

UNDER

The Resource Management Act 1991

IN THE MATTER

of an appeal pursuant to Clause 14(1) of the First Schedule to the Act

AND

IN THE MATTER

of Decisions on the Proposed Waikato District Plan

BETWEEN

AMBURY PROPERTIES LIMITED

Appellant

AND

WAIKATO DISTRICT COUNCIL

Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISIONS ON
PROPOSED WAIKATO DISTRICT PLAN**

To The Registrar
Environment Court
DX CX 100086
PO Box 7142
AUCKLAND

1. **AMBURY PROPERTIES LIMITED ("APL")** appeals against the decision of the Waikato District Council on the **PROPOSED WAIKATO DISTRICT PLAN ("PWDP")**.
2. APL made submissions and further submissions on the PDP.
3. APL is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 ("RMA").
4. APL received notice of the decision on 24 May 2021.
5. The decision was made by Waikato District Council.

6. APL appeals the decision insofar as it relates to land at Ohinewai.

7. **CONTEXT - THE COMFORT GROUP, AMBURY PROPERTIES LIMITED AND THE SLEEPYHEAD ESTATE**

The Comfort Group

7.1 The Comfort Group ("TCG") is Australasia's largest mattress and foam manufacturer. TCG currently operates from existing manufacturing facilities in Avondale and Otahuhu in Auckland, with warehousing in Glen Innes. These facilities are outdated and are impeding the company's efficient manufacturing operations. TCG therefore decided to consolidate and expand its operations at a single location and, after a careful site selection process, purchased a 178 hectare site at Ohinewai ("the Ohinewai site").

APL submission and further submission

7.2 Ambury Properties Limited ("APL") is an associated company of TCG that is responsible for the purchase and development of the Ohinewai site. In that capacity, APL made submissions and further submissions on the PWDP, specifically in relation to the zoning and plan provisions applying to the Ohinewai site.

7.3 The key relief sought by APL was the rezoning of the site from Rural to a mix of Industrial, Business and Residential zones and the establishment of an Ohinewai Structure Plan to enable the establishment of "The Sleepyhead Estate" (see below).

7.4 A number of other parties lodged submissions and further submissions on the same topic, described as the "Ohinewai Rezoning" topic. This topic was heard by independent hearing commissioners on 14-17 October 2020.

7.5 APL participated in the hearing process and received notice of the decision on 24 May 2021. The decision:

(a) Accepted, accepted in part, or rejected APLs submissions and/or further submissions.

(b) Establishes a "stand-alone" set of provisions for a new Ohinewai Zone.

7.6 In essence, the decision granted the relief that APL sought, which will enable the company to proceed with a comprehensive development in the form of The Sleepyhead Estate.

The Sleepyhead Estate

7.7 The Sleepyhead Estate will deliver a comprehensively masterplanned community. Key elements of the development comprise:

- (a) A 100,000m² factory for TCG on the western part of the site.
- (b) A 75 hectare industrial hub, accommodating the TCG factory and other industrial users, with access to the NIMT rail siding.
- (c) Commercial development comprising 6.2 hectares of land zoned Business to support the residential community, including a service station, bus terminal, emergency vehicle station and a neighbourhood centre comprising convenience stores.
- (d) Residential development of 52 hectares which will enable the construction of between 900-1100 houses.
- (e) Approximately 55 hectares of public open space including community playing fields, community vegetable plots, playgrounds and wetlands incorporating stormwater infrastructure.

8. AMBURY PROPERTIES LIMITED APPEAL

8.1 TCG / APL generally supports the decision and the provisions which apply to the site. However, there are five aspects of the PWDP per the Respondent's decision that require to be rectified, namely:

- (a) Objective OHI-EIT-07(1) which requires that the hydrological characteristics of natural drainage processes are retained where new subdivision, development or land use is proposed;
- (b) Policy OHI-EIT-P20(l)(e) which states that subdivision, land use and development does not increase the flow of stormwater runoff onto adjacent land or floodplains;
- (c) Table OHI-1 which relates to road upgrades of Tahuna Road, Lumsden Road and Balemi Road;
- (d) Figure OHI-3 which shows the Staging Plan for the Sleepyhead Estate; and
- (e) Business precinct objective PREC2-01 which identifies the locations of commercial activity in the Ohinewai zone.

