regarding the mapping of the floodplain surrounding Lake Waikare and their request that any infill volumes and cumulative loss of the storage capacity of the Lower Waikato Flood Protection Scheme (LWWFCS) is managed and displacement of water is understood. However, extensive evidence was provided to the Hearings Panel on the implications of the APL rezoning on the floodplain surrounding the APL site and on the LWWFCS, and while a decision on that rezoning is still forthcoming, it is my opinion that sufficient detail has been provided on the potential infill volumes and displacement of water as a result of development in this specific part of the Waikato District. The assessments undertaken in support of the Ohinewai rezoning, and provided at Hearing 19, are consistent with Policy 15.2.1.13.
- 2.4 Furthermore, it is my opinion that implementing a recording system of fill activities in the catchment of the LWWFCS as a result of Stage 2 plan provisions (as requested by Mercury) seems overly prescriptive given the immense size of the catchment.

Policy 15.2.1.15 - Flood ponding areas and overland flow

- 2.5 I concur with the s42A report⁴ with respect to recommended amendments to Policy 15.2.1.15. In my opinion it is appropriate to acknowledge the need to maintain the **function** of natural floodplains, wetlands and ponding areas, including flood storage capacity. While development activities may occur within these areas, the proposed wording provides for the requirement of the stormwater and flood management functions of the area to be addressed if works are proposed that require resource consent. While the recommended

¹ Section s42A Report Hearing 27C, dated 31 March 2021, Para. 98.

² Section s42A Report Hearing 27C, dated 31 March 2021, Para. 158.

³ 2053.51

⁴ Section s42A Report Hearing 27C, dated 31 March 2021, Para. 177.

amendments are slightly different to the wording requested in APL submission point 2180.3 they have a similar outcome.

Flood Plain Management Area overlay

- 2.6 As noted in the s42A report⁵, both Mercury NZ and the Department of Conservation (DoC) seek the notation of Flood Plain Management Area (FPMA) to be noted on land adjacent to Lake Waikare. DoC seek a level of 7.37m and provision to be made for climate change and catchment management programmes. Mercury seek notation to match areas below 8.0mRL as well as detailed references to future growth areas.
- 2.7 It is my opinion that neither of these mapping amendments are required on or in the vicinity of the APL land, due to the lack of data available as part of the Stage 2 process or provided by submitters. More importantly, the relevant modelling and analysis has been completed as part of the APL rezoning proposal. There is no need to further map the flood plain as APL have acknowledged the flood plain in this area and assessed the impacts on surrounding land and the LWWRCS.
- 2.8 While no decision on the proposed Ohinewai rezoning has yet been made, the evidence presented at the Hearing by Mr Desai outlined the following:
- (a) the assessment showed that the loss of flood storage for Lake Waikare associated with the development of the OSP area is inconsequential for all relevant flood scenarios.
 - (b) The assessment showed that that development of the site would result in a negligible increase in water levels or flood extents within the site or on neighbouring land. While parts of the site will remain as being flooded in the 100-year event, this is restricted to low lying areas in the east that are proposed for stormwater management and ecological enhancement and are designed to accommodate those flood flows.
 - (c) While not subject to a 'defended area' overlay notified in Stage 2, modelling has also indicated that the site as developed per the OSP is not subject to risk from a stop bank breach of the Waikato River.

⁵ Section s42A Report Hearing 27C, dated 31 March 2021, p.135.

2.9 I concur with Janice Carter in the s42A report⁶ in her recommendation that the Mercury and DoC submissions seeking the additional mapping be rejected.

3. **CONCLUSIONS**

3.1 In my evidence above I have addressed matters relating to the proposed Stage 2 provisions as they relate to the proposed Ohinewai development as heard in the Ohinewai Rezoning Hearing 19.

3.2 I was concerned that certain objectives and policies in the notified plan provisions were overly prescriptive and did not reflect our experience undertaking flood modelling and assessments as part of the Ohinewai Rezoning and APL's submissions in some cases sought further detail to be included. As set out in the s42A report, the proposed amendments now provide for a suitable framework for the management of flood hazards.

3.3 Mercury and DoC have sought prescriptive mapping of flood levels adjacent to Lake Waikare to account for existing floodplain and to acknowledge the LWWRCS. While this may be valuable for areas beyond the APL Ohinewai site, significant modelling and assessment has been completed by APL and hence specific provisions are not warranted to apply to the APL property.

Stuart Matthew Penfold
16 April 2021

⁶ Section s42A Report Hearing 27C, dated 31 March 2021, Paras. 471-474.