

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

DIRECTIONS FROM HEARING COMMISSIONERS

14 October 2020

Introduction

1. The hearing of submissions and further submissions on the Proposed Waikato District Plan (“**proposed plan**”) that relate to proposals to rezone land at Ohinewai was held on 14 – 16 September 2020 (“**Ohinewai Hearing**”).
2. Following closing submissions from Mr Berry, counsel for Ambury Properties Ltd (“**Ambury**”), that were presented in summary form orally, the Hearings Panel:
 - a. Requested that Mr Berry provide his closing submissions in writing by 23 September 2020¹; and
 - b. Indicated that although no decisions had been made by the Hearings Panel, if rezoning requests were to be approved, further work would be necessary to ensure that the provisions relating to those requests were more robust.

Notwithstanding that a number of parties remained of the opinion that the Ohinewai rezoning proposals, and in particular the Ambury proposal, should not be approved, there seemed to be a general consensus from those at the Ohinewai Hearing that the proposed plan provisions could be considered at a later date following the substantive hearing.

¹ These were received on 23 September 2020, as requested.

3. The Hearings Panel wishes to stress again that it has reached no conclusion on whether or not the various rezoning requests at Ohinewai should be approved or not. Prior to making that decision, and to properly inform it, the Hearings Panel has determined that further attention needs to be given to the drafting of the proposed Ohinewai-related objectives, policies and rules of the proposed plan (“**the Ohinewai provisions**”).
4. Subject to paragraphs 7 and 8 below, the issues that the Hearings Panel considers that the Ohinewai provisions need to address are as follows, noting that when referring to the Ohinewai provisions we are using the version attached to Mr Olliver’s rebuttal evidence, dated 24 August 2020:
 - a. As acknowledged by Mr Berry², the Ohinewai provisions need to be recast so that they are a suite of self-contained provisions, that do not rely on yet to be settled district-wide provisions. We have no opinion on how such amendments should be structured and drafted, and leave that for the parties to further consider, in accordance with these Directions, as set out further below.
 - b. Objective 4.1.19 seems to us to be very broad in that it refers to “Ohinewai East”, which is undefined. In that regard, although Policy 4.1.20 (a) (ii) provides some guidance by specifying that development at Ohinewai is to be “generally in accordance with the Ohinewai Structure Plan (“**OSP**”)”, that too is uncertain – inappropriately so in our preliminary assessment.
 - c. Policy 4.1.20 (a) (i) is similarly imprecise and would be improved if it were to be written in plain language.
 - d. Policy 4.1.20 (a) (v) should refer to large scale industrial development **ONLY** being located in Ohinewai East.
 - e. The proposed restricted discretionary activity rules in Chapters 16, 17 and 20 read as performance standards, and further clarity is needed between the criteria that restricted discretionary activities must satisfy in order to be classified as restricted discretionary activities and the matters over which discretion is being restricted.
 - f. The pre-conditions relating to the provision of infrastructure, particularly, but not limited to, those in relation to wastewater disposal, need to be considerably more robust. In relation to wastewater, the Ohinewai provisions would need to be unequivocal that, with the exception of Stages 1 and 2, development cannot occur until/unless wastewater treatment plants are fully operational and operating within resource consent conditions, as certified by the Council.
 - g. The proposed staging provisions in a number of the proposed rules are too imprecisely defined, and refer to both the sequencing of development and its timing, in years. Our preliminary view is that in some circumstances it would be appropriate to refer to both sequencing and timing (for example it might well be appropriate for a particular aspect of “community Infrastructure” to be in place during a particular stage of development, but no later than a specified date). In any event, the intention of staging and timing needs to be more clearly defined and drafted.
 - h. At the present time, we have not been persuaded that a departure from the OSP should be classified as a discretionary activity in the residential, industrial and business zones. Our preliminary view is that a non-complying activity status would be more appropriate.

² Closing submissions – paras 4.1 – 4.13

- i. Finally, there appear to be a number of general drafting, cross-referencing and numbering anomalies that should also be attended to.

5. We therefore issue the following Directions.

Directions

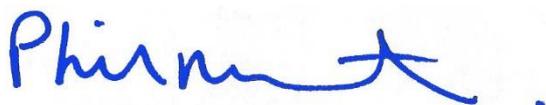
6. The Hearings Administrator is to provide these Directions to all parties that provided written, pre-circulated evidence for the Ohinewai Hearing or who presented submissions at the Ohinewai Hearing and Council staff, and post them on the Council website.
7. Ambury is to provide the parties referred to in paragraph 6 and the Hearings Administrator with a revised version of the Ohinewai provisions ("**revised version**") by **5 pm on Friday 30 October 2020**. The extent of the amendments to be made is at Ambury's discretion, but must, as a minimum, address the matters set out in paragraph 4 above.
8. Any party referred to in paragraph 6 above that wishes to propose amendments to the revised version is to provide a redlined/strikeout version to Ambury and the Hearings Administrator no later than **5pm on Friday 13 November 2020**.
9. Ambury is to provide the parties listed in paragraph 6 and the Hearings Administrator with a consolidated set of Ohinewai provisions no later than **5pm on Friday 27 November 2020**. All areas of agreement and disagreement are to be clearly identifiable.
10. We have made no specific Directions regarding consultation, but would encourage the parties to collaborate as much as possible during the process set out in paragraphs 7 – 9 above, noting also that the timeframes we have set are intended to allow sufficient time for meaningful engagement.
11. For the avoidance of doubt, we record here that to the extent that these Directions do not address specific rezoning proposals at Ohinewai, these will be addressed in our substantive decision on the proposed plan.

Questions from Parties

12. Any questions regarding these Directions are to be addressed to the Hearings Administrator, Mr Fletcher Bell. His contact details are as follows:

Email Districtplan@waidc.govt.nz

Telephone 027 214 8052



P H Mitchell (Chair)

For the Hearings Panel

14 October 2020