

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of hearing submissions and further submissions on the Proposed Waikato District Plan

AND

IN THE MATTER of rezoning requests in the Ohinewai area

MINUTE & FURTHER DIRECTIONS FROM HEARING COMMISSIONERS

20 August 2019

Introduction

1. We held a pre-hearing conference on 5 August 2019 in respect of a request by Ambury Properties Limited ("**Ambury**") that its submission on the Proposed Waikato District Plan ("**proposed plan**") be heard in May 2020, approximately five months earlier than would otherwise be expected, and that a decision on that submission be issued by mid-2020, approximately one year earlier than anticipated.
2. The pre-hearing conference was attended by representatives of the following parties:
 - a. Ambury
 - b. Mercury NZ Limited
 - c. Shand Properties Limited
 - d. Ohinewai Land Limited
 - e. New Zealand Transport Agency
 - f. Waikato-Tainui
 - g. The Ohinewai Area Committee
 - h. Waikato Regional Council
 - i. Waikato District Council ("**the Council**").
3. We issued Directions on 6 August 2019, in which we recorded our preliminary view that we would agree to Ambury's request, subject to several procedural modifications.

4. We also expressed our preliminary view is that the following procedure should be followed:
 - a. To ensure that decisions on the proposed plan result in an holistic, integrated land use planning outcome for the Ohinewai area, all the submissions requesting zoning changes for Ohinewai should be considered at the same hearing.
 - b. Those submissions comprise the rezoning proposals from:
 - i. Ambury
 - ii. Planning Focus Limited (only to the extent it has not been subsumed by the Ambury submission)
 - iii. Shand Properties (only in respect of their proposals for land adjacent to Ambury's land at Ohinewai)
 - iv. Ohinewai Land Limited
 - v. Ohinewai Area Committee
 - vi. Ribbonwood Family Trust.
 - c. The parties listed in paragraph 4 b above ("**the Ohinewai submitters requesting rezoning**") needed to ensure that sufficient information was available about their respective proposals so that interested parties could clearly understand what each proposal entailed and how they may be affected by them. This information needed to be provided in a timeframe that would enable preparations for the hearing to proceed in an orderly, informed fashion.
 - d. The wider Ohinewai community needed to be afforded the opportunity to ascertain the extent to which they may be affected by the proposed development at Ohinewai; to be able to provide further submissions on these matters; and to be able to speak to them at the hearing. Our preliminary view was that the process should include "public notification", although the form of this was yet to be determined. Such notification would need to inform the public that their further submissions will only be able to be considered if we are satisfied that they meet the requirements of Clause 8 of Schedule 1 of the Resource Management Act 2019 – that being that they either represent a relevant aspect of the public interest, or that they have an interest in the matter that is greater than the interest the general public has.
5. We issued Directions requiring that the Ohinewai submitters requesting rezoning further consider the specific procedures and timetable necessary to implement the matters set out in paragraphs 4 c and 4 d above, following which we would proceed to either issue our final decision on the Ambury request, or, but only if necessary, convene a further pre-hearing conference.
6. We have received that further information, and now, issue:
 - a. A Minute setting out our formal decision on the request to hear the Ambury submission and the other rezoning requests for the Ohinewai area, earlier than the indicative hearings schedule would otherwise provide for; and
 - b. Further Directions as to the process and timetable to be followed.

Minute

7. At the commencement of the pre-hearing conference, the parties held a variety of positions on when the Ohinewai rezoning requests should be heard in the context of the overall hearings schedule for the proposed plan.
8. However, by the end of the pre-hearing conference a broad consensus had been achieved, such that we do not need to record the initial views expressed by the individual parties, other than to state:
 - a. A number of parties were concerned that various regional planning processes regarding future urban growth in the Waikato region and the transport linkages to support them, should be progressed before considering specific rezoning proposals at Ohinewai; and
 - b. Irrespective of the timing of hearings, all parties:
 - i. Supported an integrated, holistic approach being taken when considering future growth proposals for Ohinewai; and
 - ii. Agreed that all the information concerning the rezoning proposals needed to be available to parties well in advance of any hearings.
9. Regarding the desirability of having some certainty around regional growth planning in advance of considering specific growth proposals, we agree. However, having canvassed the issue with parties in some depth, we are satisfied that these “big picture” planning initiatives are very unlikely to be completed before the hearings on the proposed plan have concluded, irrespective of the order in which we consider the zoning requests at Ohinewai and issue our decisions on them – a conclusion that was accepted by all parties at the pre-hearing conference.
10. We also record that all parties agreed that the following process should be followed, as set out in out 6 August 2019 Directions, as follows:
 6. By **5pm on Monday 12 August 2019**, Ambury is to file a memorandum with the Hearings Coordinator setting out the rationale for, and specific details of, the process they consider appropriate to address the matters identified in paragraphs 4 c and 4 d above.
 7. To the extent possible, that memorandum should represent a consensus view of as many as possible, and preferably all, of the parties listed in paragraph 2 above.
 8. In the event that any party/s listed in paragraph 2 above, other than the Waikato District Council, have a different view on how the matters identified in paragraphs 4 c and 4 d should be progressed, those party/s are to file their own memorandum on these matters. Any such memoranda are to be received by the Hearings Coordinator by **5pm on Friday 16 August 2019**.
 9. If any memoranda are received pursuant to paragraph 8 above, the Waikato District Council is to file a memorandum setting out how it considers these matters should be progressed. Any such memorandum is to be received by the Hearings Coordinator by **5pm on Wednesday 21 August 2019**.

