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Memo

To Environmental Protection Authority
Ohinewai Foam Factory Expert Consenting Panel

From Stuart Penfold

Date 21 June 2021

Subject **Ohinewai Development – further information request under clause 25 of Schedule 6 of the COVID-19 Recovery Act 2020**

On behalf of Ambury Properties Limited, please find set out below a response to the further information request under clause 25 of Schedule 6 of the COVID-19 Recovery Act 2020 (the Act) received on the 4 June 2021.

1. Implications of the Ohinewai Rezoning decision

A description of the implications of the Ohinewai Rezoning in the proposed Waikato District Plan on the application, including the assessment of effects, the technical reports provided with the application, proposed conditions and the structure plan.

1.1 The Decision

A decision relating to submissions on the Proposed Waikato District Plan (PWDP) with respect to the Ohinewai area was notified by Waikato District Council on 24 May 2021. The decision is subject to a 30 day appeal period (ending 6 July 2021). Now that the decision has been notified, the PWDP- Decisions Version (Decisions Version) must be considered when assessing the application (Schedule 6 clause 9(1)(h)). The Operative Waikato District Plan (OWDP) also remains relevant when assessing the application.

The decision was in response to Ambury Properties Limited (APL) submissions on the PWDP seeking appropriate zoning for Industrial, Business and Residential land uses and the incorporation of an Ohinewai Structure Plan to guide development. The WDC's staff summary of the decision is particularly helpful in setting out a summary of the decision (copy enclosed as **Attachment 1**).

Generally, the decision was favourable to the relief sought by APL. With respect to the proposal currently being assessed by the Expert Consenting Panel (ECP), the decision provides for a live zoning ('The Ohinewai Zone'), including an Industrial Precinct, that provides for Industrial land use, with Major Hazardous Facilities, as a Discretionary activity.

Further details of the activity status of the proposal under the Decisions Version is set out in Section 2 below.

1.2 Implications for the AEE Report

We have undertaken a review of the AEE report in light of the decision, and make the following comments:



- The proposed activities outlined in the AEE report remain the same, there are no substantive changes to the proposal beside that of amendments to landscaping on the southern boundary (discussed in Section 1.3 below).
- The rezoning decision was anticipated when preparing the AEE and is noted in Section 2.3. Under the Decisions Version, the zoning is a mix of Industrial and Residential (some earthworks and stormwater infrastructure is located in the Residential Precinct). There is no longer a Coal Mine Policy Area overlay that applies to the site¹.
- An assessment of the (as notified) PWDP objectives and policies was included in the application (**Appendix 23**). That assessment has now been superseded and an assessment against the Objectives and Policies of the Decisions Version is enclosed as **Attachment 2**.
- The earthworks being undertaken on site (Earthworks 1A) as noted in Section 2.6 were given effect to under resource consents granted by the Waikato District Council prior to the Decisions Version being notified, and are currently being completed.
- The adjacent land (52, 56 & 58 Lumsden Road²) to the immediate south of the subject site not owned by APL, is now located (and zoned) within the Industrial Precinct.

1.3 Technical Reports

Comment on the technical reports influenced by the change in zoning is as follows:

- Geotechnical reporting – The risk of liquefaction is specifically addressed in the Natural Hazards chapter of the Decisions Version. The geotechnical reporting completed for the proposal (**Appendix 6**) had sufficiently addressed the risk of liquefaction and discussed the measures required to prepare the site for development.
- Noise and vibration – While the Decisions Version has introduced rules relating to noise different to that of the OWDP, the proposed activity meets the relevant new noise standards included in the Decisions Version.
- Hazardous Substances Qualitative Assessment (Jacobs) – Jacobs’ assessment had accounted for the expected change in land use surrounding the foam factory and that is covered in Section 2.2 of their report (**Appendix 14**). In summary, the reporting assessed the proposal based on residential land uses being present to the west of the site (Lumsden Road), and that has not changed as a result of the decision.
- Hazardous Substances Technical Assessment (Tonkin + Taylor) – Tonkin + Taylor’s assessment had accounted for the expected change in land use surrounding the foam factory and that is covered in Sections 2.2 and 2.3 of their report (**Appendix 16**). From the report, *‘The proposed Sleepyhead Estate development does not increase the overall sensitivity to effects from the use and storage of hazardous substances, with no sensitive activities located any closer than the existing sensitive landuses including the adjacent dwellings on Lumsden Road’*.³

The report outlined an assessment of the resource consent requirements of the hazardous substances used in the manufacturing process based on the notified PWDP provisions. That is no longer relevant as the Decisions Version does not refer to quantities of hazardous substances, rather the Ohinewai Industrial Precinct specifically refers to a Major Hazard Facility as being a Discretionary activity.

