

MEMORANDUM

To | Hearing Commissioners
From | Chloe Trenouth, Hill Young Cooper Ltd
(Section 42A report author)
Subject | Hearing 19: Ohinewai Rezoning – Expert Conferencing
Date | 15 May 2020

The minute from the Hearings Panel (dated 8 May) invites submitters involved in Hearing 19 Ohinewai rezoning requests and Council to seek consensus on how expert conferencing for this hearing should proceed.

The Council sent a memo to all submitters (dated 12 May 2020) seeking responses on a suggested process for expert conferencing. Responses were received from the following submitters:

- Mercury Energy Ltd
- Ambury Properties Ltd
- Waikato Regional Council and The NZ Transport Agency
- Waikato Tainui
- Future Proof
- Department of Conservation¹
- Catherine Mayer

The purpose of this memo is to set out the consensus position reached on how expert conferencing should proceed, including specific matters raised by submitters where a consensus has not yet been reached. It is anticipated that these outstanding matters can be resolved at the planned Zoom meeting next week.

The minute from the Hearing Panel considers the relevant process issues to be:

- The scope of expert conferencing and the topics to be covered, including overlaps between topics;*
- The name and discipline of each expert participating in each topic. It is our intention that only technical experts attend conferencing, not lay persons;*
- Whether planners attend each topic or a planning topic(s) only;*
- The provision of information to be circulated in advance of each session, including agreed agenda and key issues for each topic;*
- The requirement for a Joint Witness Statement to be prepared at the conclusion of each topic session, in compliance with the Environment Court Practice Note 2014;*
- The timing of first set of conferencing sessions and whether a second round of conferencing will be required in advance of APL finalizing its evidence.*

Overall, those submitters that responded to the request for feedback on the expert conferencing process agree on the purpose and general approach. The following discussion sets out the matters that are agreed, then those matters raised by submitters in blue boxes where a consensus has not yet been able to be reached.

I. Purposes of expert conferencing

All parties generally agree that the purpose of expert conferencing is to address and narrow the issues raised in the section 42A report and technical peer reviews, the evidence provided by

¹ It is noted that the Department of Conservation no longer has further submitter status because the original submission by Planning Focus Ltd has been withdrawn.

Ambury Properties Limited and any experts representing submitters. Expert conferencing is often for the purpose of documenting where experts agree, but also narrowing down areas of disagreement.

All parties generally agree with the Commissioners intention that only technical experts attend conferencing, rather than lay submitters. Lay submitters will have two opportunities to share their experience and knowledge of the area – at the stage where evidence is due, and again at the hearing.

Waikato-Tainui have some concerns that lay submitters are removed from the discussion. The above comment around areas of disagreement implies some topics will be removed from the general hearing discussion if selected submitters can reach agreement. This concern is addressed further in relation to preparation of a Joint Witness Statement.

Ambury Properties Limited consider that tangata whenua have a valuable role to play in expert conferencing by bringing an expert cultural perspective to topics such as stormwater/flooding, social impacts, urban design, ecology and water/wastewater and support their inclusion.

Catherine Mayer has a number of concerns regarding expert conferencing as a lay person including:

- whether the submitters will be able to view the Experts input before having to respond at the hearing? This will have an impact to understand what is before the panel to ensure that the lay submitters, who have an intimate understanding of their community, can respond appropriately to the information available.
- are these experts taking a “holistic” viewpoints of Ohinewai? And will this impartial view point be then offset by the lay person’s response?

2. Topics to be addressed through expert conferencing

All parties generally agree with the following list of suggested topics:

- Transport
- Ecology
- Business land (Economics)
- Residential land (Economics)
- Water and wastewater
- Flooding
- Stormwater
- Urban design (including integration)
- Social impacts
- Strategic planning
- Planning provisions

Submitters have provided the name and discipline of experts participating in each topic where relevant to their concerns. This information is provided in the table in Attachment One.

Waikato Regional Council and The NZ Transport Agency suggest a single, more comprehensive session for the Economic topic would be better. While they accept that there are different issues associated with industrial and residential land, and that WDC has engaged two different economic experts, they consider the economic issues to be more holistic and encompass broad economic considerations that are likely to traverse similar ground such that a single session may be more efficient.