8.2 APL therefore appeals against those provisions of the PWDP as amended in accordance with the decision.

Grounds of appeal

8.3 The grounds of APL's appeal are that the provisions as amended:

- (a) Would inhibit the timely development of the Sleepyhead Estate and, as a result, have the potential to adversely impact on the realisation of the objectives of the Ohinewai Zone.
- (b) Do not represent the most appropriate means of achieving the objectives of the National Policy Statement for Urban Development 2020, the Waikato Regional Policy Statement, the PWDP and various other district and regional planning documents (including Future Proof and Waikato 2070) in relation to the Ohinewai Zone.
- (c) Do not represent the most appropriate means of achieving the purpose of the Act.
- (d) Apply only in the Ohinewai Zone and are based on the specific characteristics of the site, so do not have any wider implications for the PWDP.

Parts of decision appealed against, reasons and relief sought

8.4 Without limiting the generality of the foregoing, the aspects of the PWDP that APL appeals against, the reasons for appealing and the relief sought are set out in Sections 9 to 15 of this notice of appeal, as follows.

9. OBJECTIVE OHI-EIT-07(1) – REQUIREMENT FOR HYDROLOGICAL CHARACTERISTICS OF NATURAL DRAINAGE PROCESS TO BE RETAINED

Reasons for appeal

10. Objective OHI-EIT-07 (1) states:

The hydrological characteristics of the natural drainage processes are retained where new subdivision, development or land use is proposed.

10.1 Land development almost invariably changes pre-development hydrological characteristics of the subject land by modifying drainage patterns. Therefore, on the face of it, this objective is not capable of being complied with on any development site.

- 10.2 Related Policy OHI-EIT-P20 (I)(d) provides the necessary flexibility and indicates that Objective OHI-EIT-07 is not intended to apply in an absolute site-specific manner. It states that development is to:

"Retain predevelopment hydrological conditions as far as practicable."

- 10.3 The amendment of Objective OHI-EIT-07 is required to better reflect the reality of land development and to achieve consistency with OHI-EIT-P20 (I)(d).

Relief sought

- 10.4 APL seeks the following relief:

- (a) Amend Objective OHI-EIT-07 as follows:

The hydrological characteristics of the natural drainage processes are retained as far as practicable where new subdivision, development or land use is proposed.

- (b) Such further or other relief which may be necessary or appropriate to address the concerns outlined above.

11. **POLICY OHI-EIT-P20(1)(E) - SUBDIVISION, LAND USE AND DEVELOPMENT NOT TO INCREASE THE FLOW OF STORMWATER RUNOFF ONTO ADJACENT LAND OR FLOODPLAINS**

Reasons for appeal

- 11.1 Policy OHI-EIT-P20(1)(e) requires that subdivision, land use and development:

'Does not increase the flow of stormwater runoff onto adjacent land or floodplains'

- 11.2 Technically compliance with Policy OHI-EIT-P20(1)(e) is not possible. Detailed flood modelling undertaken by APL has demonstrated that:

- (a) The development of the Ohinewai site will result in a small increase in runoff into the adjacent floodplain; but that
- (b) The effects of the increase in runoff are negligible and therefore acceptable.

Policy OHI-EIT-P20(I)(e) is inconsistent with Policy OHI-EIT-P20(1)(d) referenced in paragraph 10.2 above which recognises the need for flexibility in relation to hydrological conditions.

Relief sought

11.3 APL seeks the following relief:

(a) Amend Policy OHI-EIT-P20(1)(e) as follows:

'Does not increase the flow of stormwater runoff onto adjacent land or floodplains to a more than minor extent'

(b) Such further or other relief which may be necessary or appropriate to address the concerns outlined above.