¹ As discussed in Section 3.1.1 of the AEE Report

² Referenced as 19, 20 and 21 in Figure 3.2 of the AEE Report

³ p.4



- Landscape and Visual Assessment Report – The MGLA report assessed the proposal in light of the surrounds of the site being rural and now that the site and surrounds are zoned Industrial this has changed the assessment. MGLA have provided a memorandum outlining their revised assessment as a result of the Decisions Version and this is enclosed as **Attachment 3**. In summary, the memorandum outlines the following:
 - the proposed industrial development and its anticipated effects are now largely aligned with receiving industrial zone context.
 - while previously the effects of the development were considered to be adverse to the intended character of the site, they are now positive to the industrial character of the site.
 - Overall, the development is considered to have less than minor effects on existing landscape and visual amenity.
 - While Building 4 infringes the maximum height limit of the Industrial zone (17.5m) by 2m⁴, the effect on amenity will be negligible⁵.
 - The mitigation planting on the site’s southern boundary is no longer required at the scale previously proposed. Appropriate plantings can be undertaken at the time of the future collector road construction.
- Kaitiaki Environmental Values Assessment – This report was compiled for the purposes of the rezoning and hence anticipated the development and zoning of the site now enabled by the Decisions Version.
- Greenhouse Gas Emissions Assessment – The underlying land use zoning of the site is not relevant to this assessment as the focus is on the manufacturing process and operations.
- Economics Assessment – This report is neutral with respect to the underlying land use zoning.
- Social and Cultural Wellbeing Assessment – this report is neutral with respect to the underlying land use zoning, however the report provides commentary on the Foam Factory development as being the catalyst to the larger goal⁶ of the overall development now enabled by the Decisions Version.

1.4 Proposed Conditions

There are matters resulting from the Decisions Version that require amendments to the proposed conditions (draft) submitted with the Application (**Appendix 11**). These matters relate to accounting for the requirement for an Ecological Rehabilitation and Management Plan (ERMP) to be submitted and updates to proposed landscaping as a result of the update landscape and visual assessment. Amendments are summarised as follows (and included in **Attachment 4**).

- Condition 9 of the Waikato District (land use) conditions now require an ERMP to be submitted prior to construction commencing.
- Condition 41 of the Waikato District (land use) conditions outline that landscape plantings along the southern boundary of the site can be deferred until such time as the Collector Road is constructed.

APL has also taken the opportunity to update the draft conditions after undertaking further engagement with Waka Kotahi/ NZ Transport Agency. Amendments to conditions relating to

⁴ Including 1.6m of fill for building platform

⁵ This infringement is classified as a Restricted Discretionary activity

⁶ Section A.



transportation and the construction traffic management plan have been undertaken, with the majority of the additional conditions relating to the recommendations contained within the ITA provided with the application (**Appendix 5**).

The updated conditions (with tracked changes) are included as **Attachment 4**.

1.5 Ohinewai Structure Plan

The Ohinewai Structure Plan that is embedded into the Decisions Version is un-changed from that presented in evidence to the Hearings Panel and included in the Application (**Appendix 2**).

For reference, Drawing P20-353-00-0010-GE (included as **Attachment 5**) shows the project extents overlain over the Ohinewai Structure Plan and Zoning (Precincts) Plan.

2. Assessment

An assessment of the application against the relevant objectives, policies and rules of the Ohinewai Rezoning, the zoning maps and the activity status of the application.

2.1 Objectives and Policies Assessment

An assessment of the application against the relevant objectives and policies of the Ohinewai Zone (Decisions Version) is included in this response as **Attachment 2**. That assessment supersedes the assessment of the Objectives and Policies of the notified PWDP provisions included in the application (**Appendix 23**). The assessment shows that the proposed activity is consistent with the Ohinewai Zone objectives and policies. In particular, the assessment confirms that the proposal:

- Supports the Ohinewai Zone as a strategically important industrial node and the catalyst for future development in accordance with the Industrial Precinct, bringing with it resultant employment and economic benefits.
- Provides for ecological restoration, protects amenity values and restores the whenua and upholds cultural values in accordance with Te Ture Whaimana o Te Awa o Waikato (the Vision and Strategy).
- Addresses the hazards and risks relating to the foam factory, including liquefaction, flooding and use of hazardous materials.