Ambury Properties Limited note that given the limited number of experts listed for ecology, stormwater and waste/wastewater topics there may be potential for those experts to undertake non-facilitated conferencing to see if agreement can be reached. This would then allow more time for the other topics.

3. Should planners attend each topic or planning topics only?

All parties agree that planners should attend all relevant topics so they are aware of the issues, but only as observers for technical topics other than planning. If requested, planners can provide assistance in any discussions around provisions to address issues.

Future Proof indicate that given time and cost constraints they will be informed of non-planning witness caucus outcomes. This approach has worked in other situations. It does rely on a clear written record of decisions reached/why and matters still not resolved/why.

4. Circulation of information in advance of each session, including agreed agenda and key issues for each topic

All parties agree that there should be pre-circulation of information so that attendees are better prepared to participate in discussions. It is also agreed that participants for each topic should agree on the agenda at least 3 days prior to the session commencing, and once further information has been reviewed and discussed.

Ambury Properties Ltd is currently working on a range of additional information that it will circulate to all parties by 21 May 2020. That information will include;

- Updated Integrated Transport Assessment (Draft)
- Ecology Update Memo (circulated 14 April 2020)
- Updated Water/Wastewater Memo by GHD
- Groundwater Assessment by Pattle Delamore Partners

- Updated Masterplan, Structure Plan and Zoning Plan by Adapt Studio
- Addendum to the December 2019 AEE; this addendum will summarise the additional information above and respond to key issues raised in the s42A report
- Updated set of draft District Plan provisions

Mercury agrees with the pre-circulation of information, but records that it also requires critical factual information from the Ohinewai re-zoning requestors, in order that conferencing can be sensibly undertaken.

Mercury understands that all of the submitters addressed in the Council's relatively recent Ohinewai report are to be heard and are subject to this proposed conferencing. However, Mercury is not currently aware of the extent to which Shand Properties Limited and Ohinewai Lands Limited intend to pursue the requests made in their submissions, and if so, what provisions might be proposed. It would be appropriate for the parties seeking re-zoning to be as **specific** as possible regarding the relief that they are seeking, or intend to seek. This would need to involve the particular zoning outcomes sought (in map form) and the specific plan provisions proposed.

Mercury is currently assessing the hydrological information needed from Shand Properties and Ohinewai Lands. Depending on their response to the above request, the information sought may be very detailed.

From Ambury Properties, Mercury requires clarity as to how natural hazard and climate change provisions within the District Plan will affect the site. Mercury has anticipated that parts of the site remain within a flood affected area, so this leads to questions about how natural hazard risk is managed moving forward. Mercury has a direct interest in ensuring that the storage capacity of the Lower Waikato Flood Protection Scheme is considered within the District Plan policy settings.

Mercury seeks a period of time to review the above material before providing information via the pre-circulation referred to above.

5. Should a Joint Witness Statement to be prepared at the conclusion of each topic session?

Generally, parties agree with a Joint Witness Statement being agreed at the conclusion of each topic session in accordance with Environment Court Practice Note 2014. This should be a succinct record of the matters discussed and the position of each expert.

Waikato-Tainui don't believe this is appropriate if some submitters are being excluded from this process. Perception of 'big players' teaming up will be created. Agreement of a minute possible.

6. When should expert conferencing sessions commence?

Parties agree that there needs to be adequate time before expert conferencing sessions commence to allow the exchange of information and establish an agenda. It is also noted that the Hearings Panel have an expectation that various experts will have discussed their differences on issues between themselves prior to facilitated expert conferencing commencing.

At least a two week period between receiving additional information on a specific topic and the date for conferencing on that topic would enable such discussions to take place. However, it is noted that an updated ITA is to be provided by Ambury Properties Ltd and both the district and regional councils, as well as The NZ Transport Agency consider a period of 4 weeks will be needed to review the ITA and consider issues of agreement and contention prior to expert conferencing. Therefore, the Transport topic should be later in the schedule to allow for this. All parties agree that the planning provisions topic be last in the schedule.