12. **TABLE OHI-1 – ROADING UPGRADES**

Reason for appeal

12.1 Table OHI-1 specifies road upgrades of Tahuna Road, Lumsden Road and Balemi Road.

12.2 There are a number of minor errors in Table OHI-1, as follows:

- (a) The references to the numbered roading cross-sections are incorrect, and refer to cross-sections for the internal roads, rather than the three external roads.
- (b) The cross-sections for the external roads are missing from the plan provisions.

Relief sought

13. APL seeks the following relief:

(a) Amend Table OHI-1 as follows:

'Upgrade required
Transport
<i>...(3) Tahuna Road upgrade (from Lumsden Road to Access 2), including kerb and channel and street lighting on northern side of the road (Table OHI-18 and Figure OHI-17)...</i>
<i>...(5) Balemi Road upgrade (to easternmost access), including;</i> <i>(a) Reconstruction of the road to urbanised industrial cross-section (Table OHI-18 and Figure OHI - 19 Collector Road, Business and Industrial) including widening and sealing and kerb and channel on southern side of the road.</i>
<i>(6) Lumsden Road upgrade (from Tahuna Road to Access 4), including;</i>

(a) Upgrade to urbanised/industrial cross-section with kerb and channel and graded berms (Table OHI-18 and Figure OHI-18)...'

- (b) Add Figures OHI-17, OHI-18 and OHI-19 (attached as **Appendix A**) after Figure OHI-16.
- (c) Such further or other relief which may be necessary or appropriate to address the concerns outlined above.

14. **FIGURE OHI-3 - STAGING PLAN**

Reasons for appeal

- 14.1 Figure OHI-3 shows the Staging Plan for the development of the Sleepyhead Estate. The staging plan shows Stages 1-8 of the development.
- 14.2 Stage 2A has been erroneously omitted from Figure OHI-3.

Relief sought

- 14.3 APL seeks the following relief:
 - (a) Replace Figure OHI-3 with the corrected version of the Staging Plan (attached as **Appendix B**); and
 - (b) Such further or other relief which may be necessary or appropriate to address the concerns outlined above.

15. **BUSINESS PRECINCT OBJECTIVE PREC2-01**

Reasons for appeal

- 15.1 Business Precinct Objective PREC2-01 states:

(1) Commercial activity supports the Ohinewai community in two areas identified on the Ohinewai structure plan:

(a) A neighbourhood centre on Tahuna Road; and

(b) A service centre on the intersection of Tahuna and Lumsden Roads.

- 15.2 The neighbourhood centre shown in Figure OHI-2 (Ohinewai Business Area Structure Plan) is on an internal road, not on Tahuna Road.

Relief sought

- (a) Amend PREC2-01 as follows:

(1) Commercial activity supports the Ohinewai community in two areas identified on the Ohinewai structure plan:

(a) A neighbourhood centre between the industrial and residential precincts; and

(b) A service centre on the intersection of Tahuna and Lumsden Roads.

- (b) Such further or other relief which may be necessary or appropriate to address the concerns outlined above.

16. **ATTACHMENTS**

16.1 APL attaches the following documents to this notice:

- (a) Road cross section Figures OHI-17, OHI-18 and OHI-19 (**Appendix A**);
- (b) The corrected version of Staging Plan OHI-3. (**Appendix B**);
- (c) A copy of APL's submission and further submission. (**Appendix C**);
- (d) A copy of the relevant decision. (**Appendix D**); and
- (e) A list of all submitters to be served with a copy of this notice of appeal (**Appendix E**).

DATED at **AUCKLAND** this 6th day of July 2021

AMBURY PROPERTIES LIMITED

by its solicitors and duly authorised agents **BERRY SIMONS**:



S J Berry

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How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Act.

You may apply to the Environment Court under section 281 of the Act for a waiver of the above timing or service requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not have attached a copy of the appellant's submission and (or or) the decision (or part of the decision) appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland.