2.2 Zoning Maps, Rules Assessment and Activity Status

Zoning Maps

The application includes activities located on land zoned PREC3 (Industrial) and PREC1 (Residential). Generally, activities relating to the foam factory itself are located on land zoned Industrial in the Industrial Precinct, while earthworks and stormwater infrastructure are located on land in both the Industrial and Residential Precincts. Plans (Drawings P20-353-00-0010-GE & P20-353-00-0011-GE) showing the extents of the proposal against the Ohinewai Structure Plan and the Zone plan of the Ohinewai Zone are included as **Attachment 5**.

Decision Version – Rules Assessment

An assessment of the application against the relevant rules is outlined in Table 2.1 below. Overall, the proposal is a Discretionary activity, the same status as per the WODP rules.

For completeness, an assessment of the proposal against the conditions and standards of the Permitted activities listed below (as 'PER') is included in **Attachment 6**.



Decisions version PWDP Rule	Status	Activity
OHI-EIT - Energy, infrastructure and transport		
OHI-EIT-R1	PER	The realignment of Balemi Road, Lumsden Road and associated rail siding meets the definition of infrastructure, as do the proposed water supply and stormwater management works.
OHI-EIT-R2	PER	The construction of infrastructure associated with the proposal can comply with NZS6803:1999 acoustics, construction noise.
OHI-EIT-R8	RDIS	Earthworks are required for the construction of infrastructure that exceed the Permitted standard.
OHI-EIT-R64	RDIS	The proposed stormwater system does not meet all of the conditions as outlined.
OHI-EIT-R65 (1) (a)	PER	The proposed onsite wastewater system is consistent with the wastewater servicing requirements.
OHI-EIT-R68	PER	The proposed stormwater wetlands have been sized to account for the proposed building footprint.
OHI-EIT-R71	PER	The proposed onsite water supply system is consistent with the servicing requirements.
OHI-EIT-R78 (2)	RDIS	The proposal complies with the vehicle access and formation requirements, including separation distances. The minimum sight distance from the proposed Lumsden Road entrance cannot be met due to overgrown vegetation. This was identified in the ITA completed for the proposal (Appendix 5) and the clearance of vegetation in order to comply with this rule is proposed.
OHI-EIT-R79	PER	The proposal complies with the requirements for on-site parking and loading.
OHI-EIT-R80	PER	The proposal complies with the requirements for on-site manoeuvring and queuing.
OHI-EIT-R81	RDIS	The proposal is able to comply with the traffic generation requirements, with the exception of the construction traffic movements for the importation of clean fill. Note however, that the proposed construction traffic movements are consistent with the heavy vehicle movements consented as part of the Stage 1A earthworks operation currently underway on site (200 vpd on average per day, 300vpd maximum per day).
OHI-HR - Hazards and Risk		
OHI-HR-R2	DIS	The storage, handling or use of hazardous substances in a Major Hazard Facility PREC3 – Ohinewai industrial precinct.



OHI-PREC3 - Industrial zone (Precinct 3)		
PREC3-R2 (1) (a) & (b)	PER	<p>Construction of a new building or structure provided that infrastructure upgrades are being constructed as per Tables OHI-1 and OHI-2.</p> <p>For the foam factory and rail siding, the infrastructure requirements are as follows:</p> <ul style="list-style-type: none"> • OHI-1 (5) - Balemi Road to be upgraded. This is included in the proposal. • OHI-1 (12) – Sightline increased on the south bound offramp at the Ohinewai Interchange. This is included in the proposal, and within the proposed conditions of consent. • OHI-2 (1) – Factory Stage 1 and 2 is to be serviced on-site. This is consistent with the proposal.
PREC3-R4 (1)	RDIS	<p>Industrial activity provided that infrastructure upgrades are being constructed as per Tables OHI-1 and OHI-2.</p> <p>The proposal is an Industrial activity.</p>
PREC3-S4(2)	PER	<p>A 15m landscaped strip is required along Lumsden Road and an 8m strip is required along Balemi Road.</p> <p>This landscaping is included in the proposal.</p>
PREC3-S6(1)(a)(ii)	PER	<p>The proposal complies with the noise limits relating to the Industrial zone and the adjacent Village zone (western side of Lumsden Road).</p>
PREC3-S7(1)(a)(i)	PER	<p>The proposal complies with the noise limits set out for 52-56 Lumsden Road.</p>
PREC3-S8(1)	PER	<p>Construction noise standards can be met</p>
PREC3-S9(1)	PER	<p>Glare and artificial light spill requirements can be met.</p>
PREC3-S10(2)	RDIS	<p>Earthworks for the purposes of building platforms involving clean fill.</p>
PREC3-S11(2)	RDIS	<p>General earthworks.</p>
PREC3-S13 (2)	RDIS	<p>The proposed signage on Building 3 exceeds the permitted activity standards.</p>
PREC3-S15 (1)	PER	<p>The proposed signage meets the permitted standards.</p>
PREC3-S16 (1)	PER	<p>Low impact design stormwater measures have been incorporated into the proposal.</p>
PREC3-S17 (2)	RDIS	<p>Maximum height in the Industrial Precinct = 17.9m</p> <p>The maximum height of the buildings on site is as follows:</p> <p>Building 1 – 11.1m (12.1m total including building platform)</p> <p>Building 2 – 12.27m (12.77m including building platform)</p> <p>Building 3 – 11.1m (12.5m (including building platform)</p> <p>Building 4 – 17.9m (19.5m including building platform)</p>