10. On receipt of the material required by these Directions, we will proceed to either issue our final decision on the Ambury request, or, but only if necessary, convene a further pre-hearing conference.

11. We received a detailed memorandum from counsel for Ambury, Mr Berry, which, among other things¹, stated:

Amended evidence exchange timetable

- 2.9 As noted below, Mercury NZ Limited ("Mercury") raised concerns about the evidence exchange timetable. Following discussions between counsel for APL and Mercury, it was agreed that, provided that APL's technical information will be made available to all parties on 1 December 2019, the following amended evidence exchange timetable is appropriate:
- (a) All Ohinewai Submitters' technical and other supporting evidence to be filed with WDC by **Thursday, 2 April 2020**.
 - (b) All APL Further Submitters' and Other Further Submitters evidence to be filed with WDC by **Thursday, 7 May 2020**.
 - (c) Ohinewai Submitters' rebuttal evidence to be filed with WDC by **Thursday, 21 May 2020**.
 - (d) WDC rebuttal evidence to be filed and provided to all other parties by **Thursday, 28 May 2020**.
 - (e) Ohinewai Rezoning hearing commences on **Monday, 8 June 2020**.
- 2.10 All other parties were asked to signify whether they opposed this change and none other than Waikato-Tainui (see below) have signified a concern. WDC has advised that the hearing timetable for June 2020 can accommodate a hearing commencing on that date.
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- 4.9 By email dated 10 August 2019, Ms Tukere, the General Manager, Development and Wellbeing for Waikato-Tainui advised as follows:
- "We have received the emails below in relation to the Ohinewai Submissions.*
- We are concerned with the haste in which this proposal is being progressed. We need more time to consider what is being proposed including engaging with our mana whenua to understand their position.*
- A meeting of the Waikato-Tainui and Waikato District Council Co-Governance committee for the Waikato River is due to be held later this month. We will be raising our concerns in regard to this issue with the Mayor and members of the Committee. "*
- 4.10 Despite subsequent discussions, Ms Tukere has signified that this concern remains.

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6. OUTCOME OF CONSULTATION

- 6.1 The outcome of APL's consultation with the APL Further Submitters and the Ohinewai Submitters is as follows.
- 6.2 The parties that agree with the process and timetable outlined in the memoranda dated 9 August 2019 as amended per paragraph 2.9 of this memorandum comprise:
- (a) Ohinewai Land Limited;
 - (b) Ohinewai Area Committee;
 - (c) Mercury NZ Limited;
 - (d) Ribbonwood Family Trust;
 - (e) New Zealand Transport Agency;
 - (f) Planning Focus Limited;

¹ Mr Berry's timetable also proposed that a public notice calling for further submissions on the requested Ohinewai rezonings be notified by 30 August 2019 and that the section 42A report be circulated by Friday 13 March 2020.

- (g) Waikato Regional Council;
- (h) Fish and Game; and
- (i) Shand Properties Limited.

- 6.3 WDC has signified that a hearing on that date can be arranged.
- 6.4 Waikato-Tainui has signified a concern about the pace at which the process is moving and intend to raise the matter with the mayor later this month. APL will also address this concern with Waikato-Tainui directly through the TWWG hui that have been established.
- 6.5 In light of the above, the only party that the Panel may wish to hear from in respect of APL's proposed process and timetable going forward is Waikato-Tainui.
- 6.6 The rationale for the process and timetable set out in this memorandum are as per that set out in the memorandum dated 9 August 2019 (**attached as Appendix A**) and set out above, other than as it relates to the measures originally proposed to summarise the relief for the purpose of preparing the public notice, which is no longer necessary.

- 12. Regarding Mr Berry's paragraph 6.4, no memorandum from Waikato-Tainui has been provided to us.
- 13. In addition to the matters set out above, Mr Berry also proposed various actions and an associated timetable within which the respective parties might undertake various tasks. We understand that these were intended to show that the overall timetable he proposed was achievable, rather than being matters we needed to determine. We have proceeded on that basis and provide no specific comments on them.
- 14. Counsel for Ohinewai Land Limited, Mr Muldowney, filed a memorandum dated 14 August 2019, which stated:
 - 7. OLL wishes to better define the land within its control in the 'Proposed Growth Area' that it is seeking be urbanised. **Attachment C** to this memorandum is a map showing the areas of land within the 'Proposed Growth Area' which are owned and controlled by OLL which OLL seeks to be included in any structure planning exercise for Ohinewai. The areas outlined in purple are within OLL land holdings, while the area outlined in light blue is land controlled by APL. There is also an area of recreation reserve identified in green.
 - 8. While OLL can signal a preference for residential land use within its land holdings, the exact land use within the 'Proposed Growth Area' will be determined following a structure planning exercise, as stated in the further submission filed by OLL.
 - 9. OLL respectfully suggests that in the round of further public notification of the Ohinewai submissions, that the map currently attached to the OLL primary submission be supplemented with the map at **Attachment C** to this memorandum noting that it represents "The areas of land owned and controlled by OLL which it seeks be included in the structure planning exercise for Ohinewai".
- 15. We agree with Mr Muldowney's suggestion that the public notice should reflect the position of the Ohinewai submitters requesting rezoning, but prefer to leave it to the Council, with