Parties generally agree that expert conferencing could start in early June 2020.

Waikato District Council suggest there may be merit in scheduling the Strategic Planning topic first to identify the key strategy issues to be addressed by the other topics.

Waikato-Tainui indicate that given the large amount of information provided by the applicant, early June would not seem achievable. Waikato-Tainui have been heavily involved in the COVID 19 response and are still in the process of prioritising workloads.

Ambury Properties Ltd indicates that based on the additional information being circulated by 21 May 2020 the conferencing commence on 4 June 2020.
In terms of the order of topics we consider that the Strategic Planning and Plan Provisions should be the last two topics. This will be the most efficient approach as they will draw on the outcomes of the preceding topics. We also suggest that transport should be further down the list as there is substantial technical information to review and that will provide more time.
Noting that submitter evidence is due 2 July, Ambury Property Ltd prefer that conferencing be completed in the first half of June so outcomes can be addressed in evidence.

Mercury considers that early June may be too soon unless the information referred to above can be provided reasonably quickly.
Mercury also notes that there are several RM workstreams (not just the PWDP, but others in this district, region and elsewhere) that are also underway and which will want to 'ramp up' and 'catch-up' under Level 2 and Level 1. Availability and capacity, both in-house and in terms of external providers such as technical experts and legal counsel, may become an issue as the backlog is addressed.

Waikato Regional Council and The NZ Transport Agency suggest the following approach to expert conferencing:

1) The proponents to provide (any) updated technical reports and plan provisions and a 'will say' statement prior to any conferencing:

a) The intent of the 'will say' statement is not to provide detailed evidence, but rather to identify the key conclusions, interpretations and responses that the proponents' experts have drawn from the assessments that they would normally provide in evidence. The 'will say' would still be provided where an updated technical report is not being provided.

b) In general, we consider that the provision of this information should be at least two weeks prior the proposed conferencing date for that topic. However, we are mindful that we have yet to receive the updated Integrated Transport Assessment (ITA) and draft plan provisions and that that these documents (particularly the ITA) will require substantial review and discussion between the parties prior to conferencing. Accordingly, we consider that a longer timeframe of three to four weeks would be required for the transport and plan provision conferencing. This may be achieved by ensuring the provision of updated information early next week and sequencing the sessions as we discuss below.

2) Other submitters/the District Council to review the information and provide to all parties a written statement of matters that are agreed with and those that are in dispute. The latter will form the basis of the agenda for the conferencing. We consider that this should be provided a minimum of one week before the conferencing.

We agree that this step should include informal discussions between the experts to clarify matters and discuss issues as necessary prior to conferencing.

3) An agenda should be prepared for each conference session. As this should largely be a prioritisation of the outstanding issues that have been raised, we believe this could be achieved within two to three days of step 2 above.

4) Conferencing is sequenced to provide more preparation time for those issues that require it. In particular, as above we believe more time will be required to review the updated ITA and draft plan provisions and provide opportunity for the respective experts to engage informally prior to the conferencing.

Therefore, in respect of sequencing, we propose that transportation and the two planning sessions be held at the end of the timetable to provide sufficient time to undertake the review and preparation necessary for these topics. 2

5) The timetable includes provision for more than one conferencing session, if required, as would normally be the case for expert conferencing/caucusing. As above, we consider that there will be significant benefits from robust conferencing – particularly for complex and multi-faceted technical issues. This may not be able to be achieved in one session for the more complex technical issues.

6) The provision of an agreed Joint Expert Statement that identifies the matters that were traversed, the matters of agreement and those matters that are not agreed between the experts. We appreciate that the above may mean that conferencing occurs over a slightly longer time. However, we consider that this will enable evidence to be more focused, which in turn will be of benefit to the hearing.

At least 4 weeks between receipt of the revised ITA and the start of conferencing on Transport to provide sufficient time for our experts to review the ITA, clarify and discuss any matters with the other experts and prepare their issues for mediation. If the ITA is not received until 21 May (as proposed in the memo), then initial conferencing on Transport would need to be scheduled after 18 June.