APPENDIX A

ROAD CROSS SECTION FIGURES OHI-17, OHI-18 AND OHI-19

APPENDIX B
STAGING PLAN OHI-3

APPENDIX C

APL'S SUBMISSION AND FURTHER SUBMISSION

APPENDIX D

**REPORT AND DECISIONS OF THE WAIKATO DISTRICT PLAN HEARINGS
PANEL ON OHINEWAI REZONING DATED 24 MAY 2021**

APPENDIX E

LIST OF SUBMITTERS TO BE SERVED WITH THIS APPEAL

Sub	Submitter	Address	Email
FS1045 1399	Auckland/Waikato Fish and Game Council	Anna Sintenie 156 Brymer Road RD 9 Hamilton 3289	Asintenie@fishandgame.org.nz ; Bwilson@fishandgam.org.nz
FS1403	Bruce Holmes	52 Lumsden Road RD 1 Huntly 3771	brucejuedi@gmail.com
FS1406	Daniel and Rebekah Holmes	56 Lumsden Road RD 1 Huntly 3771	connect@nanoclear.co.nz
FS1331 / FS1389 / FS1401	David and Tiffany Whyte	38 Ohinewai North Road RD 1 Huntly 3771	david@zestos.co.nz ; davidwhyte.5th@gmail.com
FS1293	Department of Conservation	C/- Maggie Burns Level 3, 73 Rostrevor Street Hamilton 3204	mburns@doc.govt.nz
FS1400	Douglas Dobbs	22 Johnson Road RD 4 Ohinewai	dadobbs@farmside.co.nz
FS1398	Future Proof Implementation Committee	Ken Tremaine 1601/18 Beach Rd Auckland 1010	ken@kentremaine.co.nz
FS1394	Iain and Luressa Macdonald	58 Lumsden Rd Ohinewai 3771	Nodmac16@gmail.com
FS1391	Konini Farms Limited	Lyn and Jenny Welch 15 Ohinewai South Road RD 1 Huntly 3771	Lyn.jenny@actrix.co.nz
FS1387 / FS1397 / FS1388	Mercury NZ	C/- Catherine Somerville-Frost Chapman Tripp PO Box2206 Auckland 1140	Catherine.Somerville-Frost@chapmantripp.com
FS1202 / FS1392	NZ Transport Agency	C/- Megan Kettle GMD Consultants Ltd Level 5, 127 Alexandra Street Hamilton 3204	megan@gmdconsultants.co.nz mike.wood@nzta.govt.nz

793 / FS1207 / FS1145 /	Ohinewai Area Committee	C/- Catherine Maher 44 Ohinewai South Road RD 1 Huntly 3771	oacommittee@hotmail.co.nz
428	Ohinewai Land Limited	David Peacocke PO Box 9548 Hamilton 3240	taupiriholdings@gmail.com
383	Planning Focus Limited	Paul Arnesen PO Box 911361 Victoria Street West Auckland 1142	pa@planningfocus.co.nz
FS1402	Richard and Shanette Marsh	75 Lumsden Road RD 1 Huntly 3771	sharicmarsh@hotmail.com
738 / FS1191	Shand Properties	C/- Grant Eccles Tonkin and Taylor Ltd PO Box 9544 Hamilton 3240	geccles@tonkintaylor.co.nz
1405	Suzanne Stow	81 Lumsden Road RD 1 Huntly 3771	Board-inn@xtra.co.nz
1108	Te Whakakitenga o Waikato (Waikato- Tainui)	Lorraine Dixon PO Box 648 Hamilton 3204	Lorraine.Dixon@tainui.co.nz
1396	The Ralph Estates	C/- Bill Loutit / Sarah Mitchell Simpson Grierson Private Bag 92518 Auckland	Bill.loutit@simpsongrierson.com ; sarah.mitchell@simpsongrierson.com
1277	Waikato Regional Council	C/- Miffy Foley Private Bag 3038 Waikato Mail Centre Hamilton 3240	Miffy.Foley@waikatoregion.govt.nz