		Building 5 – 8m (9.3m (including building platform))
PREC3-S18 (1)	PER	All buildings comply with the relevant height in relation to boundary requirements.
PREC3-S19 (1)	PER	The proposed buildings are setback >15m from Lumsden Road.

Table 2.1. - Ohinewai Zone Rules

2.3 Information requirements

As noted above, with the Decisions Version of the Ohinewai zone having been notified, there are information requirements set out within the Ohinewai Zone rules and standards that apply to the application. The requirements relevant to the application are summarised below, with comment on the compliance or otherwise of the application. Additional information requirements are listed within the Decisions Version that relate to subdivision, however those provisions do not apply to the proposal.

OHI-INFO1 - Ecological Rehabilitation and Management Plan (ERMP)

An ERMP is required to be prepared and lodged to support applications relating to earthworks activities. APL have prepared a Draft ERMP to support the application, and this document is included as **Attachment 7**. Proposed Condition 9⁷ requires a finalised ERMP to be submitted prior to construction commencing.

For context, the majority of matters required in the ERMP had been completed as part of the investigations and reporting for the proposal, and also for the earthworks activities that are currently in progress on the site as part of Earthworks 1A.

OHI-EIT-INFO2 – Broad Integrated Transport Assessment (ITA)

Various matters are set out at OHI-EIT-INFO2 for transport assessment requirements submitted in support of development applications. While the requirement for a Broad ITA is not triggered by the proposal under the Decisions Version, an ITA has been completed for the proposal (**Appendix 5**).

3. An assessment of the weighting that should be placed on the Ohinewai Rezoning decision

With a decision on the Ohinewai Zone having been notified by Waikato District Council, the plan provisions relating to the development now have legal effect in accordance with section 86B of the Resource Management Act 1991 (“RMA”). It is also worth noting that while the objectives and policies of the PWDP as notified had immediate legal effect upon notification (and had been assessed in the application as submitted as **Appendix 23**), the objectives and policies relating to development have been amended considerably as a result of the decision. An updated assessment is included as **Attachment 2**.

Until the Ohinewai Zone rules are made operative (i.e. any appeals lodged in respect of the Ohinewai Zone provisions are resolved), any proposal within that zone requires consent under both the OWDP and PWDP⁸. Should there be a conflict between the results that would be obtained

⁷ Waikato District (land use) conditions

⁸ See *Bayley v Manukau City Council* 1 NZLR 568 and *Stokes v Christchurch City Council* [1999] NZRMA 409.



under each plan (i.e. if one leads to a refusal and the other to a consent), then the issue arises as to the weighting that should be applied to each plan⁹.

The issue of weighting is not necessarily a straightforward exercise. In each case, it will be necessary to analyse any relevant appeal(s) to determine whether it directly challenges the relevant provision or whether the effect of the appeal is more subtle. That said, the general rule of thumb is that the closer a proposed plan comes to being final, the greater the weight that can be applied to it¹⁰.

It is our view however, that in assessing the proposal, the Panel can give considerable weight to the Ohinewai Zone provisions (irrespective of the nature of any appeal(s) that may be lodged in respect of the rezoning decision), for the following reasons.