Attachment One: Expert Conferencing participants

Topic	Submitter	Expert
Residential (Economics) land	Ambury Properties Ltd	Tim Heath and Phil Osborne (Economists from Property Economics) and Brent Wheeler (Economist from Brent Wheeler Group Ltd)
	Waikato District Council	Douglas Fairgray (Economist from Market Economics)
	Waikato Regional Council / The NZ Transport Agency	Blair Keenan (WRC)
	Waikato-Tainui	Gavin Donald potentially
Business (Economics) land	Ambury Properties Ltd	Tim Heath and Phil Osborne (Economists from Property Economics) and Brent Wheeler (Economist from Brent Wheeler Group Ltd)
	Waikato District Council	Derek Kemp (Economist from Prosperous Places)
	Waikato Regional Council / The NZ Transport Agency	Blair Keenan (WRC)
	Waikato-Tainui	Gavin Donald potentially
Ecology	Ambury Properties Ltd	Chad Croft (Ecologist from Ecology NZ)
	Waikato Regional Council / The NZ Transport Agency	Andrea Julian (WRC)
	Waikato-Tainui	Gavin Donald potentially
Flooding	Mercury	Grant Webby (DamWatch) and David Payne (Mercury)
	Ambury Properties Ltd	Ajay Desai (Flooding Engineer from Woods)
	Waikato-Tainui	Gavin Donald
	Waikato District Council	Megan Blackburn
	Waikato Regional Council / The NZ Transport Agency	Rick Liefing, Ghassan Basheer (WRC) and Mark Pennington (Tonkin and Taylor)
Planning Provisions	Mercury	Angus Mackenzie (Place Group) and Fraser Graafhuis (Mercury)
	Ambury Properties Ltd	John Olliver and Stuart Penfold (Planners from BBO)
	Waikato District Council	Chloe Trenouth (Planner from Hill Young Cooper)
	Waikato Regional Council / The NZ Transport Agency	Ian Mayhew, 4Sight Consulting for Council and the Transport Agency
	Future Proof	Ken Tremaine (Future Proof Implementation Advisor)
	Waikato-Tainui	Giles Boundy
Social Impacts	Ambury Properties Ltd	Robert Quigley (Social Impact Assessor from Quigley and Watts)
	Waikato District Council	Jo Healy (Social Impact Planner from Beca)
	Waikato Regional Council / The NZ Transport Agency	Melissa Hackell (WRC)
	Waikato-Tainui	Gavin Donald
Stormwater	Ambury Properties Ltd	Pranil Wadan (Stormwater Engineer from Woods)
	Waikato District Council	Megan Blackburn (Engineer from Stantec)
	Waikato-Tainui	Gavin Donald
Strategic planning	Mercury	Angus Mackenzie (Place Group) and Fraser Graafhuis (Mercury)
	Ambury Properties Ltd	John Olliver (Planner from BBO)

	Waikato District Council	Chloe Trenouth (Planner from Hill Young Cooper)
	Waikato Regional Council / The NZ Transport Agency	Ian Mayhew, 4Sight Consulting for Council and the Transport Agency and Strategic Transport Planning – Sarah Loynes (Transport Agency)
	Future Proof	Ken Tremaine (FutureProof Implementation Advisor)
	Waikato-Tainui	Gavin Donald
Transport	Ambury Properties Ltd	Cameron Inder (Transport Engineer from BBO)
	Waikato District Council	Naomi McMinn (Transport Planner from Gray Matter)
	Waikato Regional Council / The NZ Transport Agency	Robert Swears (WSP) – for the Transport Agency and Vincent Kuo (WRC)
	Waikato-Tainui	Gavin Donald potentially
Urban Design (including integration)	Ambury Properties Ltd	Jonathan Broekhuysen (Urban Designer from Adapt Studio) and Michael Graham (Urban Designer from Mansergh Graham Landscape Architects)
	Waikato District Council	Matthew Jones (Urban Designer from Isthmus)
	Waikato-Tainui	Gavin Donald potentially
Water and Wastewater	Ambury Properties Ltd	Tim Harty (Engineer from GHD)
	Waikato District Council	Jim Bradley (Engineer from Stantec)
	Waikato-Tainui	Gavin Donald