the necessary input from those parties, to determine the specific details (including mapping) of the the public notice.

16. Ms Parham, counsel for the Council, filed a concise memorandum on 20 August 2019 which, as she noted, was not strictly required given the absence of any memoranda in opposition from other parties. She noted Ambury's intention to continue working with Waikato-Tainui to address outstanding concerns and requested that we issue our final Directions on the rezoning requests.
17. There are two matters we are now required to address, namely:
 - a. The dissenting position of Waikato-Tainui – albeit that they have not filed a Memorandum – and we rely on Mr Berry's recording of what they have advised him; and
 - b. The specific timetable going forward.
18. Regarding Waikato-Tainui's position, Mr Berry stated that:²

4.12 In that regard, we note as follows:

- (a) Waikato-Tainui will have nine months between now and when its evidence would be due in May 2020 to review the details of the APL proposed development, engage with its members to understand their position on the proposal and liaise with APL as to how any issues raised by its members may be addressed.
- (b) APL is conscious that Waikato-Tainui (and other submitters) will also be involved in other aspects of the Waikato District Plan review over that time. As outlined below, APL has accordingly liaised with WDC to ensure that its proposed evidence exchange timetable and hearing dates can be accommodated within the programme for hearing submissions on other sections of the proposed Waikato District Plan (including the Rural zone provisions).
- (c) It has already been agreed that a Tangata Whenua Working Group ("TWWG") will be established for the project, which will include representatives from Nga Muka, Waahi Whaanui, Te Riu O Waikato and Waikato Tainui. The Chairs of each of those entities will sit on the TWWG, which will meet on at least a monthly basis with APL representatives to discuss environmental, cultural and other issues with the development and how those can be addressed. The next meeting of the TWWG is scheduled for 10am on Monday 26 August 2019.

4.13 In light of the above, APL's position is that the process and timetable set out in Section 3 and paragraph 2.9 of this memorandum will ensure that Waikato-Tainui clearly understands the proposed APL development and how this may affect mana whenua interests, as well properly prepare for the hearing, consistent with paragraph 6 of the Panel's minute.

19. We are satisfied that the process presented by Mr Berry and agreed to by the other parties at the pre-hearing conference, is both fair and appropriate – subject to the minor amendments we set out below.
20. In terms of timetabling, we agree with the Mr Berry, except in the following two respects:
 - a. It is not necessary to issue a public notice as early as 30 August 2019. Instead, we are satisfied that this need not occur until 30 September 2019, with the period for lodging further submissions closing 20 working days later;
 - b. Any rebuttal evidence by the parties listed in paragraph 4 b above, is to be provided no later than Monday 18 May 2020, and not Thursday 21 May 2020.

21. Accordingly, we issue the following Directions.

² At paragraph 4.12

Directions

22. A **public notice** prepared in general accordance with that contemplated in paragraph 2.5 of Mr Berry's memorandum of 12 August 2019, incorporating appropriate maps, is to be placed in the relevant newspapers and uploaded to the Council's website, **no later than 30 September 2019**, with the period for lodging further submissions closing 20 working days later.
23. Each of the Ohinewai submitters requesting rezoning is to provide **all technical reports and supporting documents**, including section 32AA assessments, to the Council and all submitters and further submitters on the Ohinewai rezoning requests **no later than 5 pm on 1 December 2019**.
24. The Council is to prepare and **release its section 42A report** on the Ohinewai rezoning requests **no later than 5 pm on 13 March 2020**.
25. The **Ohinewai submitters requesting rezoning** are to file their **evidence** for the hearing **no later than 5 pm on 2 April 2020**.
26. **All submitters and further submitters** are to file their **evidence** for the hearing **no later than 5 pm on 7 May 2020**.
27. **Any rebuttal evidence** for the Ohinewai submitters requesting rezoning is to be filed **no later than 5 pm on 18 May 2020**.
28. The Council is to file an **updated section 42A report** to address matters arising from the evidence of the parties, **no later than 5 pm on 28 May 2020**.
29. **The hearing will commence on or shortly after Monday 8 June 2020**, with specific details to be provided in due course.

Questions from Parties

30. Any questions regarding these Directions are to be addressed to the Hearings Administrator in the prescribed manner.



P H Mitchell (Chair)

For P H Mitchell, P Cooney and D Fulton (Hearings Commissioners)

20 August 2019