Extensive hearing process by independent decision maker

The Waikato District Plan Hearings Panel (the Panel) acknowledged the significant economic and social benefits of the APL proposal to the Waikato District and agreed that it could (and should) make a decision on APL's rezoning proposal, in advance of determining the remainder of the PWDP¹¹. As a result, there was a dedicated hearing and extensive evidence presented on the Ohinewai Rezoning in September 2020. This hearing also followed an extensive range of caucusing sessions, where the matters in contention between experts were narrowed and where possible, matters of agreement and disagreement were acknowledged.

As such, the Ohinewai Zone provisions have already been subject to scrutiny by an experienced hearings panel, following consideration of the matters raised by all submitters and key stakeholders. Thus, this is not a situation where the Ohinewai Zone provisions (including the objectives and policies) are "freshly minted" (or only just notified) and have not yet even been subject to submissions, let alone a hearing. Rather, the provisions have already progressed a significant way along the process required before they become operative.

Further, the Rezoning decision represents a notable shift in Council policy from the previous zoning of Rural to a mix of zonings that provide for significant economic development, and hence there is a case for substantial weight to be placed on the Rezoning decision. To ignore this policy shift and continue to give significant weight to the site's existing Rural zoning would be inconsistent with the realistic and likely future for the site, in accordance with the rezoning decision.

Finally, it is also relevant to note (as the Hearings Panel did¹²) that the rezoning gives effect to the highest order planning instruments, in particular:

- *'the NPS-UD because it will add significantly to development capacity and contribute to transforming the Huntly and Ohinewai area into a well-functioning urban environment; and*
- *the alternative land release criteria in the RPS and the relevant development principles'.*

Possible injustice

It is our view that there is limited risk of injustice to any parties, and in particular on any submitter on the Rezoning as a result of giving substantial weight to the Rezoning decision. The key issues relating to the Rezoning were refined by evidence and questioning by the Hearing Panel and these matters were noted by the Hearing Panel throughout their decision. In summary, they related

⁹ Ibid.

¹⁰ *Hanton v Auckland CC* [1994] NZRMA 289 at page 32, agreeing with the decision in *Lim v Hutt CC* [1994] NZRMA 183; *Queenstown Central Ltd v Queenstown Lake District Council* 17 ELRNZ 585; [2013] NZHC 815 at paragraph [9].

¹¹ Report and Decisions of the Waikato District Plan Hearings Panel, Report 2 Ohinewai Rezoning, 24 May 2021, para. 13.

¹² Ibid. para. 391



primarily to whether the rezoned land could be adequately serviced (particularly in respect of water and wastewater), as well as opposition to the residential aspect of the rezoning. Neither of those matters are engaged by the foam factory proposal that is before the Expert Consenting Panel for consideration, for the following reasons:

Water supply and wastewater

- Significant evidence was presented by APL and submitters, in particular Waikato Tainui on the serviceability of the overall development from a water supply and wastewater perspective. Notwithstanding APL's position (and ultimately that also of the Hearings Panel), that the overall development area can be adequately serviced, the application in front of the Expert Consenting Panel is self-sufficient with respect to water supply and wastewater. There are no infrastructure upgrades required, so the key water and wastewater rules are not engaged.
- If there were appeals relating to water supply or wastewater, then it is our view based on the rule framework, that those appeals are likely to relate to future development proposals and do not affect the proposed foam factory and rail siding application.

Residential development

- The key area of contention at the rezoning hearing related to the residential component of the Ohinewai development area. Notwithstanding APL's position (and ultimately that also of the Hearings Panel) that the residential zoning is appropriate, if there were appeals relating to the residential component, that would not affect the proposed foam factory. The protagonists in opposition to the rezoning, are in the whole not against the Industrial zoning of the site.

Commitment to the proposal by APL

Finally, we note that APL has expended significant expenditure on the Ohinewai rezoning proposal and has committed to the site, given their existing facilities in Auckland are reaching end-of-life. There are initial resource consents in place, physical works occurring on site at present and detailed design underway for building consent applications.

While appeals on the rezoning decision may be lodged, APL is committed to the development and the significant benefits it can bring to the Waikato District and the wider Waikato Region. It therefore has a strong incentive to ensure that any appeals that are lodged in respect of the rezoning decision are successfully resolved (and the Ohinewai Zone provisions confirmed, largely if not entirely as determined by the Hearings Panel) as soon as possible.

Yours sincerely

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